034425/EU XXVI. GP
Eingelangt am 12/09/18

Council of the European Union

Brussels, 12 September 2018
(OR. en)

12111/18

Interinstitutional File:
2017/0230(COD)

EF 236
ECOFIN 819
DROIPEN 123
CRIMORG 121
CODEC 1458

PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	12 September 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2018) 646 final
Subject:	Amended proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority); Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority); Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority); Regulation (EU) No 345/2013 on European venture capital funds; Regulation (EU) No 346/2013 on European social entrepreneurship funds; Regulation (EU) No 600/2014 on markets in financial instruments; Regulation (EU) 2015/760 on European long-term investment funds; Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds; Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market; and (EU) Directive 2015/849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing

Delegations will find attached document COM(2018) 646 final.

Encl.: COM(2018) 646 final

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EUROPEAN
COMMISSION

Brussels, 12.9.2018
COM(2018) 646 final

2017/0230 (COD)

Amended proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority); Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority); Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority); Regulation (EU) No 345/2013 on European venture capital funds; Regulation (EU) No 346/2013 on European social entrepreneurship funds; Regulation (EU) No 600/2014 on markets in financial instruments; Regulation (EU) 2015/760 on European long-term investment funds; Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds; Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market; and (EU) Directive 2015/849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing

(Text with EEA relevance)

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The September 2017 Commission proposal to review the European Supervisory Authorities' Regulations (hereafter the " Review Proposal") intends to strengthen their capacity to ensure convergent and effective financial supervision, but it does not pursue the specific objective of reinforcing the mandate of the Authorities in matters relating to the preventing and combating of money laundering and terrorist financing. Despite the strengthened legislative framework in this area, several recent cases of money-laundering in European banks have shown that improvements may still be warranted in the Union's supervisory framework to strengthen the confidence in the Banking and Capital Markets Unions. These improvements need to be implemented swiftly and in a determined way. The most efficient way of dealing with this matter is to amend the Review Proposal and strengthen decisively the role of the European Banking Authority in particular. The Commission calls on the legislators to adopt these new amendments, together with the Review Proposal, as rapidly as possible.

The objectives of this amending proposal are the following:

1) to optimise the use of expertise and resources dedicated by centralising tasks related to preventing and combating money-laundering and terrorist financing at the European Banking Authority;

2) to clarify the scope and content of the anti-money-laundering related tasks entrusted to the European Banking Authority;

3) to reinforce the tools for carrying out anti-money laundering tasks;

4) to strengthen the coordination role of the European Banking Authority for international anti-money laundering issues.

To this end, it is proposed to give a leading and coordinating role to the European Banking Authority in order to centralise resources currently scattered across the three European Supervisory Authorities and give it a more robust support structure, also given that it is in the banking sector that money laundering and terrorist financing risks are most likely to have systemic impact. On the basis of existing tools and powers of the Authorities as amended by the pending Review Proposal, it is proposed to give the European Banking Authority a more explicit and comprehensive mandate to ensure that risks of money-laundering and terrorist financing in the Union's financial system are effectively and consistently incorporated into the supervisory strategies and practices of all relevant authorities. The European Banking Authority will also be able to request competent authorities to investigate possible breaches of the relevant rules and to oversee national procedures in this area. Under specific, circumscribed circumstances it will be able to address decisions directly to individual financial sector operators with regard to money-laundering matters and engage in binding mediation between national competent authorities on such matters.

• Consistency with existing policy provisions in the policy area

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This amending proposal is consistent with the Commission's on-going efforts to strengthen the Union's framework for financial supervision, develop the Capital Markets Union and to combat money-laundering and terrorist financing.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The legal basis for all amendments presented in this proposal is Article 114 of the Treaty on the Functioning of the European Union ("TFEU").

• Subsidiarity (for non-exclusive competence)

Because the European Supervisory Authorities are Union bodies, their governing regulations can only be amended by the Union legislator. Moreover, the objective of this proposal is to improve the effectiveness of supervision, foster cooperation among competent authorities and to optimise the use of expertise and resources at Union level in matters related to risks of money-laundering and terrorist financing. This will ensure a more consistent and effective functioning of the internal market, an objective which cannot be reached by Member States acting individually.

• Proportionality

The amendments presented in this proposal constitute targeted changes to improve the Union's supervisory framework, which do not go beyond what is necessary for attaining the objectives set out therein. The proposed amendments will contribute to improving the integrity, stability and effectiveness of the financial system throughout the Union.

• Choice of the instrument

This proposal amends the pending Review Proposal. It amends the Regulations governing the three European Supervisory Authorities and the Directive on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing and takes the form of a Regulation.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

• Collection and use of expertise

This proposal takes into account reflections of the Joint Working Group composed of the chairpersons of the European Supervisory Authorities, the chairperson of the Supervisory Board of the Single Supervisory Mechanism, the chairperson of the Joint Committee's anti-money laundering sub-committee and the Commission, as well as exchanges with relevant stakeholders.

• Impact assessment

Given the urgent need to preserve and safeguard the European banking system from potentially damaging money-laundering cases, this initiative was prepared without an impact

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assessment or public consultation, but using the practical experience and expertise underpinning the Reflection Paper mentioned above.

- **Regulatory fitness and simplification**

This is a targeted amendment of the Union framework for prudential and anti-money laundering supervision of financial institutions and financial market participants to centralise the tasks of the European Supervisory Authorities related to preventing and combating money-laundering and terrorist financing in the financial sector at the European Banking Authority and to reinforce the tools for carrying out anti-money laundering tasks and coordination. The amendments should make Union level supervision more effective and efficient and will improve legal and economic certainty. This is in line with the Commission's Better Regulation Agenda.

- **Fundamental rights**

This proposal respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

4. BUDGETARY IMPLICATIONS

The financial and budgetary impact of this proposal is explained in detail in the supplementary legislative financial statement at the end of this proposal.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The implementation of this Regulation will be reviewed as part of the regular reviews of the Authorities framework every three years.

- **Detailed explanation of the specific provisions of the proposal**

Enhancing the role of the European Banking Authority

The proposed amendments to Article 1(2) extend the scope of action of the European Banking Authority in a targeted way, to incorporate into the European Banking Authority's mandate matters related to combating money-laundering and terrorist financing across the financial sector, to supplement its existing mandate in the banking sector.

The proposed amendments to Article 4(2) ensure a dedicated definition of financial sector operators which include all relevant financial institutions subject to Directive 2015/849, including those within the remit of Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010.

The proposed Article 8(1)(l) emphasises the specific importance attributed to the European Banking Authority's work in relation to combating money-laundering and terrorist financing.

The proposed new Article 9a provides the European Banking Authority with strengthened tools to promote consistent, systematic and effective action in the area of preventing and combating money-laundering and terrorist financing in the Union's financial system.

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In particular, it empowers the European Banking Authority to collect information relating to weaknesses identified in the processes and procedures, governance, business model and activities of financial institutions to prevent money-laundering and terrorist financing, as well as measures taken by competent authorities and make that information available to relevant competent authorities as appropriate. It also puts emphasis on the importance of conducting reviews of competent authorities, as well as carrying out risk assessment exercises to test competent authorities' strategies and resources in relation to money-laundering and terrorist financing risks. The proposed Article also foresees a role for the European Banking Authority to cooperate and liaise with relevant third country anti-money laundering supervisors with a view to better coordinating action at Union level in material cases of money-laundering or terrorism financing with a third country dimension.

Finally, the proposed Article foresees that coordination and cooperation issues relating to anti-money laundering and terrorist financing takes place through an Anti-Money Laundering Committee integrated into the European Banking Authority. It will be composed of heads of Member States authorities and bodies competent for ensuring compliance by financial institutions with the requirements of Directive 2015/849/EU, and observers from the European Insurance and Occupational Pensions Authority, the European Securities and Markets Authority, the European Systemic Risk Board, the European Commission and from the Supervisory Board of the European Central Bank.

The proposed Article 9b aims to reinforce the capacity of the European Banking Authority to ensure the effectiveness of Union law in the area of preventing and combating money laundering and terrorism financing. It gives the Authority the power, where it has indications of material breaches, to request competent authorities to start investigations on possible breaches of relevant rules, and consider taking decisions and imposing sanctions on financial sector operators.

Changes put forward to Article 17 on the procedure for breach of Union law and Article 19 on the procedure for binding mediation, envisage enabling the European Banking Authority in the context of its tasks related to preventing and combating money laundering and terrorism financing, to take individual decisions addressed to financial sector operators even when the material rules are not directly applicable to such financial sector operators. This will include material rules enshrined in national legislation transposing Directives, as well as national legislation exercising options granted to Member States in Regulations.

The proposed amendments to Article 54 clarify that the Joint Committee of the three Supervisory Authorities serves as a forum of cooperation among the three Authorities on matters related to the interaction between prudential and anti-money laundering aspects.

The proposed amendments to the Regulation governing the European Insurance and Occupational Pensions Authority and the Regulation governing the European Securities and Markets Authority remove Directive 2015/849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing from the scope of activities of those two authorities and clarify that the Joint Committee should be used as a forum for cooperation on matters related to the interaction between prudential, and anti-money laundering andcountering financing of terrorism aspects.

The proposal also includes minor amendments to Directive 2015/849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing to substitute references to the European Supervisory Authorities with a reference to the

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European Banking Authority. These are technical amendments to ensure coherence with the proposed new role proposed for the latter.

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(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 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank[1],

Having regard to the opinion of the European Economic and Social Committee[2],

Acting in accordance with the ordinary legislative procedure[3],

Whereas:

(1) Following the financial crisis and the recommendations of a group of high level experts led by Jacques de Larosière, the the Union has made important progress in creating not only stronger, but also more harmonised rules for the financial markets in

1 OJ C , , p. .
2 OJ C , , p. .
3 Position of the European Parliament of …(OJ…) and decision of the Council of …

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the form of the Single Rule Book. The Union has also set up the European System of Financial Supervision ("ESFS"), built on a two-pillar system which combines micro-prudential supervision, coordinated by European Supervisory Authorities ("ESAs"), and macro-prudential supervision through the establishment of the European Systemic Risk Board ("ESRB"). The three ESAs namely the European Banking Authority ("EBA"), created by Regulation (EU) No 1093/2010 of the European Parliament and of the Council[4], the European Insurance and Occupational Pensions Authority ("EIOPA"), created by Regulation (EU) No 1094/2010 of the European Parliament and of the Council , and the European Securities and Markets Authority (ESMA), created by Regulation (EU) No 1095/2010 of the European Parliament and of the Council[5] (collectively "the founding regulations") – became operational in January 2011. The overall objective of the ESAs is to sustainably reinforce the stability and effectiveness of the financial system throughout the Union and to enhance consumer and investor protection.

(2) The ESAs have made a crucial contribution to the harmonisaton of the rules of the financial markets in the Union by providing the Commission with input for its initiatives for regulations and directives adopted by Council and Parliament. The ESA's have also provided the Commission with drafts of detailed technical rules which have been adopted as delegated and implementing acts.

(3) The ESAs have also contributed to the convergence in financial supervision. And supervisory practise in the Union by means of guidelines directed at competant authorities and by coordinating reviews of supervisory practices. However, the decision making processes enshrined in their founding regulations, in addition to constraints on resources and the nature of those instruments, which the ESAs have at their disposal, have prevented them from fully achieving their overall objectives.

(4) After seven years of operation and following evaluations and the public consultations undertaken by the Commission it appears that the ESAs are increasingly constrained in their capacity to meet their objectives of the further integration of financial markets and services and the enhancement of consumer protection, within the existing legislative framework, both in the Union and between the Union and third countries.

(5) Any enhanced powers to be afforded to the ESAs, to enable them to meet those objectives, would also require both appropriate governance and sufficient funding. Enhanced powers alone would not be sufficient to achieve the ESAs' objectives where they do not have sufficient funding or where they are not governed in an effective and efficient manner.

(6) In the Commission's Communication of 8 June 2017 on the mid-term review of the Capital Markets Union Action Plan, it was emphasised that a more effective and consistent supervision of financial markets and services is pivotal for the elimination

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4 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 (OJ L 331, 15.12.2010, p. 12).

5 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 (OJ L 331, 15.12.2010, p. 84).

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of regulatory arbitrage between Member States, when exercising their supervisory tasks, for the acceleration of market integration and for the creation of single market opportunities for financial entities and investors.

(7) Further progress in supervisory integration is therefore particularly urgent to complete the Capital Markets Union. Ten years after the onset of the financial crisis and the establishment of the new supervisory system, financial services and the Capital Markets Union will be increasingly driven by two major developments: sustainable finance and technological innovation. Both have the potential to transform financial services and our system of financial supervision should be equiped for them.

(8) It is therefore crucial that the financial system plays its full part in meeting critical sustainability challenges. This will require a deep re-engineering of the financial system to which the ESAs should make an active contribution starting with reforms to create the right regulatory and supervisory framework to mobilise and orient private capital flows towards sustainable investments.

(9) The ESAs should play an important role in identifying and reporting risks that environmental, social and governance factors pose to financial stability, and in rendering financial markets activity more consistent with sustainability objectives. The ESAs should provide guidance on how sustainability considerations can be effectively embodied in relevant EU financial legislation, and promote coherent implementation of these provisions upon adoption.

(10) Technological innovation has had an increasing impact on the financial sector and competent authorities have therefore taken various initiatives to deal with those technological developments. In order to promote better supervisory convergence and to exchange best practices between relevant authorities on the one hand, and between relevant authorities and financial institutions or financial market participants on the other hand, the role of the ESAs with regard to their oversight function and supervisory coordination should be strengthened.

(11) Technological advancements in financial markets can improve financial inclusion provide access to finance, enhance market integrity and operational efficiency and also lower barriers to entry in those markets. To the extent relevant for the applicable substantive rules, training of competent authorities should also extend to technological innovation.. This should contribute to avoiding that Member States develop divergent approaches in these matters.

(11a) It is becoming increasingly important to promote consistent, systematic and effective monitoring and assessment of risks in relation to money-laundering and terrorist financing in the Union's financial system. Given the consequences for financial stability which may stem from abuses of the financial sector for money-laundering or terrorist financing purposes, and building on the experience already gained by EBA in protecting the banking sector from such abuses, EBA should take a leading role at Union level to protect the financial system from money-laundering and terrorist financing risks. Therefore, it is necessary to entrust EBA, in addition to its present competences, with the authority to act within the remit of Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010 insofar as such authority relates to the prevention and combating of money-laundering and terrorist financing, where it concerns financial sector

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operators and the competent authorities supervising them, which are covered by those Regulations. Moreover, concentrating this mandate for the entire financial sector within EBA would optimise the use of its expertise and resources, and is without prejudice to the material obligations laid down in Directive (EU) 2015/849.

(11b) In order for EBA to exercise its mandate effectively it should make full use of all its powers and tools under the Regulation. In line with its new role, it is important that EBA collects all relevant information in relation to money-laundering and terrorist financing activities identified by the relevant Union and national authorities, without prejudice to the tasks assigned to authorities under Directive (EU) 2015/849. EBA should store such information in a centralised database and foster cooperation among authorities by ensuring appropriate dissemination of relevant information. In addition EBA should carry out reviews of competent authorities, as well as risk assessment exercises relating to money-laundering and terrorist financing. Furthermore, EBA should also have a role cooperating and liaising with relevant third country authorities on these matters with a view to better coordinate action at Union level in material cases of anti-money laundering and terrorist financing having a cross-border and third country dimension.

(11c) In order to enhance the effectiveness of supervisory control of compliance in the area of money laundering and terrorist financing and to ensure greater coordination of the enforcement by national competent authorities of breaches of directly applicable Union law or its national transposing measures, EBA should have the power, where there are indications of material breaches, to request competent authorities to investigate any possible breaches of the relevant rules, to consider taking decisions and imposing sanctions addressed to financial institutions requiring them to comply with their legal obligations. This power should only be used where EBA has indications of material breaches.

(12) A number of national authorities are not defined as competent authorities under the founding regulations, yet they are empowered to ensure the application of Union legislation in the area of financial services and markets. In order to ensure consistent, efficient and effective supervisory practices within the ESFS, it is necessary to define them as such. This would allow the ESAs notably to issue guidelines and recommendation to those national authorities.

(13) In order to ensure appropriate safeguards for the stakeholders' interests where the ESAs exercise their competence to issue guidelines or recommendations, the various Stakeholder Groups should be able to issue an opinion where two thirds of their members consider that the ESA concerned has exceeded its competence. In that instance, the Commission should have the authority to require the ESA, after a proper assessment, to withdraw those guidelines or recommendations as appropriate.

(14) In addition, for the purpose of the procedure provided for in Article 17 of the founding regulations and in the interest of proper application of Union law, it is appropriate to ease and speed up the ESAs' access to information. They should therefore be enabled to request information directly, via a duly justified and reasoned request, from all competent authorities concerned, financial institutions and financial market participants, even where those authorities, institutions or market participants have not

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themselves violated any provision of Union law. The ESAs should inform the competent authority concerned of such requests and that competent authority should assist the ESAs in collecting the requested information.

(15) A harmonised supervision of the financial sector requires a consistent approach among competent authorities. To that end, the activities of the competent authorities should be subject to regular and independent reviews by the ESAs, which should be supported by a review committee established by each of them. The ESAs should also develop a methodological framework for such reviews. The independent reviews should not only focus on the convergence of supervisory practices, but also on the capacity of competent authorities to achieve high quality supervisory outcomes, as well as on the independence of those competent authorities. The results of those reviews should be published to encourage compliance and increase transparency, unless such publication would involve risks to financial stability.

(15a) In view of the importance of ensuring that the Union supervisory framework for combating of money-laundering and terrorist financing is applied effectively, independent reviews to provide objective and transparent perspectives on supervisory practices are of paramount importance. Where such reviews reveal serious concerns, which the competent authority does not remedy, EBA should notify the European Parliament, the Council and the Commission.

(15b) For carrying out its tasks and exercising its powers, EBA should be able to take individual decisions addressed to financial sector operators in the context of the procedure for breach of Union law and of the procedure of binding mediation even when the material rules are not directly applicable to financial sector operators, after having taken a decision addressed to the competent authority. Where the material rules are laid down in Directives, EBA should apply the national legislation transposing those Directives. Where the relevant Union law is composed of Regulations and where, on the date of entry into force of this Regulation, those Regulations expressly grant options to Member States, EBA should apply the national legislation exercising those options.

(16) A harmonised supervision of the financial sector also requires that disagreements between the competent authorities of different Member States in cross–border situations are settled efficiently. The existing rules for settling such disagreements are not fully satisfactory. They should therefore be adapted so as to be more easily applicable.

(17) Integral to the ESAs work on convergence of supervisory practices is the promotion of a Union supervisory culture. However, the ESAs are not equipped with all the tools required to achieve this objective. It is necessary to enable the ESAs to set out the general supervisory objectives and priorities in a multiannual Strategic Supervisory Plan, intended to assist competent authorities in identifying and focussing on the most important areas of concern for EU-wide market integrity and financial stability, including with respect to prudential supervision of firms engaged in cross-border activities. The Strategic Supervisory Plan should be risk-based and take into account general economic and regulatory orientations for supervisory actions as well as relevant micro-prudential trends, potential risks and vulnerabilities identified by the ESAs in their reviews of competent authorities and from Union-wide and stress tests. The competent authorities should subsequently draw up annual work programmes to

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implement the Strategic Supervisory Plan, which convert the Union priorities and objectives into operational objectives for those authorities. The ESAs should be empowered to review the implementation of the annual work programs on day-to-day supervisio,n including, on a sample basis, supervisory measures taken in individual cases in order to ensure that the ESAs can achieve their objective of harmoising supervisory practices.

(18) The current supervisory practices of outsourcing, delegation and risks transfer (back-to-back business or fronting) from one licensed entity to another entity vary from one Member State to another. Those divergent regulatory approaches carry a risk of regulatory arbitrage across Member States ("race to the bottom"). Inefficient supervision of outsourced, delegated or transferred activities exposes the Union to financial stability risks. Those risks are particularly acute in relation to supervised entities outsourcing, delegating or transferring risk to third countries where supervisory authorities may lack the necessary tool to adequately and effectively supervise material activities and key functions. ESAs should have an active role in promoting supervisory convergence by ensuring a common understanding and supervisory practices of outsourcing, risk transfer and delegation of material activities and key functions in third countries, in accordance with Union law and in view of guidelines, recommendations and opinions that the ESAs may adopt. The ESAs should therefore have the necessary powers to effectively coordinate supervisory actions carried out by national supervisory authorities both when authorising or registering an undertaking and as part of an ongoing review of supervisory practices. In performing this coordination role, ESAs should particularly focus on situations that may lead to a circumvention of the rules and monitor financial institutions or financial market participants that intend to make an extensive use of outsourcing, delegation and risk transfer in third countries with the intention of benefitting from the EU passport while essentially performing substantial activities or functions outside the Union

(19) Continued financial stability requires that third-country equivalence decisions that have been adopted by the Commission are monitored on an ongoing basis. The ESAs should therefore verify whether the criteria, on the basis of which the third-country equivalence decisions have been taken and any conditions set out therein, are still fulfilled. In addition, the ESAs should monitor both the regulatory and supervisory developments and the enforcement practices in those third countries. In that context, the ESAs should also develop administrative arrangements with third-country competent authorities to obtain information for monitoring purposes and for coordinating supervisory activities. This enhanced supervisory regime will ensure that third countries/ equivalence is more transparent, more predictable for the third countries concerned and more consistent across all sectors.

(20) The collection and gathering of accurate and complete information by the ESAs is essential to the carrying out of their tasks and functions and to achieving their objectives. In order to avoid duplication of reporting obligations for financial institutions and financial market participants, that information should be provided by the relevant competent authorities or national supervisory authorities which are closest to the financial markets and institutions. However, the ESAs should be able to address a duly justified and reasoned request for information directly to financial institutions or financial market participants where a competent authority does not or cannot provide that information within a specified period. Furthermore, it is necessary for the purposes of ensuring the effectiveness of the ESAs' right to collect information that

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they should have the possibility to impose periodic penalty payments or fines on those financial institutions or financial market participants that do not comply accurately, completely or in a timely manner with a request or decision to submit information. The right of the financial institution or financial market participant concerned to be heard by the ESAs should be guaranteed explicitly.

(21) Within the founding regulations of the ESAs it was provided that competent authorities would play a key role within their governance structure. It was also specified in those regulations that in order to prevent conflicts of interest, the members of the Board of Supervisors and of the Management Board would act independently and in the sole interest of the Union. The initial governance structure of the ESAs did not however provide sufficient safeguards to ensure that conflicts of interest be entirely avoided which can affect the ESAs' ability to take all the decisions necessary in the area of supervisory convergence and to ensure that their decisions take the broader Union interests fully into account. Therefore in order to ensure the effectiveness and efficiency of the decision making process of the ESAs, the allocation of the decision making powers within the ESAs should be redefined.

(22) Moreover, the Union dimension in the decision-making process within the Board of Supervisors should be enhanced by including independent full time members as members of the Board, who are not subject to possible conflicts of interest. Decision-making powers on issues of a regulatory nature and on direct supervision should remain fully with the competence of the Board of Supervisors. The Management Board should be transformed into an Executive Board composed of full time members and should decide on certain non-regulatory issues, including independent reviews of competent authorities, dispute settlements, breach of Union law, the Strategic Supervisory Plan, monitoring of outsourcing, delegation and risk transfers to third countries, stress tests and requests for information. The Executive Board should also examine and prepare all decisions to be taken by the Board of Supervisors. Moreover, the position and role of the Chairperson should be enhanced by empowering the Chairperson with formal tasks and with a casting vote in the Executive Board. Finally, the Union dimension in the ESAs governance should also be strengthened by amending the selection procedure of the Chairperson and the members of the Executive Board to one which will include the role of the Council and the European Parliament. The Executive Board should have a balanced composition.

(23) In order to provide for an appropriate level of expertise and accountability, the Chairperson and the members of the Executive Board should be appointed on the basis of merit, skills, knowledge of clearing, post-trading and financial matters, as well as experience relevant to the financial supervision. To ensure transparency and democratic control, as well as to safeguard the rights of the Union institutions, the Chairperson and the members of the Executive Board should be chosen on the basis of an open selection procedure. The Commission should establish a shortlist and submit that shortlist to the European Parliament for approval. Following that approval, the Council should adopt a decision to appoint the members of the Executive Board. The Chairperson and the full time members of the Executive Board should be accountable to the European Parliament and to the Council for any decisions taken on the basis of the founding Regulations.

(24) To ensure a more efficient allocation of operational tasks on the one hand and the management of administrative day-to-day activities on the other hand, the current

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tasks of the Executive Director of each of the ESAs should be assumed by one of the members of the Executive Board, who should be selected on the basis of those particular tasks.

(24a) To ensure that the appropriate level of expertise underpins decisions relating to anti-money laundering and terrorist financing measures, it is necessary to set up a committee composed of the heads of authorities and bodies in charge of compliance with anti-money laundering and terrorist financing legislation , which will examine and prepare decisions to be taken by EBA. In order to avoid duplication, this new committee will replace the existing anti-money laundering sub-committee which has been set up within the ESAs Joint Committee.

(25) It is appropriate that financial institutions and financial market participants contribute to the financing of the activities of the ESAs, because the overall objective of the activities of the ESAs is to contribute to financial stability and, through the avoidance of distortions of competition, the proper operation of the single market. The activities of the ESAs benefit all financial institutions and financial market participants, whether or not they operate across borders. The ESAs contribute to them conducting their business in a stable environment and on a level playing field. Financial institutions and financial market participants that are not directly supervised by the ESA's should therefore also contribute to the funding of those activities of the ESAs from which they benefit. In addition, the ESAs should however also receive fees paid by the financial institutions and financial market participants that are directly supervised by them.

(26) Within each category of financial institutions and financial market participants, the level of contributions should take into account how much each financial institution and financial market participant benefits from the activities of the ESAs. Accordingly, individual contributions by financial institutions and financial market participants should be determined by reference to their size in order to reflect their importance in the relevant market. The collection of very small contributions should be subject to a *de minimis* threshold, to ensure that their collection is economical whilst at the same time ensuring that larger firms are not required to contribute disproportionately.

(27) In order to determine how the annual contributions by individual financial institutions and financial market participants are to be calculated, power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission. The delegated acts will establish a methodology to allocate the estimated expenditure to categories of financial institutions or financial market participants and criteria to determine the level of individual contributions based on size. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(28) To preserve the confidentiality of the work of the ESAs, the requirements of professional secrecy should also apply to any person who provides any service,

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directly or indirectly, permanently or occasionally, related to the tasks of the ESA concerned.

(29) Regulations (EC) 1093/2010, 1094/2010 and 1095/2010 as well as sectoral financial services legislation require the ESAs to seek effective administrative arrangements, involving the exchange of information with third-country supervisors. The need for effective cooperation and information exchange should become all the more important when, pursuant to this amending Regulation, some of the ESAs assume additional, broader responsibilities in relation to the supervision of non-EU entities and activities. Where, in this context, the ESAs process personal data, including by transferring such data outside the Union, they are bound by the requirements of Regulation (EU) No 2018/XXX (Data Protection Regulation for EU institutions and Bodies). In the absence of an adequacy decision or of appropriate safeguards, for example provided for in administrative arrangements within the meaning of Article 49(3) of the Data Protection Regulation for EU institutions and Bodies, the ESAs may exchange personal data with third-country authorities in accordance with and under the conditions of the public interest derogation as set out in Article 51(1)(d) thereof, which notably applies to cases of international data exchange between financial supervisory authorities.

(30) It is essential that the EBA decision making procedures provide appropriate safeguards for Member States not participating in the banking union, whilst at the same time enabling the EBA to continue to take decisions in an effective manner when the number of non-participating Member States reduces. The current voting rules requiring that a majority of participating member States and a majority of non-participating Member States for EBA take a decision should be maintained. However, additional safeguards are required in order to avoid a scenario whereby decisions cannot be taken only because of absences of member State competent authorities and in order to ensure that as many national competent authorities as possible are present when voting to end up with a strong and legitimate vote.

(31) The founding regulations of the ESAs provide that the ESAs, in cooperation with the ESRB, should initiate and coordinate Union-wide stress tests in order to assess the resilience of financial institutions or financial market participants to adverse market developments. It should also ensure that a consistent methodology is applied, in as much as possible, at national level to such tests. To ensure a proper balance between competent authorities' supervisory concerns and Union wide considerations, it is appropriate to transfer to the Executive Board of the ESAs the power to decide on the initiation and coordination of stress tests. It should also be clarified, in respect of all of the ESAs, that the professional secrecy obligations of competent authorities shall not prevent competent authorities from transmitting the results of stress test to the ESAs for the purpose of publication.

(32) To ensure a high level of convergence in the area of supervision and approval of internal models, EIOPA should be able to issue opinions to remedy potential inconsistencies and assist competent authorities in reaching agreement related to the approval of internal models. Competent authorities should take their decisions in conformity with these opinions, or alternatively explain why there are not conforming to the opinion.

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(33) With the ever increasing cross-border dimension of trading activities and, in particular, of the activities of certain investment firms which, by their systemic nature, may have cross-border effects impacting financial stability, ESMA should have an enhanced coordination role in recommending competent authorities to initiate corresponding investigations. Furthermore, it should be able to facilitate the exchange of information relevant for those investigations, where ESMA has reasonable grounds to suspect that activity with significant cross-border effects is taking place that threatens the orderly functioning and integrity of financial markets or the financial stability in the Union. For this purpose, ESMA should maintain a data storage facility to collect from, and disseminate between, competent authorities, all relevant information

(34) The main objectives of Regulation (EU) No 345/2013 of the European Parliament and of the Council[6], Regulation (EU) No 346/2013 of the European Parliament and of the Council[7] and Regulation (EU) 2015/760 of the European Parliament and of the Council[8] is boosting jobs and growth, SME financing, social and long-term investments, as well as promoting an EU investment culture. However, the divergent use by national competent authorities of their discretion, their divergent administrative practices, and the differences in supervisory cultures and performance remain despite the harmonisation achieved by the three Regulations. Those divergences hinder the necessary level playing field among managers of qualifying venture capital funds, qualifying social entrepreneurship funds and long-term investment funds in different Member States increasing, at the same time, the transaction and operational costs of those managers.

(35) To lower transaction and operational costs, to strengthen investor choice and to increase legal certainty, it is appropriate to transfer the supervisory powers, including the granting and withdrawal of registrations and authorisations, for managers of qualifying venture capital funds and those funds as referred to in Regulation (EU) No 345/2013, managers of qualifying social entrepreneurship funds or those funds as referred to in Regulation (EU) No 346/2013 and European long-term investment funds as referred to in Regulation (EU) 2015/760, from the competent authorities to ESMA. For that purpose, ESMA should be able to conduct investigations and on-site inspections and to impose penalties or periodic penalty payments to compel persons to put an end to an infringement, to supply complete and correct information required by ESMA or to submit to an investigation or an on-site inspection.

(36) Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds lays down uniform requirements which must be met by long-term funds in order to be authorised as an 'ELTIF'. Regulation (EU) 2015/760 lays down rules on qualifying investments, qualifying portfolio undertakings, concentration rules, and eligible investors. The rules also define the supervisory powers, including requirements for authorizations and ongoing supervision. Whilst maintaining the prudential rules in Regulation (EU) 2015/760, this Regulation confers supervisory powers, including authorization, ongoing supervision

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6 Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, p. 1).

7 Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (OJ L 115, 25.4.2013, p. 18).

8 Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (OJ L 123/98, 19.5.2015, p. 98).

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and withdrawals of authorisations, on ESMA. This regulation entrusts ESMA with the drawing up of draft regulatory technical standards which do not involve policy choices for submission to the Commission, so that the legal obligations and the scope of ESMA's discretion under Regulation (EU) 2015/760 are sufficiently clear. Similar changes have been made to Regulations (EU) 345/2013 and 346/2013 to confer supervisory powers on ESMA.

(37) In order to effectively exercise its supervisory powers with respect to qualifying venture capital funds, qualifying social entrepreneurship funds and European long-term investment funds and their managers, ESMA should be able to conduct investigations and on-site inspections. To support ESMA's oversight capabilities, ESMA should be granted powers to impose penalties or periodic penalty payments to compel persons to put an end to an infringement, to supply complete and correct information required by ESMA or to submit to an investigation or an on-site inspection. This Regulation should therefore clearly define the boundaries of such administrative sanctions or other administrative measures which should be effective, proportionate and dissuasive and ensure a common approach and a deterrent effect. ESMA's investigatory and enforcement activities should rely on the support of national authorities where needed and required. ESMA should be empowered to delegate certain of these functions can still be delegated back to the national competent authorities

(38) Article 40 of Regulation (EU) No 600/2014 granted ESMA with temporary intervention powers, which allow ESMA under certain conditions, to temporarily prohibit or restrict in the Union the marketing, distribution or sale of certain financial instruments or financial instruments with certain specified features, or a type of financial activity or practice. It is explicit that these product intervention powers under Regulation (EU) No 600/2014 apply to investment firms and credit institutions involved in marketing, distribution or sale of financial instruments, including units in collective investment undertakings. Since units in collective investment undertakings may also be directly marketed, distributed or sold by management companies of undertakings for collective investment in transferable securities and investment companies authorised in accordance with Directive 2009/65/EC of the European Parliament and of the Council and managers of alternative investment funds (AIFMs) authorised in accordance with Directive 2011/61/EU of the European Parliament and of the Council, in the interest of enhancing legal certainty it is necessary to make it explicit that the above-mentioned product intervention powers under Regulation (EU) No 600/2014 also apply in respect of management companies of UCITS and UCITS investment companies, as well as to AIFMs.

(39) In strictly defined and exceptional cases, ESMA may use its intervention powers to restrict or prohibit marketing, sale or distribution of units or shares in UCITS or AIFs also by their managers. This would be appropriate when the proposed action addresses a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or to the stability or part of the financial system in the Union; regulatory requirements under Union law that are applicable to the relevant financial instrument or activity do not address the threat; and a competent authority or competent authorities have not taken action to address the threat or the actions that have been taken do not adequately address the threat

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(40) Inconsistencies in the quality, formatting, reliability and cost of trading data have a detrimental effect on transparency, investor protection and market efficiency. In order to enhance the monitoring and reconstruction of trading data, to improve the consistency and quality of those data and their availability and accessibility at reasonable cost throughout the Union for the relevant trading venues, Directive 2014/65/EU introduced a new legal regime for data reporting services, including the authorisation and supervision of data reporting services providers.

(41) The quality of trading data and of the processing and provisioning those data, including cross-border data procession and provisioning, is of paramount importance to achieve the main objective of Regulation (EU) No 600/2014 of strengthening the transparency of financial markets. The provision of core data services are therefore pivotal for users to be able to obtain the desired overview of trading activity across Union financial markets and for competent authorities to receive accurate and comprehensive information on relevant transactions.

(42) In addition, trading data is an increasingly essential tool for effective enforcement of requirements stemming from Regulation (EU) No 600/2014. Given the cross-border dimension of data handling, data quality and the necessity to achieve economies of scale, and to avoid the adverse impact of potential divergences on both data quality and the tasks of data reporting service providers, it is beneficial and justified to transfer authorisation and supervisory powers in relation to data reporting service providers from competent authorities to ESMA and specify those powers in Regulation (EU) No 600/2014 enabling, at the same time, the consolidation of the benefits arising from pooling data-related competences within ESMA..

(43) Retail investors should be adequately informed about potential risks when they decide to invest in a financial instrument. The legal framework of the Union aims at reducing the risk of misselling where retail investors are sold financial products which do not fit their needs or expectations. To that end, Directive 2014/65/EU and Regulation (EU) No 600/2014 enhance organisational and conduct of business requirements to ensure that investment firms act in the best interests of their clients. Those requirements include enhanced risk disclosure to clients, better assessment of suitability of products recommended as well as an obligation to distribute financial instruments to the identified target market, taking into account factors such as the solvency of issuers. ESMA should make full use of its powers to ensure supervisory convergence and support national authorities in achieving a high level of investor protection and effective oversight of risks associated with financial products.

(44) It is important to ensure effective and efficient submissions, compilation, analysis and publication of data for the purposes of calculations for determining the requirements for the pre-and post-trade transparency and trading obligation regimes, as well as for the purposes of reference data in accordance with Regulation (EU) No 600/2014 and Regulation (EU) No 596/2014[9]. ESMA should therefore be conferred competences to undertake direct data gathering from market participants in relation to pre- and post-

[9] Regulation (EU) No 600/2014 and Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC (OJ L 173, 12.6.2014, p. 1).

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trade transparency requirements, as well as well as their authorisation and oversight of data reporting services providers.

(45) Granting those competences to ESMA allows for a centrally managed authorisation and oversight, which would avoid the current situation where multiple trading venues, systematic internalisers, APAs and CTPs are required to provide multiple competent authorities with data which are only then provided to ESMA. Such a centrally managed system should be highly beneficial to the market participants in terms of higher data transparency, investor protection and market efficiency.

(46) The conferral of data gathering powers, authorisation and oversight from competent authorities to ESMA is also instrumental to other tasks ESMA is performing under Regulation (EU) No 600/2014, such as market monitoring, ESMA's temporary intervention powers and position management powers, as well as ensuring the consistent compliance with pre-trade and post-trade transparency requirements..

(47) For ESMA to exercise its supervisory powers effectively within the area of data processing and provision, ESMA should be able to conduct investigations and on-site inspections. ESMA should be able to impose penalties or periodic penalty payments to compel data reporting service providers to put an end to an infringement, to supply complete and correct information required by ESMA or to submit to an investigation or an on-site inspection and to impose administrative sanctions or other administrative measures where it finds that a person has committed, intentionally or negligently, an infringement of Regulation (EU) No 600/2014.

(48) Financial products using critical benchmarks are available in all Member States. Those benchmarks are therefore of crucial importance for the functioning of financial markets and financial stability in the Union. The supervision of a critical benchmark should therefore take a holistic view of potential impacts, not only in the Member State where the administrator is located and the Member States where its contributors are located, but across the entire Union. It is hence appropriate that critical benchmarks are supervised at Union level by ESMA. To avoid duplication of tasks, administrators of critical benchmarks should be supervised only by ESMA, including any non-critical benchmarks they might administer.

(49) Where, however, a benchmark is of critical importance only in one Member State closer market proximity of the competent authority of that Member State might make it appropriate for ESMA to delegate, entirely or in parts, the supervision of that benchmark to the competent authority of the Member State where the administrator is located, provided that ESMA has obtained the prior consent of that competent authority for that purpose.

(50) As administrators of and contributors to critical benchmarks are put under stricter requirements than administrators of and contributors to other benchmarks, the designation of benchmarks as critical benchmarks should be undertaken by the Commission or ESMA and should be codified by the Commission. As national competent authorities have best access to data on and information about benchmarks they supervise, they should notify the Commission or ESMA of benchmarks which, in their opinion, fulfil the criteria identifying critical benchmarks. .

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(51) Colleges of supervisors for critical benchmarks were envisaged to contribute to the harmonised application of rules under Regulation (EU) 2016/1011 and to the convergence of supervisory practices. Because ESMA is in direct contact with all national supervisors or is made up of those supervisors, those colleges of supervisors will no longer be needed.

(52) The procedure to determine the Member State of reference for benchmark administrators located in third countries that apply for recognition in the Union is cumbersome and time-consuming for both applicants and national competent authorities. Applicants might try to influence that determination in the hope of supervisory arbitrage, as might other benchmark administrators located in third countries that seek access to the Union via the endorsement regime. Those benchmark administrators might choose their legal representative strategically in a Member State where they consider supervision less strict. A harmonised approach with ESMA as competent authority for third country benchmarks and their administrators avoids these risks and the costs of determining the Member State of reference as well as of the subsequent supervision. Furthermore, this role as competent authority for third country benchmarks establishes ESMA as the counterpart in the Union for supervisors in third countries, making cross-border cooperation more efficient and effective.

(53) Many if not the majority of benchmark administrators are banks or financial services firms handling client money. In order not to undermine the Union's fight against money laundering or terrorist financing it should be a precondition for the conclusion of a cooperation arrangement with a competent authority under an equivalence regime that the country of the competent authority is not on the list of jurisdictions which have strategic deficiencies in their national anti-money laundering and countering the financing of terrorism regimes that pose significant threats to the financial system of the Union.

(54) Almost all benchmarks are referenced in financial products which are available in several Member States, if not the entire Union. To detect risks related to the provision of benchmarks that might no longer be reliable or representative of the market or economic reality they intend to measure, competent authorities, including ESMA, should cooperate and assist each other where appropriate.

(55) Due to the nature of the securities and issuers concerned, certain types of prospectuses drawn up according to Regulation (EU) 2017/1129 involve a cross-border dimension within the Union, a level of technical complexity and/or potential risks of regulatory arbitrage which are such that their centralised supervision by ESMA would achieve more effective and efficient results than their supervision at national level. Consolidating at the level of ESMA the approval of such prospectuses, as well as related supervisory and enforcement activities at the level of ESMA, should reduce compliance costs and administrative barriers while enhancing the quality, consistency and efficiency of supervision in the Union.

(56) Private placements of non-equity securities are an important source of capital for issuers and are cross-border by nature. While a private placement with qualified investors does not require a prospectus, the subsequent admission to trading of the securities on a regulated market is subject to the publication of a prospectus under Regulation (EU) 2017/1129. The prospectus regime provides issuers with the flexibility to choose their home Member State where the denomination by unit of non-

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equity securities is in excess of 1000 EUR. As the non-equity securities concerned by private placements typically display a denomination by unit in excess of 1 000 EUR, this creates a potential for regulatory forum shopping. Entrusting ESMA with approving such wholesale non-equity prospectuses admitted to trading on a regulated market or its specific segment to which only qualified investors can have access to should achieve the double objective of ensuring a level playing field for issuers and a higher degree of efficiency by significantly streamlining approval procedures.

(57) The approval of prospectuses relating to asset backed securities as well as the approval of prospectuses drawn up by specialist issuers, such as property companies, mineral companies, scientific research based companies or shipping companies, require national competent authorities to have highly specialized staff available, in most cases to deal with a fairly modest volume of prospectuses. Besides, certain non-financial information to be disclosed by specialist issuers is not set out in the delegated acts referred to in Article 13 of Regulation (EU) 2017/1129 but is left to the discretion of national competent authorities. This represents a potential source of inefficiency and regulatory arbitrage. Entrusting ESMA with the approval of these types of prospectuses should, on the one hand, ensure a level playing field in terms of information disclosure and eliminate the risk of regulatory arbitrage and, on the other hand, optimise the allocation of supervisory resources at Union level by establishing ESMA as the centre of expertise, thereby enhancing the efficiency of supervision of the prospectuses concerned.

(58) Third country issuers which draw up a prospectus in accordance with Union law enjoy some flexibility as regards the choice of their home Member State for the purpose of prospectus approval, which carries the risk of creating supervisory forum shopping across Member States. Consolidating such approvals at the level of ESMA would ensure a fully harmonised approach vis-à-vis third country issuers and eliminate the potential for regulatory arbitrage. Third country issuers will thereby have ESMA as their single point of contact in the Union regardless of the Member State(s) where they offer their securities or request an admission to trading. This removes the need to determine a home Member State for such third country issuers.

(59) The equivalence regime for prospectuses drawn up under the national laws of third countries should be amended to provide that the equivalence assessment and the subsequent adoption of a decision by the Commission are based not only on the information requirements of the national laws of such third countries, but also on the existence of a framework for the scrutiny and approval of the prospectus by the third country supervisor, including its supplements, where applicable, and effective supervision and enforcement of the offers and admissions under such prospectus. In order to be consistent with the approach set out by the Commission in its Staff Working Document 'EU equivalence decisions in financial services policy: an assessment' (SWD(2017) 102 final), the Commission should be able to subject its equivalence decision to additional conditions with a view to protecting market integrity within the Union, and promoting the internal market for financial services as well as common values and shared regulatory objectives at international level. Such conditions may consist in a requirement for the third country to provide for an effective equivalent system for the recognition of prospectuses drawn up according to Regulation (EU) No 2017/1129 or the ability of ESMA to cooperate with the relevant third country supervisor in order to monitor the rules of the third country on an ongoing basis.

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(60) Where the legal and supervisory arrangements of a third country relating to prospectuses drawn up in accordance with the national law of that third country have been declared equivalent by the Commission, and where an appropriate cooperation arrangement has been concluded between ESMA and the supervisory authority of that third country, any prospectus approved by the supervisory authority of that third country which is used in the Union for an offer of securities to the public or an admission to trading on a regulated market should be filed with ESMA and the rules for determining the home Member State should be disapplied.

(61) As the equivalence regime provided for in Regulation (EU) 2017/1129 requires that competent authorities and ESMA rely on third country supervisors with regard to offers and admissions to trading taking place in the Union on the basis of a prospectus drawn up under third-country rules, those competent authorities and ESMA also need to be confident that the prevention of the use of the financial system for the purposes of money laundering and terrorist financing is ensured in the third country concerned. For that purpose, and also in order not to undermine the Union's fight against money laundering and/or terrorist financing, it should be a precondition for a conclusion by ESMA of a cooperation arrangement with a third country supervisor under the equivalence regime provided by Regulation (EU) 2017/1129 that the third country is not included on the list of jurisdictions which are declared as having strategic deficiencies in their national anti-money laundering and countering the financing of terrorism regimes that pose significant threats to the financial system of the Union.

(62) ESMA should be empowered to impose administrative sanctions or take other administrative measures for infringements of Regulation (EU) No 2017/1129 related to the specific types of prospectuses for which approval is conferred to ESMA. This Regulation should therefore clearly define the boundaries of such administrative sanctions or other administrative measures which should be effective, proportionate and dissuasive.

(63) The supervision of advertisements related to those prospectuses whose approval is conferred to ESMA should also be transferred to ESMA. ESMA should have the option to exercise control over the compliance of those advertisements. However such control should always be performed by ESMA in relation to any advertisement disseminated in a Member State whose competent authority has formally requested ESMA to make use of its controlling power whenever a prospectus approved by ESMA is used for an offer or admission in its jurisdiction. To perform such a task, ESMA should have adequate human resources with sufficient knowledge of the relevant national rules on consumer protection.

(64) ESMA should scrutinise and approve all prospectuses of the types defined by this Regulation that are submitted for approval from the date of application of this Regulation. Prospectuses of the types defined by this Regulation that were approved by a competent authority before the date of application of this Regulation, or submitted for approval to a competent authority but not yet approved at that date, should continue to be supervised by that competent authority. To avoid any confusion, such supervision should cover in particular the finalisation of the scrutiny and approval procedure for those prospectuses not yet approved, as well as all approval and notification tasks applying to related supplements and final terms, where applicable.

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(65) It is appropriate to provide for a reasonable period of time to make the necessary arrangements for the envisaged governance structure and the delegated and implementing acts in order to enable the ESAs and the other parties concerned to apply the rules introduced by this Regulation.

(66) Regulation (EU) No 1093/2010); Regulation (EU) No 1094/2010; Regulation (EU) No 1095/2010; Regulation (EU) No 345/2013; Regulation (EU) No 346/2013; Regulation (EU) No 600/2014 ; Regulation (EU) No 2015/760; Regulation (EU) 2016/2011; Regulation (EU) 2017/1129 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1
Amendments to Regulation (EU) No 1093/2010

Regulation (EU) 1093/2010 is amended as follows:

(1) Article 1 is amended as follows:

(a) paragraph 2 is replaced by the following:

"2. The Authority shall act within the powers conferred by this Regulation and within the scope of Directive 2002/87/EC, Directive 2008/48/EC of the European Parliament and of the Council*, Regulation (EU) No 575/2013 of the European Parliament and of the Council, Directive 2013/36/EU of the European Parliament and of the Council, Directive 2014/49/EU of the European Parliament and of the Council**, Directive 2014/92/EU of the European Parliament and of the Council***, Regulation (EU) 2015/847**** of the European Parliament and the Council*****, Directive (EU) 2015/2366 of the European Parliament and of the Council****** and, to the extent that those acts apply to credit and financial institutions and the ompetent authorities that supervise them, within the relevant parts of Directive 2002/65/EC ~~and Directive (EU) 2015/849 of the European Parliament and of the Council*******~~, including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority. The Authority shall also act in accordance with Council Regulation (EU) No 1024/2013********.

* Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66).

**Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes Text with EEA relevance (OJ L 173, 12.6.2014, p. 149).

***Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features Text with EEA relevance (OJ L 257, 28.8.2014, p. 214).

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****Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (OJ L 141, 5.6.2015, p. 1).

****Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

~~*****Directive 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).~~

*****Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).";

(b) **in Article 1(2), the following subparagraph is added:**

'The Authority shall also act within the powers conferred by this Regulation and within the scope of Directive (EU) 2015/849(*) of the European Parliament and of the Council to the extent that that Directive applies to financial sector operators and the competent authorities that supervise them. For this purpose only, EBA shall carry out the tasks conferred by any legally binding Union act on the European Insurance and Occupational Pensions Authority established by Regulation (EU) No 1094/2010 or to the European Securities and Markets Authority established by Regulation (EU) No 1095/2010. When carrying out such tasks, the Authority shall keep those Authorities informed of its activities concerning any entity which is a "financial" institution" as defined in Article 4(1) of Regulation (EU) No 1094/2010 or a "financial market participant" as defined in Article 4(1) of Regulation (EU) No 1095/2010.';

(*) Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73)';

(2) in Article 2 paragraph 5 the following subparagraph is inserted:

"References in this Regulation to supervision include the activities of all competent authorities to be carried out pursuant to the legislative acts referred to in Article 1(2).";

(3) Article 4 is amended as follows:

(a) point (1) is replaced by the following:

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"(1) financial institutions' means any undertaking subject to regulation and supervision pursuant to the Union acts referred to in Article 1(2); ";

(aa) the following point (1a) is inserted:

"(1a) 'financial sector operators' means any entity which is subject to Directive (EU) 2015/849 and which is either a 'financial institution' as defined in Article 4(1) of this Regulation and in Article 4(1) of Regulation (EU) No 1094/2010 or a 'financial market participant' as defined in Article 4(1) of Regulation (EU) No 1095/2010";

(b) point (i) in point (2) is replaced by the following:

"(i) competent authorities as defined in point (40) of Article 4(1) of Regulation (EU) No 575/2013, including the European Central Bank with regard to matters relating to the tasks conferred on it by Regulation (EU) No 1024/2013;";

(c) point (ii) of point (2) is replaced by the following:

"(ii) with regard to Directive~~s~~ 2002/65/EC ~~and (EU) 2015/849~~ the authorities and bodies competent for ensuring compliance with the requirements of ~~those~~ **that** Directive~~s~~ by ~~credit and~~ financial institutions;

(iia) with regard to Directive (EU) 2015/849 the authorities and bodies that supervise financial institutions and are competent for ensuring their compliance with the requirements of that Directive";

(d) point (iii) in point (2) is replaced by the following:

"(iii) with regard to deposit guarantee schemes, bodies which administer deposit guarantee schemes pursuant to Directive 2014/49/EU of the European Parliament and of the Council 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, and relevant administrative authorities as referred to in that Directive; and";

(e) the following points (v) and (vi) of point (2) are added:

"(v) competent authorities as referred to in Directive 2014/17/EU; in Regulation 2015/751, in Directive EU 2015/2366, in Directive 2009/110/EC, in Regulation (EC) No 924/2009 and in Regulation (EU) No 260/2012;

(vi) bodies and authorities referred to in Article 20 of Directive 2008/48/EC.";

(4) Article 6 is amended as follows:

(a) point (2) is replaced by the following:

"(2) an Executive Board, which shall exercise the tasks set out in Article 47;";

(b) point (4) is deleted;

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(5) Article 8 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the following point (aa) is replaced:

(1) "(aa) to develop and maintain an up to date Union supervisory handbook on the supervision of financial institutions in the Union;";

(ii) the following point (ab) is inserted:

(2) "(ab) to develop and maintain up to date a Union resolution handbook on the resolution of financial institutions in the Union which sets out supervisory best practices and high quality methodologies and processes;";

(iii) points (e) and (f) are replaced by the following:

(3) "(e) to organise and conduct reviews of competent authorities and, in that context, to issue guidelines and recommendations and to identify best practices, with a view to strengthening consistency in supervisory outcomes;

(4) (f) to monitor and assess market developments in the area of its competence including where relevant, developments relating to trends in credit, in particular, to households and SMEs and in innovative financial services;";

(iv) point (h) is replaced by the following:

(5) "(h) to foster depositor, consumer and investor protection;";

(v) the following point (l) is added:

"(l) to contribute to the prevention of the use of the financial system for the purposes of money-laundering and terrorist financing.";

(b) in paragraph 1a, the following point (c) is inserted:

"(c) take account of technological innovation, innovative and sustainable business models, and the integration of environmental, social and governance related factors.";

(c) in paragraph 2, the following are amended

(i) point (ca) is inserted:

"(ca) issue recommendations as laid down in Articles 29a and 31a;";

ii) point h) is replaced by the following:

"(h) collect the necessary information concerning financial institutions as provided for in Article 35 and Article 35b";

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(6) Article 9 is amended as follows:

paragraph 2 is replaced by the following:

"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 and supervisory practices.";

paragraph 4 is replaced by the following:

"4. The Authority shall establish, as an integral part of the Authority, a Committee on financial innovation, which brings together all relevant competent authorities and authorities responsible for consumer protection 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. The Authority may also include national data protection authorities as part of the Committee.";

(6a) the following Articles 9a and 9b are inserted:

"Article 9a

Special tasks related to combating money-laundering and terrorist financing

1. The Authority shall take a leading role in promoting integrity, transparency and security in the financial system by means of adopting measures to prevent and combat money laundering and terrorist financing, including by:

(a) **collecting information from competent authorities relating to weaknesses identified in the processes and procedures, governance arrangements, fit and proper assessments, business models and activities of financial sector operators to prevent money-laundering and terrorist financing as well as measures taken by competent authorities. Competent authorities shall provide all such information to the Authority in addition to any obligations under Article 35. The Authority shall coordinate closely with Financial Intelligence Units;**

(b) **developing common standards for combating money-laundering and terrorist financing in the financial sector and promoting their consistent implementation;**

(c) **monitoring market developments and assessing vulnerabilities to money-laundering and terrorist financing in the financial sector.**

2. The Authority shall establish and keep up to date a central database of information collected pursuant to point (a) in paragraph 1. The Authority shall ensure that information is analysed and made available to competent authorities on a need-to-know and confidential basis.

3. The Authority shall promote convergence of supervisory processes referred to in Directive (EU) 2015/849, including by conducting periodic reviews, in accordance with Article 30.

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Where such a review reveals serious shortcomings in the identification, assessment or addressing of risks of money-laundering and terrorist financing and the competent authority does not take action to address the follow-up measures set out in the report referred to in Article 30(3), the Authority shall inform the European Parliament, the Council and the Commission.

4. The Authority shall regularly perform risk assessments on competent authorities with a main focus on competent authorities as referred to in point (iia) of Article 4(2)to test their strategies and resources to address and monitor the most important emerging risks related to money-laundering and terrorist financing. The Authority shall inform the Commission of the outcomes of these risk assessments, including by integrating the analysis of the outcomes in the opinion it is requested to deliver pursuant to paragraph 5 of Article 6 of Directive (EU) 2015/849.

5. In material cases of money-laundering or terrorist financing affecting cross border matters with third countries, the Authority shall have a leading role in facilitating cooperation between competent authorities in the Union and the relevant authorities in third countries.

6. The Authority shall establish a permanent internal committee on anti-money laundering and countering terrorist financing to coordinate measures in order to combat money-laundering and terrorist financing and to prepare draft decisions to be taken by the Authority in accordance with Article 44.

7. The committee shall be chaired by the Chairperson of the Board of Supervisors and shall be composed of the heads of the authorities and bodies competent for ensuring compliance with the requirements of Directive (EU) 2015/849 by financial institutions. In addition, the Commission, the ESRB, the Supervisory Board of the European Central Bank, the European Insurance and Occupational Pensions Authority, and the European Securities and Markets Authority may each nominate a high-level representative to participate in the committee meetings as observers.";

Article 9b

Request for investigation related to the prevention of money laundering and terrorist financing

1. In matters concerning the prevention of the use of the financial system for the purpose of money laundering and terrorist financing in accordance with Directive (EU) 2015/849, the Authority may, where it has indications of material breaches, request a competent authority as referred to in point (iia) of Article 4(2) to investigate possible breaches of Union law, and where such Union law is composed of Directives or explicitly grants options for Member States, breaches of national laws transposing Directives or exercising options granted to Member States by Union law, by a financial sector operator and to consider imposing sanctions on that operator in respect of such breaches. Where necessary, it may also request a competent authority as referred to in point (iia) of Article 4(2) to consider adopting an individual decision addressed to that financial sector operator requiring it to undertake all necessary action to comply with its

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obligations under directly applicable Union law, or under national laws transposing Directives or exercising options granted to Member States by Union law, including the cessation of any conduct.

2. The competent authority shall comply with any request addressed to it in accordance with paragraph 1 and shall inform the Authority within 10 days of the steps it has taken or intends to take to comply with that request.

3. **Without prejudice to the powers of the Commission under Article 258 TFEU, where a competent authority does not comply with paragraph 2 of this Article, Article 17 shall apply.";**

(7) Article 16 is amended as follows:

(a) in paragraph 1, the following subparagraph is added:

"The Authority may also address guidelines and recommendations to the authorities of Member States that are not defined as competent authorities under this Regulation but that are empowered to ensure the application of the acts referred to in Article 1(2).

(b) paragraph 2 is replaced by the following:

"2. The Authority shall, save in exceptional circumstances, conduct open public consultations regarding the guidelines and recommendations which it issues and shall analyse the related potential costs and benefits of issuing such guidelines and recommendations. Those consultations and analyses shall be proportionate in relation to the scope, nature and impact of the guidelines or recommendations. The Authority shall, save in exceptional circumstances, also request opinions or advice from the Banking Stakeholder Group referred to in Article 37.";

(c) in paragraph 4, the following sentence is added:

"The report shall also explain how the Authority has justified the issue of its guidelines and recommendations and summarise the feedback from public consultations on those guidelines and recommendations.";

(d) the following paragraph 5 is added:

"5. Where two thirds of the members of the Banking Stakeholder Group are of the opinion that the Authority has exceeded its competence by issuing certain guidelines or recommendations, they may send a reasoned opinion to the Commission.

The Commission shall request an explanation justifying the issuance of the guidelines or recommendations concerned from the Authority. The Commission shall, on receipt of the explanation from the Authority, assess the scope of the guidelines or recommendations in view of the Authority's competence. Where the Commission considers that the Authority has exceeded its competence, and after having given the Authority the opportunity to state its views, the Commission may adopt an implementing decision requiring the Authority to withdraw the guidelines or recommendations concerned .The decision of the Commission shall be made public.";

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(8) **Article 17 is amended as follows:**

(a) in paragraph 2 the following subparagraphs are added:

"Without prejudice to the powers laid down in Article 35, the Authority may address a duly justified and reasoned request for information directly to other competent authorities or relevant financial institutions, whenever it is deemed necessary for the purpose of investigating an alleged breach or non-application of Union law. Where it is addressed to financial institutions, the reasoned request shall explain why the information is necessary for the purposes of investigating an alleged breach or non-application of Union law.

The addressee of such a request shall provide the Authority with clear, accurate and complete information without undue delay.

Where a request for information has been addressed to a financial institution, the Authority shall inform the relevant competent authorities of such a request. The competent authorities shall assist the Authority in collecting the information, where so requested by the Authority.";

(b) **paragraphs 6 and 7 are replaced by the following:**

"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 or, in the context of matters relating to the prevention and combating of money laundering and terrorist financing, to financial sector operators, adopt an individual decision addressed to a financial institution or a financial sector operator requiring it to take all necessary action to comply with its obligations under Union law, including the cessation of any conduct.

In matters concerning the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, where the relevant requirements of the acts referred to in Article 1(2) are not directly applicable to financial sector operators, the Authority may adopt a decision requiring the competent authority to comply with the formal opinion referred to in paragraph 4 within the period of time specified therein. If the authority does not comply with that decision, the Authority may also adopt a decision in accordance with the first sub-paragraph. To that effect, the Authority shall apply all relevant Union law, and where that Union law is composed of Directives, the national legislation transposing those Directives. Where the relevant Union law is composed of Regulations and where currently those Regulations explicitly grant options for Member States, the Authority shall apply also the national legislation exercising those options.

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

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7. Decisions adopted in accordance with 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 of this Article or to a decision pursuant to paragraph 6, competent authorities shall comply with the formal opinion or the decision, as the case may be.";

(9) Article 19 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. In cases specified in the Union acts referred to in Article 1(2) and without prejudice to the powers laid down in Article 17, the Authority may assist the competent authorities in reaching an agreement in accordance with the procedure set out in paragraphs 2 to 4 in either of the following circumstances:

(a) at the request of one or more of the competent authorities concerned where a competent authority disagrees with the procedure or content of an action, proposed action, or inactivity of another competent authority;

(b) on its own initiative where on the basis of objective criteria, disagreement can be determined between competent authorities.

In cases where the acts referred to in Article 1(2) require a joint decision to be taken by competent authorities, a disagreement shall be presumed in the absence of a joint decision being taken by those authorities within the time limits set out in those acts".;

(b) the following paragraphs 1a and 1b are inserted:

"1a. The competent authorities concerned shall in the following cases notify the Authority without delay that an agreement has not been reached:

(a) where a time limit for reaching an agreement between competent authorities has been provided for in the Union acts, referred to in Article 1(2), and the earlier of the following occurs :

(i) the time limit has expired;

(ii) one or more of the competent authorities concerned conclude that a disagreement exists, on the basis of objective factors;

(b) where no time limit for reaching an agreement between competent authorities has been provided in the Union acts referred to in Article 1(2), and the earlier of the following occurs:

(i) one or more of the competent authorities concerned concludes that a disagreement exists on the basis of objective factors; or

(ii) two months have elapsed from the date of receipt by a competent authority of a request from another competent authority to take certain action in order to comply with those Union acts and the

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requested authority has not yet adopted a decision that satisfies the request.

1b. The Chairperson shall assess whether the Authority should act in accordance with paragraph 1. Where the intervention is at the Authority's own initiative, the Authority shall notify the competent authorities concerned of its decision regarding the intervention.

Pending the Authority's decision in accordance with the procedure set out in Article 47(3a), in cases where the acts referred to in Article 1(2) require a joint decision to be taken, all competent authorities involved in the joint decision shall defer their individual decisions. Where the Authority decides to act, all the competent authorities involved in the joint decision shall defer their decisions until the procedure set out in paragraphs 2 and 3 is concluded.";

(c) paragraph 3 is replaced by the following:

"Where the competent authorities concerned fail to reach an agreement within the conciliation phase referred to in paragraph 2, the Authority may take a decision requiring those authorities to take specific action or to refrain from certain action in order to settle the matter, in order to ensure compliance with Union law. The decision of the Authority shall be binding on the competent authorities concerned. . The Authority's decision may require competent authorities to revoke or amend a decision that they have adopted or to make use of the powers which they have under the relevant Union law.";

(d) the following paragraph 3a is inserted:

"3a. The Authority shall notify the competent authorities concerned of the conclusion of the procedures under paragraphs 2 and 3 together with, where applicable its decision taken under paragraph 3.";

(e) paragraph 4 is replaced by the following:

~~"4. Without prejudice to the powers of the Commission pursuant to Article 258 of the Treaty, 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.";~~

"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 or, in the context of matters relating to the prevention and combating of money laundering and terrorist financing, a financial sector operator 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 that financial institution or financial sector operator requiring it to take all necessary action to comply with its obligations under Union law, including the cessation of any practice.

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In matters concerning the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, the Authority may also adopt a decision in accordance with the first subparagraph where the relevant requirements of the acts referred to in Article 1(2) are not directly applicable to financial sector operators. To that effect, the Authority shall apply all relevant Union law, and where this Union law is composed of Directives, the national legislation transposing those Directives. Where the relevant Union law is composed of Regulations and where currently those Regulations explicitly grant options for Member States, the Authority shall apply also the national legislation exercising those options.";

(10) Article 22 is amended as follows

(a) , paragraph 1a is deleted;

(b) in paragraph 4, the second subparagraph is replaced by the following:

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

(11) Article 29 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the following point (aa) is inserted:

"(aa) issuing the Strategic Supervisory Plan in accordance with Article 29a;";

(ii) point (b) is replaced by the following:

"(b) promoting an effective bilateral and multilateral exchange of information between competent authorities, pertaining to all relevant issues, including cyber security and cyber-attacks as appropriate, with full respect for the applicable confidentiality and data protection provisions provided for in the relevant Union legislation;";

(iii) point (e) is replaced by the following:

"(e) establishing sectoral and cross-sectoral training programmes, including with respect to technological innovation, facilitating personnel exchanges and encouraging competent authorities to intensify the use of secondment schemes and other tools;";

(b) in paragraph 2, the following subparagraph is added:

"For the purpose of establishing a common supervisory culture, the Authority shall develop and maintain an up-to-date Union supervisory handbook on the supervision of financial institutions in the Union, taking into account changing business practices and business models of financial institutions. The Authority shall also develop and maintain an up-to-date Union resolution handbook on the resolution of financial institutions in the Union. Both the Union supervisory handbook and the Union

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resolution handbook shall set out supervisory best practices and shall specify high quality methodologies and processes.";

(12) the following Article 29a is inserted:

"Article 29a

Strategic Supervisory Plan

1. Upon the entry into application of Regulation [XXX insert reference to amending Regulation] and every three years thereafter by 31 March, the Authority shall issue a recommendation addressed to competent authorities, laying down supervisory strategic objectives and priorities ("Strategic Supervisory Plan") and, taking into account any contributions from competent authorities,. The Authority shall transmit the Strategic Supervisory Plan for information to the European Parliament, the Council and the Commission and shall make it public on its website.

The Strategic Supervisory Plan shall identify specific priorities for supervisory activities in order to promote consistent, efficient and effective supervisory practices and the common, uniform and consistent application of Union law and to address relevant micro-prudential trends, potential risks and vulnerabilities identified in accordance with Article 32.

2. By 30 September of each year, each competent authority shall submit a draft annual work programme for the following year to the Authority for consideration and specifically stipulate how that draft programme is aligned with the Strategic Supervisory Plan.

The draft annual work programme shall contain specific objectives and priorities for supervisory activities and quantitative and qualitative criteria for the selection of financial institutions, market practices and behaviours and financial markets to be examined by the competent authority submitting the draft annual work programme during the year covered by that programme.

3. The Authority shall assess the draft annual work programme and where there are material risks for not attaining the priorities set out in the Strategic Supervisory Plan, the Authority shall issue a recommendation to the relevant competent authority aiming at the alignment of the relevant competent authority's annual work programme with the Strategic Supervisory Plan.

By 31 December of each year, the competent authorities shall adopt their annual work programmes taking into account any such recommendations.

4. By 31 March of each year, each competent authority shall transmit to the Authority a report on the implementation of the annual work programme.

The report shall include at least the following information:

(a) a description of the supervisory activities and examinations of financial institutions, market practices and behaviours and of financial markets, and on

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the administrative measures and sanctions imposed against financial institutions responsible for breaches of Union and national law;

(b) a description of activities that were carried out and which were not foreseen in the annual work programme;

(c) an account of the activities provided for in the annual work programme that were not carried out and of the objectives of that programme that were not met, as well as the reasons for the failure to carry out those activities and to reach those objectives.

5. The Authority shall assess the implementation reports of the competent authorities. Where there are material risks of not attaining the priorities set out in the Strategic Supervisory Plan the Authority shall issue a recommendation to each competent authority concerned on how the relevant shortcomings in its activities can be remedied.

Based on the reports and its own assessment of risks, the Authority shall identify the activities of the competent authority that are critical to fulfilling the Strategic Supervisory Plan and shall, as appropriate, conduct reviews under Article 30 of those activities.

6. The Authority shall make best practices identified during the assessment of the annual work programmes publicly available.";

(13) Article 30 is amended as follows:

(a) the title of the article is replaced by the following:

"Reviews of competent authorities";

(b) paragraph 1 is replaced by the following:

"1. The Authority shall periodically conduct 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 competent authorities reviewed. When conducting reviews, existing information and evaluations already made with regard to the competent authority concerned, including all information provided to the Authority in accordance with Article 35, and any information from stakeholders shall be taken into account.";

(c) the following paragraph is inserted:

1a. For the purposes of this Article, the Authority shall establish a review committee, exclusively composed of staff from the Authority. The Authority may delegate certain tasks or decisions to the review committee.

(d) paragraph 2 is amended as follows:

(i) the introductory sentence is replaced by the following:

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"The review shall include an assessment of, but shall not be limited to:";

(ii) point (a) is replaced by the following:

"(a) the adequacy of resources, the degree of independence, and governance arrangements of the competent authority, with particular regard to the effective application of the Union acts referred to in Article 1(2) and the capacity to respond to market developments;";

(e) paragraph 3 is replaced by the following:

"3. The Authority shall produce a report setting out the results of the review. That report shall explain and indicate the follow-up measures that are foreseen as a result of the review. Those follow-up measures may be adopted in the form of guidelines and recommendations pursuant to Article 16 and opinions pursuant to Article 29(1)(a).

In accordance with Article 16(3), the competent authorities shall make every effort to comply with any guidelines and recommendations issued. Where competent authorities do not take action to address the follow-up measures indicated in the report, the Authority shall issue a follow-up report.

When developing draft regulatory technical standards or draft implementing technical standards in accordance with Articles 10 to 15, or guidelines or recommendations in accordance with Article 16, the Authority shall take into account the outcome of the review, along with any other information acquired by the Authority in carrying out its tasks, in order to ensure convergence of the highest quality supervisory practices.";

(f) the following paragraph 3a is inserted:

"3a. The Authority shall submit an opinion to the Commission where, having regard to the outcome of the review or to any other information acquired by the Authority in carrying out its tasks, it considers that further harmonisation of the rules applicable to financial institutions or competent authorities would be necessary.";

(g) paragraph 4 is replaced by the following:

4. The Authority shall publish the reports referred to in paragraph 3 including any follow-up report , unless publication would involve risks to the stability of the financial system. The competent authority that is subject to the review shall be invited to comment before the publication of any report. Those comments shall be made publicly available unless publication would involve risks to the stability of the financial system.";

(14) in Article 31 a-paragraph is added:

Regarding activity of competent authorities intended to facilitate entry into the market of operators or products relying on technological innovation, the Authority shall promote supervisory convergence, in particular through the exchange of information and best practices. Where appropriate, the Authority may adopt guidelines or recommendations in accordance with Article 16."

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(15) the following Article 31a is inserted:

"Article 31a

Coordination on delegation and outsourcing of activities as well as of risk transfers

1. The Authority shall on an ongoing basis coordinate supervisory actions of competent authorities with a view to promoting supervisory convergence in the fields of delegation and outsourcing of activities by financial institutions as well as in relation to risk transfers conducted by them, in accordance with paragraphs 2, 3, and 4 and 5.

2. The competent authorities shall notify the Authority where they intend to carry out an authorisation or registration related to a financial institution which is under supervision of the competent authority concerned in accordance with the acts referred to in Article 1(2) and where the business plan of the financial institution entails the outsourcing or delegation of a material part of its activities or any of the key functions or the risk transfer of a material part of its activities into third countries, to benefit from the EU passport while essentially performing substantial activities or functions outside the Union. The notification to the Authority shall be sufficiently detailed to allow for a proper assessment. by the Authority.

Where the Authority considers it necessary to issue an opinion to a competent authority regarding the non-compliance of an authorisation or registration notified pursuant to the first subparagraph with Union law or guidelines, recommendations or opinions adopted by the Authority, the Authority shall inform that competent authority thereof within 20 working days of the receipt of the notification by that competent authority. In that case the competent authority concerned shall await the opinion of the Authority before carrying out the registration or authorisation.

At the request of the Authority, the competent authority shall within 15 working days of the receipt of such a request provide information related to its decisions to authorise or register a financial institution which is under its supervision in accordance with the acts referred to in Article 1(2).

The Authority shall issue the opinion, without prejudice to any time limits set out in Union law, at the latest within 2 months of the receipt of the notification pursuant to the first subparagraph.

3. A financial institution shall notify the competent authority of the outsourcing or delegation of a material part of its activities or any of its key functions, and the risk transfer of a material part of its activities, to another entity or its own branch established in a third country. The competent authority concerned shall inform the Authority of such notifications on a semi-annual basis.

Without prejudice to Article 35, at the request of the Authority, the competent authority shall provide information in relation to the outsourcing, delegation or risk transfer arrangements by financial institutions.

The Authority shall monitor whether the competent authorities concerned verify that outsourcing, delegation or risk transfer arrangements referred to in the first

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subparagraph are concluded in accordance with Union law, comply with guidelines, recommendations or opinions from the Authority and do not prevent effective supervision by the competent authorities and enforcement in a third country.

4. The Authority may issue recommendations to the competent authority concerned, including recommendations to review a decision or to withdraw an authorisation. Where the competent authority concerned does not follow the recommendations of the Authority within 15 working days, the competent authority shall state the reasons and the Authority shall make its recommendation public together with those reasons.";

(16) Article 32 is amended as follows:

(a) a new paragraph 2a is inserted:

"2a. At least annually, the Authority shall consider whether it is appropriate to carry out Union-wide assessments referred to in paragraph 2 and shall inform the European Parliament, the Council and the Commission of its reasoning. Where such Union-wide assessments are carried out and the Authority considers it appropriate to do so, it shall disclose the results for each participating financial institution.

Professional secrecy obligations of competent authorities shall not prevent the competent authorities from publishing the outcome of Union-wide assessments referred to in paragraph 2 or from transmitting the outcome of such assessments to the Authority for the purpose of the publication by the Authority of the results of Union-wide assessments of the resilience of financial institutions.";

(b) paragraphs 3a and 3b are replaced by the following:

"3a. The Authority may require competent authorities to conduct specific reviews. It may request competent authorities to carry out on-site inspections, and may participate in such on-site inspections in accordance with Article 21 and subject to the conditions set out therein, in order to ensure comparability and reliability of methods, practices and results.";

(17) Article 33 is amended as follows:

(a) paragraph 2 is replaced by the following:

"2. The Authority shall assist the Commission in preparing equivalence decisions pertaining to regulatory and supervisory regimes in third countries following a specific request for advice from the Commission or where required to do so by the acts referred to in Article 1(2).";

(b) the following paragraphs 2a, 2b and 2c are inserted:

"2a. The Authority shall monitor regulatory and supervisory developments and enforcement practices and relevant market developments in third countries for which equivalence decisions have been adopted by the Commission pursuant to the acts referred to in Article 1(2) in order to verify whether the criteria, on the basis of which those decisions have been taken and any conditions set out therein, are still fulfilled.

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The Authority shall submit a confidential report on its findings to the Commission on an annual basis.

Without prejudice to specific requirements set out in the acts referred to in Article 1(2) and subject to the conditions set out in the second sentence of paragraph 1, the Authority shall cooperate with the relevant competent authorities, and where appropriate, also with resolution authorities, of third countries whose legal and supervisory regimes have been recognised as equivalent. That cooperation shall be pursued on the basis of administrative arrangements concluded with the relevant authorities of those third countries. When negotiating such administrative arrangements, the Authority shall include provisions on the following:

(a) the mechanisms which allow the Authority to obtain relevant information, including information on the regulatory regime, the supervisory approach, relevant market developments and any changes that may affect the decision on equivalence;

(b) to the extent necessary for the follow up of such decisions on equivalence where relevant to the extent necessary for the follow-up of such decisions on equivalence, the procedures concerning the coordination of supervisory activities including, where necessary, on-site inspections.

The Authority shall inform the Commission where a third-country competent authority refuses to conclude such administrative arrangements or when it refuses to effectively cooperate. The Commission shall take this information into account when reviewing the relevant equivalence decisions.

2b. Where the Authority identifies developments in relation to the regulation, supervision or the enforcement practices in the third countries referred to in paragraph 2a that may impact the financial stability of the Union or of one or more of its Member States, market integrity or investor protection or the functioning of the internal market, it shall inform the Commission on a confidential basis and without delay.

The Authority shall on an annual basis submit a confidential report to the Commission on the regulatory, supervisory, enforcement and market developments in the third countries referred to in paragraph 2a with a particular focus on their implications for financial stability, market integrity, investor protection or the functioning of the internal market..

2c. The competent authorities shall inform the Authority in advance of their intentions to conclude any administrative arrangements with third-country supervisory authorities in any of the areas governed by the acts referred to in Article 1(2), including in relation to branches of third country entities. They shall provide simultaneously to the Authority a draft of such planned arrangements.

The Authority may develop model administrative arrangements, with a view to establishing consistent, efficient and effective supervisory practices within the Union and to strengthening international supervisory coordination. In accordance with Article 16(3), the competent authorities shall make every effort to follow such model arrangements.

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In the report referred to in Article 43(5), the Authority shall include information on the administrative arrangements agreed upon with supervisory authorities, international organisations or administrations in third countries, the assistance provided by the Authority to the Commission in preparing equivalence decisions and the monitoring activity pursued by the Authority in accordance with paragraph 2a.";

(18) Article 34, paragraph 2, is replaced by the following:

"2. With regard to assessments under Article 22 of Directive 2013/36/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 such an assessment, except in relation to the criteria in Article 23(1)(e) of that Directive. The opinion shall be issued promptly and in any event before the end of the assessment period referred to in that Directive. Articles 35 and 35b shall apply to the areas in respect of which the Authority may issue an opinion.";

(19) Article 35 is amended as follows:

(a) paragraphs 1, 2 and 3 are replaced by the following:

"1. At the request of the Authority, the competent authorities shall provide the Authority with all the necessary information to carry out the tasks conferred on it by this Regulation, provided that they have legal access to the relevant information.

The information provided shall be accurate, complete and submitted within the time limit prescribed by the Authority.

2. The Authority may also request information to be provided at recurring intervals and in specified formats or by way of comparable templates approved by the Authority. Such requests shall, where possible, be made using common reporting formats.

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

(b) paragraph 5 is replaced by the following:

"5. Where information requested in accordance with paragraph 1 is not available or is not made available by the competent authorities within the time limit set by the Authority, the Authority may address a duly justified and reasoned request to any of the following:

(a) other authorities with supervisory functions;

(b) to the ministry responsible for finance in the Member State concerned where it has at its disposal prudential information;

(c) to the national central bank of the Member State concerned;

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(d) to the statistical office of the Member State concerned.

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

(c) paragraphs 6 and 7a are deleted :

(20) the following Articles 35a to 35h are inserted:

"Article 35a

Exercise of the powers referred to in Article 35b

The powers conferred on the Authority, any of its officials or another person authorised by the Authority in accordance with Article 35(b) shall not be used to require the disclosure of information or documents that are subject to legal privilege.

Article 35b

Request for information to financial institutions, holding companies or branches of relevant financial institutions and non-regulated operational entities within a financial group or conglomerate

1. Where information requested under paragraph 1 or paragraph 5 of Article 35 is not available or is not made available within the time limit set by the Authority, it may by simple request or by decision require the following institutions and entities to provide all necessary information to enable the Authority to carry out its duties under this Regulation:

(a) relevant financial institutions;

(b) holding companies or branches of a relevant financial institution;

(c) non-regulated operational entities within a financial group or conglomerate that are significant to the financial activities of the relevant financial institutions.

2. Any simple request for information referred to in paragraph 1shall:

(a) refer to this Article as the legal base of that request;

(b) state the purpose of the request;

(c) specify the information required;

(d) include a time limit within which the information is to be provided;

(e) include a statement that there is no obligation on the person from whom the information is requested to provide that information but that in case of a

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voluntary reply to the request, the information provided must not be incorrect or misleading;

(f) indicate the amount of the fine to be issued in accordance with Article 35c where the information provided is incorrect or misleading information.

3. When requesting information by decision, the Authority shall:

(a) refer to this Article as the legal base of that request;

(b) state the purpose of the request;

(c) specify the information required;

(d) set a time limit within which the information is to be provided;

(e) indicate the periodic penalty payments provided for in Article 35d where the production of the required information is incomplete;

(f) indicate the fine provided for in Article 35c where the answers to the questions are incorrect or misleading information;

(g) indicate the right to appeal the decision before the Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union in accordance with Articles 60 and 61.

4. The relevant institutions and entities listed in paragraph 1 or their representatives and, in the case of legal persons or associations having no legal personality, the persons authorised to represent them by law or by their constitution shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.

5. The authority shall send, without delay, a copy of the simple request or of its decision to the competent authority of the Member State where the relevant entity listed in paragraph 1 concerned by the request for information is domiciled or established.

6. The Authority may use confidential information received in accordance with this Article only for the purposes of carrying out the tasks assigned to it by this Regulation.

Article 35c

Procedural rules for imposing fines

1. Where, in carrying out its duties under this Regulation, the authority finds that there are serious indications of the possible existence of facts liable to constitute an infringement as referred to in Article 35d(1), the Authority shall appoint an independent investigation officer within the Authority to investigate the matter. The appointed officer shall not be involved or have been directly or indirectly involved in

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the direct or indirect supervision of the institutions or entities listed in Article 35b(1) and shall perform his or her functions independently from the Board of Supervisors.

2. The investigation officer referred to in paragraph 1 shall investigate the alleged infringements, taking into account any comments submitted by the persons who are subject to the investigations, and shall submit a complete file with his or her findings to the Board of Supervisors.

3. In order to carry out his or her tasks, the investigation officer shall have the power to request information in accordance with Article 35b.

4. Where carrying out his or her tasks, the investigation officer shall have access to all documents and information gathered by the Authority in its supervisory activities.

5. Upon completion of his investigation and before submitting the file with his or her findings to the Board of supervisors, the investigation officer shall give the persons subject to the investigations the opportunity to be heard on the matters being investigated. The investigation officer shall base his or her findings only on facts on which the persons concerned have had the opportunity to comment.

6. The rights of defence of the persons subject to the investigations shall be fully respected during investigations undertaken pursuant to this Article.

7. Upon submission of the file with his finding to the Board of Supervisors, the investigation officer shall notify the persons who are subject to the investigations. The persons subject to the investigations shall be entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information affecting third parties.

8. On the basis of the file containing the investigation officer's findings and, when requested by the persons subject to the investigations, after having heard those persons in accordance with Article 35f, the Authority shall decide if one or more of the infringements as referred to in Article 35d(1) has been committed by the persons subject to the investigations and, in such a case, shall take a measure in accordance with that Article.

9. The investigation officer shall not participate in the deliberations of the Board of Supervisors or intervene in any way in the decision-making process of the Board of Supervisors.

10. The Commission shall adopted delegated acts in accordance with Article 75a to specify the rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including rules on the following:

(a) rights of defence

(b) temporal provisions,

(c) provisions specifying how fines or periodic penalty payments are to be collected,

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(d) provisions specifying the limitation periods for the imposition and enforcement of fines and periodic penalty payments.

11. The Authority shall refer matters for criminal prosecution to the relevant national authorities where, in carrying out its duties under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. In addition, the Authority shall refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from identical fact or facts which are substantially the same has already acquired the force of res judicata as the result of criminal proceedings under national law.

Article 35d

Fines

1. The Authority shall adopt a decision to impose a fine where it finds that an institution or entity listed in Article 35b(1) has, intentionally or negligently, failed to provide information in response to a decision requiring information pursuant to Article 35b(3) or has provided incomplete, incorrect or misleading information in response to a simple request for information or a decision pursuant to Article 35b(2).

2. The basic amount of the fine referred to in paragraph 1 shall amount to at least EUR 50 000 and shall not exceed EUR 200 000.

3. When setting the basic amount of the fine referred to in paragraph 2, the Authority shall have regard to the annual turnover of the institution or entity concerned for the preceding business year and shall be:

(a) at the lower end of the limit for entities with an annual turnover below EUR 10 million;

(b) the middle of the limit for entities with an annual turnover between EUR 10 and 50 million;

(c) the higher end of the limit for entities with an annual turnover higher than EUR 50 million.

The basic amounts defined within the limits set out in paragraph 2 shall be adjusted, where necessary, by taking into account aggravating or mitigating factors in accordance with the relevant coefficients set out in paragraph 5.

The relevant aggravating coefficient shall be applied one by one to the basic amount. Where more than one aggravating coefficient is applicable, the difference between the basic amount and the amount resulting from the application of each individual aggravating coefficient shall be added to the basic amount.

The relevant mitigating coefficient shall be applied one by one to the basic amount. Where more than one mitigating coefficient is applicable, the difference between the basic amount and the amount resulting from the application of each individual mitigating coefficient shall be subtracted from the basic amount.

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4. The following adjustment coefficients shall be applied cumulatively to the basic amount referred to in paragraph 2, based on the following:

(a) the adjustment coefficients linked to aggravating factors are as follows:

(i) where the infringement has been committed repeatedly, an additional coefficient of 1.1 shall apply each time the infringement has been repeated;

(ii) where the infringement lasted for more than six months, a coefficient of 1.5 shall apply;

(iii) where the infringement has been committed intentionally, a coefficient of 2 shall apply;

(iv) where no remedial action has been taken since the infringement has been identified, a coefficient of 1.7 shall apply;

(v) where the entity's senior management has not cooperated with the Authority, a coefficient of 1.5 shall apply.

(b) the adjustment coefficients linked to mitigating factors are as follows:

(i) where the infringement lasted fewer than 10 working days, a coefficient of 0.9 shall apply;

(ii) where the institution's or entity's senior management can demonstrate that they have taken all the necessary measures to prevent the failure to comply with a request pursuant to Article 35(6a), a coefficient of 0.7 shall apply;

(iii) where the entity has brought the infringement to the Authority's attention quickly, effectively and completely, a coefficient of 0.4 shall apply;

(iv) where the entity has voluntarily taken measures to ensure that similar infringement cannot be committed in the future, a coefficient of 0.6 shall apply.

5. Notwithstanding paragraphs 2 and 3, the total fine shall not exceed 20% of the annual turnover of the entity concerned in the preceding business year unless the entity has directly or indirectly benefitted financially from the infringement. In that case, the total fine shall be at least equal to that financial benefit.

Article 35e

Periodic penalty payments

1. The Authority shall adopt decisions to impose a periodic penalty payment in order to compel institutions or entities referred to in Article 35b(1) to provide information requested by decision in accordance with Article 35b(3)..

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2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed on a daily basis until the institution or entity concerned complies with the relevant decision referred to in paragraph 1.

3. Notwithstanding paragraph 2, the amount of a periodic penalty payment shall be 3% of the average daily turnover of the institution or entity concerned in the preceding business year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.

4. A periodic penalty payment may be imposed for a period of no more than six months following the notification of the Authority's decision.

Article 35f

Right to be heard

1. Before taking any decision to impose a fine and periodic penalty payment under Articles 35d and 35e, the Authority shall give the institution or entity subject to the request for information the opportunity to be heard.

The Authority shall base its decisions only on the findings on which the institutions or entities concerned have had the opportunity to comment.

2. The rights of defence of the institution or entity referred to in paragraph 1 shall be fully respected during the procedure. The institution or entity shall be entitled to have access to the Authority's file, subject to the legitimate interest of other persons in protecting their business secrets. The right of access to the file shall not extend to confidential information or internal preparatory documents of the Authority.

Article 35g

Disclosure, nature, enforcement and allocation of fines and periodic penalty payments

1. Fines and periodic penalty payments imposed pursuant to Articles 35d and 35e shall be of an administrative nature and shall be enforceable.

2. Enforcement of the fine and periodic penalty payment shall be governed by the rules of procedure in force in the Member State in the territory of which the enforcement is carried out. The enforcement order shall be appended to the decision imposing a fine or a periodic penalty payment without the requirement for any other formality than the verification of the authenticity of the decision by an authority which each Member State shall designate for that purpose and shall make known to the Authority and to the Court of Justice of the European Union.

3. Where the formalities referred to in paragraph 2 have been completed on application by the party concerned, the party concerned may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent body.

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4. Enforcement of the fine or periodic penalty payment may only be suspended by a decision of the Court of Justice of the European Union. However, the courts of the Member State concerned shall have jurisdiction over complaints that the enforcement of the fine or periodic penalty payment is being carried out in an irregular manner.

5. The Authority shall disclose to the public every fine and periodic penalty payment that has been imposed pursuant to Articles 35d and 35e, unless such disclosure to the public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

6. The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the European Union.

Article 35h

Review by the Court of Justice of the European Union

The Court of Justice of the European Union shall have unlimited jurisdiction to review decisions whereby the Authority has imposed a fine or a periodic penalty payment. It may annul, reduce or increase the fine or periodic penalty payment imposed by the Authority.";

(21) In paragraph 5 of Article 36, the first subparagraph is replaced by the following:

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

(22) Article 37 is amended as follows:

in paragraph 4, the last sentence of the first subparagraph is replaced by the following:

"Members of the Banking Stakeholder Group shall serve for a period of four years, following which a new selection procedure shall take place.";

in paragraph 5, the following subparagraphs are added:

"Where members of the Banking Stakeholder Group cannot reach a common opinion or advice, the members representing one group of stakeholders shall be permitted to issue a separate opinion or separate advice.

The Banking Stakeholder Group, the Securities and Markets Stakeholder Group, the Insurance and Reinsurance Stakeholder Group, and the Occupational Pensions Stakeholder Group may issue joint opinions and advice on issues related to the work of the European Supervisory Authorities under Article 56 of this Regulation on joint positions and common acts.";

(23) Article 39 is replaced by the following:

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"Article 39
Decision-making procedures

1. The Authority shall act in accordance with paragraphs 2 to 6 when adopting decisions provided for in this Regulation save for those decisions adopted in accordance with Articles 35b, 35d and 35e.

2. The Authority shall inform any addressee of a decision of its intention to adopt the decision, setting a time limit within which the addressee may express its views on the subject-matter of the decision, taking full account of the urgency, complexity and potential consequences of the matter. The provision laid down in the first sentence shall apply mutatis mutandis to recommendations as referred to in Article 17(3).

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

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

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

6. The adoption of the decisions which the Authority takes pursuant to Articles 17, 18 or 19 shall be made public. The publication shall disclose the identity of the competent authority or financial institution concerned and the main content of the decision, unless such publication is in conflict with the legitimate interest of those financial institutions or with 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.";

(24) Article 40 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the following point (aa) is inserted:

"(aa) the full time members of the Executive Board referred to Article 45(1), who shall be non-voting;";

(b) in paragraph 7, the second subparagraph is deleted;

(c) the following paragraph 8 is added:

"8. Where the national public authority referred to in paragraph 1(b) is not responsible for the enforcement of consumer protection rules, the member of the Board of Supervisors referred to in that point may decide to invite a representative from the Member State's consumer protection authority, who shall be non-voting. In the case where the responsibility for consumer protection is shared by several authorities in a Member State, those authorities shall agree on a common representative.";

(25) Article 41 is replaced by the following:

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"Article 41

Internal committees

"The Board of Supervisors may establish internal committees for specific tasks attributed to it. The Board of Supervisors may provide for the delegation of certain clearly defined tasks and decisions to internal committees, to the Executive Board or to the Chairperson.";

(26) in Article 42 the first paragraph is replaced by the following:

"When carrying out the tasks conferred upon them by this Regulation 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.";

(27) Article 43 is amended as follows:

paragraph 1 is replaced by the following:

"1. The Board of Supervisors shall give guidance to the work of the Authority. Save as otherwise provided in this Regulation the Board of Supervisors shall adopt the opinions, recommendations, guidelines and decisions of the Authority, and issue the advice referred to in Chapter II, based on a proposal from the Executive Board.";

paragraphs 2 and 3 are deleted;

in paragraph 4, the first subparagraph is replaced by the following:

"The Board of Supervisors shall adopt, before 30 September of each year, on the basis of a proposal by the Executive 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.";

paragraph 5 is replaced by the following:

"5. The Board of Supervisors shall adopt, on the basis of a proposal by the Executive Board, 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.";

paragraph 8 is deleted;

(28) Article 44 is amended as follows:

the second subparagraph of paragraph 1 is replaced by the following:

"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

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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, which shall include at least a simple majority of the members, present at the vote, from competent authorities of Member States that are participating Member States as defined in point 1 of Article 2 of Regulation (EU) No 1024/2013 (participating Member States) and a simple majority of the members, present at the vote, from competent authorities of Member States that are not participating Member States as defined in point 1 of Article 2 of Regulation (EU) No 1024/2013 (non-participating Member States).

The full time members of the Executive Board and the Chairperson shall not vote on these decisions.";

in paragraph 1, the third, fourth, fifth and sixth subparagraphs are deleted; paragraph 4 is replaced by the following:

"4. The non-voting members and the observers shall not participate in 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).";

The first subparagraph shall not apply to the Chairperson, the members that are also members of the Executive Board and the European Central Bank representative nominated by its Supervisory Board.";

(29) in Chapter III, the title of Section 2 is replaced by the following:

"SECTION 2

EXECUTIVE BOARD"

(30) Article 45 is replaced by the following:

"Article 45

Composition

1. The Executive Board shall be composed of the Chairperson and three full time members. The Chairperson shall assign clearly defined policy and managerial tasks to each of the full time members. One of the full time members shall be assigned responsibilities for budgetary matters and for matters relating to the work programme of the Authority ("Member in charge "). One of the full time members shall act as a Vice Chairperson and carry out the tasks of the Chairperson in his or her absence or reasonable impediment, in accordance with this Regulation.

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2. The full time members shall be selected on the basis of merit, skills, knowledge of financial institutions and markets, and experience relevant to financial supervision and regulation. The full time members shall have extensive management experience. The selection shall be based on an open call for candidates, to be published in the Official Journal of the European Union, following which the Commission shall draw up a shortlist of qualified candidates.

The Commission shall submit the shortlist to the European Parliament for approval. Following the approval of that shortlist, the Council shall adopt a decision to appoint the full time members of the Executive Board including the Member in charge. The Executive Board shall be balanced and proportionate and shall reflect the Union as a whole.

3. Where a full time member of the Executive Board no longer fulfils the conditions set out in Article 46 or has been found guilty of serious misconduct, the Council may, on a proposal from the Commission which has been approved by the European Parliament, adopt a decision to remove him or her from office.

4. The term of office of the full time members shall be 5 years and shall be renewable once. In the course of the 9 months preceding the end of the 5-year term of office of the full time member, the Board of Supervisors shall evaluate:

(a) the results achieved in the first term of office and the way in which they were achieved;

(b) the Authority's duties and requirements in the coming years.

Taking into account the evaluation, the Commission shall submit the list of the full time members to be renewed to the Council. Based on this list and taking into account the evaluation, the Council may extend the term of office of the full time members.";

(31) the following Article 45a is inserted:

"Article 45a

Decision-making

1. Decisions by the Executive Board shall be adopted by simple majority of its members. Each member shall have one vote. In the event of a tie, the Chairperson shall have a casting vote.

2. The representative of the Commission shall participate in meetings of the Executive Board without the right to vote save in respect of matters referred to in Article 63.

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

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

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

5. The members of the Executive Board may, subject to the rules of procedure, be assisted by advisers or experts. The non-voting participants shall not attend any discussions within the Executive Board relating to individual financial institutions.";

(32) the following Article 45b is inserted:

"Article 45b

Internal committees

The Executive Board may establish internal committees for specific tasks attributed to it.";

(33) Article 46 is replaced by the following:

"Article 46

Independence

The members of the Executive 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 Executive Board in the performance of their tasks.";

(34) Article 47 is replaced by the following:

"Article 47

Tasks

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

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

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

For the purposes of Articles 17, 19, 22, 29a, 30, 31a, 32 and 35b to 35h, the Executive Board shall be competent to act and to take decisions. The Executive Board shall keep the Board of Supervisors informed of the decisions it takes.

3a. The Executive Board shall examine, give an opinion and make proposals on all matters to be decided by the Board of Supervisors.

4. The Executive 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 ('the Staff Regulations').

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

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

8. The members of the Executive Board shall make public all meetings held and any hospitality received. Expenses shall be recorded publicly in accordance with the Staff Regulations

9. The Member in charge shall have the following specific tasks:

(a) to implement the annual work programme of the Authority under the guidance of the Board of Supervisors and under the control of the Executive Board;

(b) to take all 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;

(c) to prepare a multi-annual work programme, as referred to in Article 47(2);

(d) to prepare a work programme by 30 June of each year for the following year, as referred to in Article 47(2);

(e) to draw up a preliminary draft budget of the Authority pursuant to Article 63 and to implement the budget of the Authority pursuant to Article 64;

(f) to prepare an annual draft report to include a section on the regulatory and supervisory activities of the Authority and a section on financial and administrative matters;

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(g) to exercise in respect to the Authority's staff, the powers laid down in Article 68 and to manage staff matters.";

(35) Article 48 is amended as follows:

in paragraph 1, the second subparagraph is replaced by the following:

"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 Executive Board.";

paragraph 2 is replaced by the following:

"2. The Chairperson shall be selected on the basis of merit, skills, knowledge of financial institutions and markets, and of experience relevant to financial supervision and regulation, following an open call for candidates to be published in the Official Journal of the European Union. The Commission shall submit a shortlist of candidates for the position of the Chairperson to the European Parliament for approval. Following the approval of that shortlist, the Council shall adopt a decision to appoint the Chairperson.

Where the Chairperson no longer fulfil the conditions referred to in Article 49 or has been found guilty of serious misconduct, the Council may, on a proposal from the Commission which has been approved by the European Parliament, adopt a decision to remove him or her from office.";

in paragraph 4, the second subparagraph is replaced by the following:

"The Council, on a proposal from the Commission and taking into account the evaluation, may extend the term of office of the Chairperson once.";

paragraph 5 is deleted;

(36) Article 49a is replaced by the following:

"Article 49a

Expenses

The Chairperson shall make public all meetings held and any hospitality received. Expenses shall be recorded publicly in accordance with the Staff Regulations.";

(37) Articles 51, 52, 52a and 53 are deleted;

(38) Article 54 is amended as follows:

(a) in paragraph 2 ~~of Article 54~~, the following indent is added:

" — depositor, consumer and investor protection issues";

(b) **in paragraph 2 the fifth indent is deleted;**

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(c) **the following paragraph 2a is inserted:**

"2a. With regard to the Authority's tasks related to preventing and combating of money-laundering and terrorist financing, the Joint Committee shall serve as a forum in which the Authority shall cooperate with the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority on matters relating to the interaction between the specific tasks of the Authority referred to in point (l) of Article 8(1) and the tasks conferred on the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority.";

(39) in Article 55, paragraph 2 is replaced by the following:

"2. One member of the Executive Board, the 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.";

(40) Article 58 is amended as follows:

paragraph 3 is replaced by the following:

"3. Two members of the Board of Appeal and two alternates shall be appointed by the Executive 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.";

paragraph 5 is replaced by the following:

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

(41) in Article 59, paragraph 1 is replaced by the following:

"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 Executive Board or its Board of Supervisors.";

(42) in Article 60, paragraph 1 is replaced by the following:

"1. Any natural or legal person, including competent authorities, may appeal against a decision of the Authority referred to in Articles 17, 18, 19 and 35 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.";

(43) Article 62 is amended as follows:

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(a) paragraph 1 is replaced by the following:

"1. The revenues of the Authority shall consist, without prejudice to other types of revenue, of any combination of the following:

(a) a balancing contribution from the Union, entered in the General Budget of the Union (Commission section) which shall not exceed 40% of the estimated revenues of the Authority;

(b) annual contributions from financial institutions, based on the annual estimated expenditure relating to the activities required by this Regulation and by the Union Acts referred to in Article 1(2) for each category of participants within the remit of the Authority;

(c) any fees paid to the Authority in the cases specified in the relevant instruments of Union law.

(d) any voluntary contribution from Member States or observers;

(e) charges for publications, training and for any other services requested by competent authorities.";

(b) the following paragraphs 5 and 6 are added:

"5. The annual contributions referred to in paragraph 1(b) shall be collected each year from individual financial institutions by the authorities designated by each Member State. By 31 March of each financial year, each Member State shall pay to the Authority the amount that it is required to collect in accordance with the criteria set out in the delegated act referred in to Article 62a.

6. Voluntary contributions from Members States and observers as referred to in point (d) of paragraph 1 shall not be accepted if such acceptance would cast doubt on the independence and impartiality of the Authority.";

(44) the following Article 62a is inserted:

"Article 62a

Delegated acts on the calculation of annual contributions by financial institutions

The Commission shall be empowered, in accordance with Article 75a, to adopt delegated acts determining how annual contributions by individual financial institutions referred to in point (e) of Article 62 are to be calculated, establishing the following:

(a) a methodology to allocate the estimated expenditure to categories of financial institutions as a basis for determining the share of contributions to be made by financial institutions of each category;

(b) appropriate and objective criteria to determine the annual contributions payable by individual financial institutions within the scope of the Union Acts

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referred to in Article 1(2) based on their size so as to approximately reflect their importance in the market.

The criteria referred to in point (b) of the first paragraph may establish either *de minimis* thresholds below which no contribution is due or minima below which contributions must not fall.";

(45) Article 63 is replaced by the following:

"Article 63

Establishment of the budget

1. Each year, the Member in charge shall draw up a provisional draft single programming document of the Authority for the three following financial years setting out the estimated revenue and expenditure, as well as information on staff, from its annual and multi-annual programming and shall forward it to the Executive Board and the Board of Supervisors, together with the establishment plan.

1a. The Executive Board shall, on the basis of the draft which has been approved by the Board of Supervisors adopt the draft single programming document for the three following financial years.

1b. The draft single programming document shall be transmitted by the Executive Board to the Commission, the European Parliament and the Council by 31 January.

2. On the basis of the draft single programming document, the Commission shall enter in the draft budget of the Union the estimates it deems necessary in respect of the establishment plan and the amount of the balancing contribution to be charged to the general budget of the Union in accordance with Articles 313 and 314 of the Treaty.

3. The budgetary authority shall adopt the establishment plan for the Authority. The budgetary authority shall authorise the appropriations for the balancing contribution to the Authority.

4. 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 Union. Where necessary, it shall be adjusted accordingly.

5. The Executive 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.";

(46) Article 64 is replaced by the following:

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"Article 64

Implementation and control of the budget

"1. The Member in charge shall act as authorising officer and shall implement the Authority's budget.

2. The Authority's accounting officer shall send their provisional accounts to the Commission's accounting officer and to the Court of Auditors by 1 March of the following year.

3. The Authority's accounting officer shall send by 1 March of the following year the required accounting information for consolidation purposes to the accounting officer of the Commission, in the manner and format laid down by that accounting officer.

4. 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, the Council and the Court of Auditors by 31 March of the following year.

5. After receiving the observations of the Court of Auditors on the provisional accounts of the Authority in accordance with Article 148 of the Financial Regulation, the Authority's accounting officer shall draw up the Authority's final accounts. The Member in charge shall send them to the Board of Supervisors, which shall deliver an opinion on these accounts.

6. The Authority's accounting officer shall send the final accounts, accompanied by the opinion of the Board of Supervisors, by 1 July of the following year to the accounting officer of the Commission, the European Parliament, the Council and the Court of Auditors.

The Authority's accounting officer shall also send by 1 July, a reporting package to the Commission's accounting officer, in a standardised format as laid down by the Commission's accounting officer for consolidation purposes.

7. The final accounts shall be published in the Official Journal of the European Union by 15 November of the following year.

8. The Member in charge 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 Executive Board and the Commission.

9. The Member in charge shall submit to the European Parliament, at the latter's request and as provided for in Article 165(3) of the Financial Regulation, any information necessary for the smooth application of the discharge procedure for the financial year in question.

10. 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 for the financial year N.";

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(47) Article 65 is replaced by the following:

"Article 65

Financial rules

The financial rules applicable to the Authority shall be adopted by the Executive Board after consulting the Commission. Those rules may not depart from Commission Delegated Regulation (EU) No 1271/2013* for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 unless the specific operational needs for the functioning of the Authority so require and only with the prior agreement of the Commission.

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

(48) in Article 66, paragraph 1 is replaced by the following:

"1. For the purposes of combating fraud, corruption and any other illegal activity, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council** shall apply to the Authority without any restriction.

**Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).";

(49) Article 68 is amended as follows:

paragraphs 1 and 2 are replaced by the following:

"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 the full time members of the Executive Board and its Chairperson.

2. The Executive 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.";

paragraph 4 is replaced by the following:

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

(50) Article 70 is amended as follows:

paragraph 1 is replaced by the following:

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"1. Members of the Board of Supervisors and all 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.";

in paragraph 2, the second subparagraph is replaced by the following:

"Moreover, the obligation under paragraph 1 and the first subparagraph of this paragraph shall not prevent the Authority and the competent 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.";

the following paragraph 2a is inserted:

"2a. The Executive Board and the Board of Supervisors shall ensure that individuals who provide any service, directly or indirectly, permanently or occasionally, relating to the tasks of the Authority, including officials and other persons authorised by the Executive Board and the Board of Supervisors or appointed by the competent authorities for that purpose, are subject to the requirements of professional secrecy equivalent to those in the previous paragraphs.

The same requirements for professional secrecy shall also apply to observers who attend the meetings of the Executive Board and the Board of Supervisors who take part in the activities of the Authority.";

in paragraph 3, the first subparagraph is replaced by the following:

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

(51) Article 71is replaced by the following:

"This Regulation shall be without prejudice to the obligations of Member States relating to their processing of personal data under Regulation (EU) 2016/679 or the obligations of the Authority relating to its processing of personal data under Regulation (EU) No 2018/XXX (Data Protection Regulation for EU institutions and Bodies) when fulfilling its responsibilities.";

(52) in Article 72, paragraph 2 is replaced by the following:

"2. The Executive Board shall adopt practical measures for applying Regulation (EC) No 1049/2001.";

(53) in Article 73, paragraph 2 is replaced by the following:

"2. The Executive Board shall decide on the internal language arrangements for the Authority.";

(54) in Article 74, the first paragraph is replaced by the following:

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"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 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 Executive Board.";

(55) the following Article 75a is inserted:

"Article 75a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 35c and Article 62a shall be conferred for an indeterminate period of time.

3. The delegation of power referred to in Article 35c and Article 62a may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 35c or Article 62a shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.";

(56) Article 76 is replaced by the following:

"Article 76

Relationship with the CEBS

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

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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."

(57) new Article 77a is inserted:

Article 77a

Transitional provisions

The tasks and position of the Executive Director appointed in accordance with Regulation No 1093/2010 as last amended by Directive (EU) 2015/2366 and in office on [PO: please insert date 3 months after the entry into force of this Regulation] shall cease on that date.

The tasks and position of the Chairperson appointed in accordance with Regulation No 1093/2010 as last amended by Directive (EU) 2015/2366 and in office on [PO: please insert date 3 months after the entry into force of this Regulation] shall continue until its expiry.

The tasks and position of the members of the Management Board appointed in accordance with Regulation No 1093/2010 as last amended by Directive (EU) 2015/2366 and in office on [PO: please insert date 3 months after the entry into force of this Regulation] shall cease on that date.".

Article 2

Amendments to Regulation (EU) No 1094/2010

Regulation (EU) 1094/2010 is amended as follows:

(1) paragraph 2 of Article 1 is replaced by the following:

"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, Directive 2009/103/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 ~~(EU) 2015/849 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.

* Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ L 263, 7.10.2009, p. 11).";

(58) paragraph 5 of Article 2 the following subparagraph is inserted:

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"References to supervision in this Regulation include the activities of all competent authorities to be carried out pursuant to the legislative acts referred to in Article 1(2).";

(59) in point 2 of Article 4, point (ii) is replaced by the following:

"(ii) with regard to Directives 2002/65/EC and (EU) 2015/849, the authorities competent for ensuring compliance with the requirements of those Directives by financial institutions as defined in point 1;";

(60) Article 6 is amended as follows:

point (2) is replaced by the following:

"(2) an Executive Board, which shall exercise the tasks set out in Article 47;";

point (4) is deleted;

(61) Article 8 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the following point (aa) is inserted:

"(aa) to develop and maintain an up to date Union supervisory handbook on the supervision of financial institutions in the Union;";

ii) points (e) and (f) are replaced by the following:

"(e) to organise and conduct reviews of competent authorities and, in that context, to issue guidelines and recommendations and to identify best practices, with a view to strengthening consistency in supervisory outcomes;

(f) to monitor and assess market developments in the area of its competences including, where relevant, developments relating to trends in innovative financial services;";

(iii) point (h) is replaced by the following:

"(h) to foster the protection of policyholders, pensions scheme members and beneficiaries, consumers and investors";

(iv) point (l) is deleted;

(v) the following point (m) is inserted:

"(m) to issue opinions in respect of the applications of internal models, to facilitate decision making and to provide assistance as foreseen in Article 21a;";

(b) a new paragraph 1a is inserted:

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"1a. " When carrying out its tasks in accordance with this Regulation, the authority shall take account of technological innovation, innovative and sustainable business models, and the integration of environmental, social and governance related factors ";

(c) in paragraph 2, the following are amended

(i) point (ca) is inserted:

"(ca) issue recommendations as laid down in Articles 29a and 31a;";

(ii) point h) is replaced by the following:

"(h) collect the necessary information concerning financial institutions as provided for in Article 35 and Article 35b";

(d) the following paragraph 3 is added:

"3. When carrying out the tasks referred to in paragraph 1 and exercising the powers referred to in paragraph 2, the Authority shall have due regard to the principles of better regulation, including the results of cost-benefit analyses produced in accordance with this Regulation.";

(62) Article 9 is amended as follows:

in paragraph 1, the following points (aa) and (ab) are inserted:

"(aa) undertaking in-depth thematic reviews of market conduct, building a common understanding of markets practices in order to identify potential problems and analyse their impact;

(ab) developing retail risk indicators for the timely identification of potential causes of consumer harm;";

in paragraph 1, point (d) is replaced by the following:

"(d) developing common disclosure rules.";

paragraph 2 is replaced by the following:

"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 and supervisory practices.";

paragraphs 4 is replaced by the following:

"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 and authorities responsible for consumer protection 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. The Authority may also include national data protection authorities as part of the Committee.";

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(63) Article 16 is amended as follows:

(a) in paragraph 1, the following subparagraph is added:

"The Authority may also address guidelines and recommendations to the authorities of Member States that are not defined as competent authorities under this Regulation but that are empowered to ensure the application of the acts referred to in Article 1(2).";

(b) paragraph 2 is replaced by the following:

"2. The Authority shall, save in exceptional circumstances, conduct open public consultations regarding the guidelines and recommendations which it issues and shall analyse the related potential costs and benefits of issuing such guidelines and recommendations. Those consultations and analyses shall be proportionate in relation to the scope, nature and impact of the guidelines or recommendations. The Authority shall, save in exceptional circumstances, also request opinions or advice from the Insurance and Reinsurance Stakeholder Group and of the Occupational Pensions Stakeholder Group.";

(c) in paragraph 4 the following sentence is added at the end:

"The report shall also explain how the Authority has justified the issue of its guidelines and recommendations and summarise the feedback from public consultations on those guidelines and recommendations.";

(d) the following paragraph 5 is added:

"5. Where two thirds of the members of the Insurance and Reinsurance Stakeholder Group or Occupational Pensions Stakeholder Group are of the opinion that the Authority has exceeded its competence by issuing certain guidelines or recommendations, they may send a reasoned opinion to the Commission.

The Commission shall request an explanation justifying the issuance of the guidelines or recommendations concerned from the Authority. The Commission shall, on receipt of the explanation from the Authority, assess the scope of the guidelines or recommendations in view of the Authority's competence. Where the Commission considers that the Authority has exceeded its competence, and after having given the Authority the opportunity to state its views, the Commission may adopt an implementing decision requiring the Authority to withdraw the guidelines or recommendations concerned. The decision of the Commission shall be made public.";

(64) in paragraph 2 of Article 17, the following subparagraphs are added:

"Without prejudice to the powers laid down in Article 35, the Authority may address a duly justified and reasoned request for information directly to other competent authorities or relevant financial institutions, whenever it is deemed necessary for the purpose of investigating an alleged breach or non-application of Union law. Where it is addressed to financial institutions, the reasoned request shall explain why the information is necessary for the purposes of investigating an alleged breach or non-application of Union law.

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The addressee of such a request shall provide the Authority with clear, accurate and complete information without undue delay.

Where a request for information has been addressed to a financial institution, the Authority shall inform the relevant competent authorities of such a request. The competent authorities shall assist the Authority in collecting the information, where so requested by the Authority.";

(65) Article 19 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. In cases specified in the Union acts referred to in Article 1(2) and without prejudice to the powers laid down in Article 17, the Authority may assist the competent authorities in reaching an agreement in accordance with the procedure set out in paragraphs 2 to 4 in either of the following circumstances:

(a) at the request of one or more of the competent authorities concerned where a competent authority disagrees with the procedure or content of an action, proposed action, or inactivity of another competent authority;

(b) on its own initiative where on the basis of objective criteria, disagreement can be determined between competent authorities.

In cases where the acts referred to in Article 1(2) require a joint decision to be taken by competent authorities, a disagreement shall be presumed in the absence of a joint decision being taken by those authorities within the time limits set out in those acts.";

(b) the following paragraphs 1a and 1b are inserted:

"1a. The competent authorities concerned shall in the following cases notify the Authority without delay that an agreement has not been reached:

(a) where a time limit for reaching an agreement between competent authorities has been provided for in the Union acts, referred to in Article 1(2), and the earlier of the following occurs :

(i) the time limit has expired;

(ii) one or more of the competent authorities concerned conclude that a disagreement exists, on the basis of objective factors;

(b) where no time limit for reaching an agreement between competent authorities has been provided in the Union acts referred to in Article 1(2), and the earlier of the following occurs:

i. one and more of the competent authorities concerned conclude that a disagreement exists on the basis of objective factors; or

ii. two months have elapsed from the date of receipt by a competent authority of a request from another competent authority to take

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certain action in order to comply with Union law and the requested authority has not yet adopted a decision that satisfies the request.";

(c) paragraph 1, sub-paragraph 2 is deleted;

1b. The Chairperson shall assess whether the Authority should act in accordance with paragraph 1. Where the intervention is at the Authority's own initiative, the Authority shall notify the competent authorities concerned of its decision regarding the intervention.

Pending the Authority's decision in accordance with the procedure set out in Article 47(3a), in cases where the acts referred to in Article 1(2) require a joint decision to be taken, all competent authorities involved in the joint decision shall defer their individual decisions. Where the Authority decides to act, all competent authorities involved in the joint decision shall defer their decisions until the procedure set out in paragraphs 2 and 3 is concluded.";

(d) paragraph 3 is replaced by the following:

"Where the competent authorities concerned fail to reach an agreement within the conciliation phase referred to in paragraph 2, the Authority may take a decision requiring those authorities to take specific action or to refrain from certain action in order to settle the matter, in order to ensure compliance with Union law. The decision of the Authority shall be binding on the competent authorities concerned. The Authority's decision may require competent authorities to revoke or amend a decision that they have adopted or to make use of the powers which they have under the relevant Union law.";

(e) the following paragraph 3a is inserted:

"3a. The Authority shall notify the competent authorities concerned of the conclusion of the procedures under paragraphs 2 and 3 together with, where applicable its decision taken under paragraph 3.";

(f) paragraph 4 is replaced by the following:

"4. Without prejudice to the powers of the Commission pursuant to Article 258 of the Treaty, 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.";

(66) Article 21 is amended as follows:

(a) paragraph 1 is replaced by the following:

"The Authority shall promote and monitor 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

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the Authority shall be able to participate or where appropriate lead the activities of the colleges of supervisors, including on-site examinations, carried out jointly by two or more competent authorities.";

(b) in paragraph 2, subparagraph 2 is replaced by the following:

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

(67) the following Article 21a is inserted:

"Article 21a

Internal models

1. In order to contribute to the establishment of high-quality common supervisory standards and practices, the Authority shall on its own initiative, or upon request from one or more supervisory authorities:

(a) Issue opinions to the supervisory authorities concerned on the application to use or change an internal model. To this end, EIOPA may request all the information necessary from the supervisory authorities concerned; and

(b) In case of disagreement related to the approval of internal models assist the supervisory concerned authorities in reaching an agreement in accordance with the procedure set out in Article 19.

2. In the circumstances set out under Article 231(6a) of Directive 2009/138/EC, undertakings may request EIOPA to assist the competent authorities in reaching an agreement in accordance with the procedure set out in Article 19.

(68) in Article 22(4), the second subparagraph is replaced by the following:

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

(69) Article 29 is amended as follows:

paragraph 1 is amended as follows::

(i) the following point (aa) is inserted:

"(aa) issuing the Strategic Supervisory Plan in accordance with Article 29a;";

(ii) point (b) is replaced by the following:

"(b) promoting an effective bilateral and multilateral exchange of information between competent authorities, pertaining to all relevant issues, including cyber security and cyber-attacks as appropriate, with full respect for the

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applicable confidentiality and data protection provisions provided for in the relevant Union legislation;";

(iii) point (e) is replaced by the following:

"(e) establishing sectoral and cross-sectoral training programmes, including with respect to technological innovation, facilitating personnel exchanges and encouraging competent authorities to intensify the use of secondment schemes and other tools;";

in paragraph 2, the following subparagraph 2 is added:

"For the purpose of establishing a common supervisory culture, the Authority shall develop and maintain an up-to-date Union supervisory handbook on the supervision of financial institutions in the Union, taking into account changing business practices and business models of financial institutions. The Union supervisory handbook shall set out supervisory best practices and shall specify high quality methodologies and processes;

(70) The following Article 29a is inserted:

"Article 29a

Strategic Supervisory Plan

1. Upon the entry into application of Regulation [XXX insert reference to amending Regulation] and every three years thereafter by 31 March, the Authority shall issue a recommendation addressed to competent authorities, laying down supervisory strategic objectives and priorities ("Strategic Supervisory Plan") and, taking into account any contributions from competent authorities,. The Authority shall transmit the Strategic Supervisory Plan for information to the European Parliament, the Council and the Commission and shall make it public on its website.

The Strategic Supervisory Plan shall identify specific priorities for supervisory activities in order to promote consistent, efficient and effective supervisory practices and the common, uniform and consistent application of Union law and to address relevant micro-prudential trends, potential risks and vulnerabilities identified in accordance with Article 32.

2. By 30 September of each year, each competent authority shall submit a draft annual work programme for the following year to the Authority for consideration and specifically stipulate how that draft programme is aligned with the Strategic Supervisory Plan.

The draft annual work programme shall contain specific objectives and priorities for supervisory activities and quantitative and qualitative criteria for the selection of financial institutions, market practices and behaviours and financial markets to be examined by the competent authority submitting the draft annual work programme during the year covered by that programme.

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3. The Authority shall assess the draft annual work programme and where there are material risks for not attaining the priorities set out in the Strategic Supervisory Plan the Authority shall issue a recommendation to the relevant competent authority aiming at the alignment of the relevant competent authority's annual work programme with the Strategic Supervisory Plan.

By 31 December of each year, the competent authorities shall adopt their annual work programmes taking into account any such recommendations.

4. By 31 March of each year, each competent authority shall transmit to the Authority a report on the implementation of the annual work programme.

The report shall include at least the following information:

(a) a description of the supervisory activities and examinations of financial institutions, market practices and behaviours and of financial markets, and on the administrative measures and sanctions imposed against financial institutions responsible for breaches of Union and national law;

(b) a description of activities that were carried out and which were not foreseen in the annual work programme;

(c) an account of the activities provided for in the annual work programme that were not carried out and of the objectives of that programme that were not met, as well as of the reasons for the failure to carry out those activities and to reach those objectives.

5. The Authority shall assess the implementation reports of the competent authorities. Where there are material risks of not attaining the priorities set out in the Strategic Supervisory Plan the Authority shall issue a recommendation to each competent authority concerned on how the relevant shortcomings in its activities can be remedied.

Based on the reports and its own assessment of risks, the Authority shall identify the activities of the competent authority that are critical to fulfilling the Strategic Supervisory Plan, and shall as appropriate conduct reviews under Article 30 of those activities.

6. The Authority shall make best practices identified during the assessment of the annual work programmes publicly available.";

(71) Article 30 is amended as follows:

(a) the title of the Article is replaced by the following:

"Reviews of competent authorities";

(b) paragraph 1 is replaced be the following:

"1. The Authority shall periodically conduct 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

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and comparison between the competent authorities reviewed. When conducting reviews, existing information and evaluations already made with regard to the competent authority concerned, including all information provided to the Authority in accordance with Article 35, and any information from stakeholders shall be taken into account.";

(c) the following paragraphs 1a is inserted:

"1a. For the purpose of this Article, the Authority shall establish a review committee, exclusively composed of staff from the Authority. The Authority may delegate certain tasks or decisions to the review committee.";

(d) paragraph 2 is amended as follows:

(i) the introductory sentence is replaced by the following:

"The review shall include an assessment of, but shall not be limited to:";

(ii) point (a) is replaced by the following:

"(a) the adequacy of resources, the degree of independence and governance arrangements of the competent authority, with particular regard to the effective application of the Union acts referred to in Article 1(2) and the capacity to respond to market developments;";

(e) paragraph 3 is replaced by the following:

"3. The Authority shall produce a report setting out the results of the review. This report shall explain and indicate the follow-up measures that are foreseen as a result of the review. Those follow-up measures may be adopted in the form of guidelines and recommendations pursuant to Article 16 and opinions pursuant Article 29(1)(a).

In accordance with Article 16(3), the competent authorities shall make every effort to comply with any guidelines and recommendations issued. Where competent authorities do not take action to address the follow-up measures indicated in the report, the Authority shall issue a follow-up report.

When developing draft regulatory technical standards or draft implementing technical standards in accordance with Articles 10 to 15, or guidelines or recommendations in accordance with Article 16, the Authority shall take into account the outcome of the review, along with any other information acquired in carrying out its tasks, in order to ensure convergence of the highest quality supervisory practices.";

(f) the following paragraph 3a is inserted:

"3a. The Authority shall submit an opinion to the Commission where, having regard to the outcome of the review or to any other information acquired by the Authority in carrying out its tasks, it considers further harmonisation of the rules applicable to financial institutions or competent authorities would be necessary.";

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(g) paragraph 4 is replaced by the following:

4. The Authority shall publish the report referred to in paragraph 3 and any follow-up report referred, unless publication would involve risks to the stability of the financial system. The competent authority that is subject to the review shall be invited to comment before the publication of any report. Those comments shall be made publicly available unless publication would involve risks to the stability of the financial system.";

(72) in Article 31 a new paragraph 2 is inserted:

"2. Regarding activity of competent authorities intended to facilitate entry into the market of operators or products relying on technological innovation, the Authority shall promote supervisory convergence, in particular through the exchange of information and best practices. Where appropriate, the Authority may adopt guidelines or recommendations in accordance with Article 16.";

(73) a new Article 31a is inserted:

"Article 31a

Coordination on delegation and outsourcing of activities as well as of risk transfer

1. The Authority shall on an ongoing basis coordinate supervisory actions of competent authorities with a view to promoting supervisory convergence in the fields of delegation and outsourcing of activities by financial institutions as well as in relation to risk transfers conducted by them, in accordance with paragraphs 2, 3 and 4.

2. The competent authorities shall notify the Authority where they intend to carry out an authorisation or registration related to a financial institution which is under supervision of the competent authority concerned in accordance with the acts referred to in Article 1(2) and where the business plan of the financial institution entails the outsourcing or delegation of a material part of its activities or any of the key functions or the risk transfer of a material part of its activities into third countries, to benefit from the EU passport while essentially performing substantial activities or functions outside the Union. The notification to the Authority shall be sufficiently detailed to allow for a proper assessment by the Authority.

Where the Authority considers it necessary to issue an opinion to a competent authority regarding the non-compliance of an authorisation or registration notified pursuant to the first subparagraph with Union law or guidelines, recommendations or opinions adopted by the Authority, the Authority shall inform that competent authority thereof within 20 working days of the receipt of the notification by that competent authority. In that case the competent authority concerned shall await the opinion of the Authority before carrying out the registration or authorisation.

At the request of the Authority, the competent authority shall within 15 working days of the receipt of such a request provide information related to its decisions to

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authorise or register a financial institution which is under its supervision in accordance with the acts referred to in Article 1(2).

The Authority shall issue the opinion, without prejudice to any time limits set out in Union law, at the latest within 2 months of the receipt of the notification pursuant to the first subparagraph.

3. A financial institution shall notify the competent authority of the outsourcing or delegation of a material part of its activities or any of its key functions, and the risk transfer of a material part of its activities, to another entity or its own branch established in a third country. The competent authority concerned shall inform the Authority of such notifications on a semi-annual basis.

Without prejudice to Article 35, at the request of the Authority, the competent authority shall provide information in relation to the outsourcing, delegation or risk transfer arrangements by financial institutions.

The Authority shall monitor whether the competent authorities concerned verify that outsourcing, delegation or risk transfer arrangements referred to in the first subparagraph are concluded in accordance with Union law, comply with guidelines, recommendations or opinions from the Authority and do not prevent effective supervision by the competent authorities [and enforcement] in a third country.

4. The Authority may issue recommendations to the competent authority concerned, including recommendations to review a decision or to withdraw an authorisation. Where the competent authority concerned does not follow the recommendations of the Authority within 15 working days, the competent authority shall state the reasons and the Authority shall make its recommendation public together with those reasons.";

(74) Article 32 is amended as follows:

(75) a new paragraph 2a is inserted:

"2a. At least annually, the Authority shall consider whether it is appropriate to carry out Union-wide assessments referred to in paragraph 2 and shall inform the European Parliament, the Council and the Commission of its reasoning. Where such Union-wide assessments are carried out and the Authority considers it appropriate to do so, it shall disclose the results for each participating financial institution.

Professional secrecy obligations of competent authorities shall not prevent the competent authorities from publishing the outcome of Union-wide assessments referred to in paragraph 2 or from transmitting the outcome of such assessments to the Authority for the purpose of the publication by the Authority of the results of Union-wide assessments of the resilience of financial institutions..";

(76) Article 33 is amended as follows

(a) paragraph 2 is replaced by the following:

"2. The Authority shall assist the Commission in preparing equivalence decisions pertaining to regulatory and supervisory regimes in third countries following a

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specific request for advice from the Commission or where required to do so by the acts referred to in Article 1(2).";

(b) the following paragraphs 2a, 2b and 2c are inserted:

"2a. The Authority shall monitor the regulatory and supervisory developments, as well as enforcement practices and relevant market developments in third countries for which equivalence decisions have been adopted by the Commission pursuant to the acts referred to in Article 1(2) in order to verify whether the criteria, on the basis of which those decisions have been taken and any conditions set out therein, are still fulfilled. It shall take into account the market relevance of the third countries concerned. The Authority shall submit a confidential report on its findings to the Commission on an annual basis.

Without prejudice to specific requirements set out in the acts referred to in Article 1(2) and subject to the conditions set out in the second sentence of paragraph 1 the Authority shall cooperate where possible with the relevant competent authorities, and where appropriate, also with resolution authorities, of third countries whose legal and supervisory regimes have been recognised as equivalent. That cooperation shall be pursued on the basis of administrative arrangements concluded with the relevant authorities of those third countries. When negotiating such administrative arrangements, the Authority shall include provisions on the following:

(a) the mechanisms which allow the Authority to obtain relevant information, including information on the regulatory regime, the supervisory approach, relevant market developments and any changes that may affect the decision on equivalence;

b) to the extent necessary for the follow up of such decisions on equivalence, the procedures concerning the coordination of supervisory activities including on-site inspections.

The Authority shall inform the Commission where a third-country competent authority refuses to conclude such administrative arrangements or when it refuses to effectively cooperate. The Commission shall take this information into account when reviewing the relevant equivalence decisions..

2b. Where the Authority identifies developments in relation to the regulation, supervision or the enforcement practices in the third countries referred to in paragraph 2a that may impact the financial stability of the Union or of one or more of its Member States, market integrity or investor protection or the functioning of the internal market, it shall inform the Commission on a confidential basis and without delay.

The Authority shall on an annual basis submit a confidential report to the Commission on the regulatory, supervisory, enforcement and market developments in the third countries referred to in paragraph 2a with a particular focus on their implications for financial stability, market integrity, investor protection or the functioning of the internal market

2c. The competent authorities shall inform the Authority in advance of their intentions to conclude any administrative arrangements with third-country

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supervisory authorities in any of the areas governed by the acts referred to in Article 1(2), including in relation to branches of third country entities. They shall provide simultaneously to the Authority a draft of such planned arrangements.

The Authority may develop model administrative arrangements, with a view to establishing consistent, efficient and effective supervisory practices within the Union and to strengthening international supervisory coordination. In accordance with Article 16(3), the competent authorities shall make every effort to follow such model arrangements.

In the report referred to in Article 43(5), the Authority shall include information on the administrative arrangements agreed upon with supervisory authorities, international organisations or administrations in third countries, the assistance provided by the Authority to the Commission in preparing equivalence decisions and the monitoring activity pursued by the Authority in accordance with paragraph 2a.";

(77) in Article 34, paragraph 2, is replaced by the following:

"2. With regard to prudential assessment of mergers and acquisitions falling within the scope of Directive 2009/138/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 59(1)(e) of Directive 2009/138/EC. The opinion shall be issued promptly and in any event before the end of the assessment period in accordance with Directive 2009/138/EC. Articles 35 and 35b shall apply to the areas in respect of which the Authority may issue an opinion."

(78) Article 35 is amended as follows:

paragraphs 1, 2 and 3 are replaced by the following:

"1. At the request of the Authority, the competent authorities shall provide the Authority with all the necessary information to carry out the tasks conferred on it by this Regulation, provided that they have legal access to the relevant information.

The information provided shall be accurate, complete and submitted within the time limit prescribed by the Authority.

2. The Authority may also request information to be provided at recurring intervals and in specified formats or by way of comparable templates approved by the Authority. Such requests shall, where possible, be made using common reporting formats.

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

paragraph 5 is replaced by the following:

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"5. Where information requested in accordance with paragraph 1 is not available or is not made available by the competent authorities within the time limit set by the Authority, the Authority may address a duly justified and reasoned request to any of the following:

(a) other authorities with supervisory functions;

(b) to the ministry responsible for finance in the Member State concerned where it has at its disposal prudential information;

(c) to the national central bank of the Member State concerned;

(d) to the statistical office of the Member State concerned.

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

paragraphs 6 and 7 are deleted:

(79) the following Articles 35a to 35h are inserted:

"Article 35a

Exercise of the powers referred to in Article 35b

The powers conferred on the Authority, any of its officials or another person authorised by the Authority in accordance with Article 35(b) shall not be used to require the disclosure of information or documents that are subject to legal privilege.

Article 35b

Request for information to financial institutions

1. Where information requested under paragraph 1 or paragraph 5 of Article 35 is not available or is not made available within the time limit set by the Authority, it may by simple request or by decision require the relevant financial institutions to provide all necessary information to enable the Authority to carry out its duties under this Regulation.

2. Any simple request for information referred to in paragraph 1shall:

(a) refer to this Article as the legal base of that request;

(b) state the purpose of the request;

(c) specify the information required;

(d) include a time limit within which the information is to be provided;

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(e) include a statement that there is no obligation on the person from whom the information is requested to provide that information but that in case of a voluntary reply to the request, the information provided must not be incorrect or misleading;

(f) indicate the amount of the fine to be issued in accordance with Article 35c where the information provided is incorrect or misleading information.

3. When requesting information by decision per, the Authority shall:

(a) refer to this Article as the legal base of that request;

(b) state the purpose of the request;

(c) specify the information required;

(d) set a time limit within which the information is to be provided;

(e) indicate the periodic penalty payments provided for in Article 35d where the production of the required information is incomplete;

(f) indicate the fine provided for in Article 35c where the answers to the questions are incorrect or misleading information;

(g) indicate the right to appeal the decision before the Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union in accordance with Articles 60 and 61.

4. The financial institutions or their representatives and, in the case of legal persons or associations having no legal personality, the persons authorised to represent them by law or by their constitution shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.

5. The authority shall send, without delay, a copy of the simple request or of its decision to the competent authority of the Member State where the relevant entity listed in paragraph 1 concerned by the request for information is domiciled or established.

6. The Authority may use confidential information received in accordance with this Article only for the purposes of carrying out the tasks assigned to it by this Regulation.";

Article 35c

Procedural rules for imposing fines

1. Where, in carrying out its duties under this Regulation, the authority finds that there are serious indications of the possible existence of facts liable to constitute an infringement as referred to in Article 35d(1), the Authority shall appoint an

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independent investigation officer within the Authority to investigate the matter. The appointed officer shall not be involved or have been directly or indirectly involved in the direct or indirect supervision of the financial institutions concerned and shall perform his or her functions independently from the Board of Supervisors.

2. The investigation officer referred to in paragraph 1 shall investigate the alleged infringements, taking into account any comments submitted by the persons who are subject to the investigations, and shall submit a complete file with his or her findings to the Board of Supervisors.

3. In order to carry out his or her tasks, the investigation officer shall have the power to request information in accordance with Article 35b.

4. Where carrying out his or her tasks, the investigation officer shall have access to all documents and information gathered by the Authority in its supervisory activities.

5. Upon completion of his or her investigation and before submitting the file with his or her findings to the Board of supervisors, the investigation officer shall give the persons subject to the investigations the opportunity to be heard on the matters being investigated. The investigation officer shall base his or her findings only on facts on which the persons concerned have had the opportunity to comment.

6. The rights of defence of the persons subject to the investigations shall be fully respected during investigations undertaken pursuant to this Article.

7. Upon submission of the file with his finding to the Board of Supervisors, the investigation officer shall notify the persons who are subject to the investigations. The persons subject to the investigations shall be entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information affecting third parties.

8. On the basis of the file containing the investigation officer's findings and, when requested by the persons subject to the investigations, after having heard those persons in accordance with Article 35f, the Authority shall decide if one or more of the infringements as referred to in Article 35d(1) has been committed by the persons subject to the investigations and, in such a case, shall take a measure in accordance with that Article.

9. The investigation officer shall not participate in the deliberations of the Board of Supervisors or intervene in any way in the decision-making process of the Board of Supervisors.

10. The Commission shall adopted delegated acts in accordance with Article 75a to specify the rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including rules on the following:

(a) rights of defence

(b) temporal provisions,

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(c) provisions specifying how fines or periodic penalty payments are to be collected,

(d) provisions specifying the limitation periods for the imposition and enforcement of fines and periodic penalty payments.

11. The Authority shall refer matters for criminal prosecution to the relevant national authorities where, in carrying out its duties under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. In addition, the Authority shall refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from identical fact or facts which are substantially the same has already acquired the force of res judicata as the result of criminal proceedings under national law.

Article 35d

Fines

1. The Authority shall adopt a decision to impose a fine where it finds that a financial institution referred to in Article 35b has, intentionally or negligently, failed to provide information in response to a decision requiring information pursuant to Article 35b(3) or has provided incomplete, incorrect or misleading information in response to a simple request for information or a decision pursuant to Article 35b(2).

2. The basic amount of the fine referred to in paragraph 1 shall amount to at least EUR 50 000 and shall not exceed EUR 200 000.

3. When setting the basic amount of the fine referred to in paragraph 2, the Authority shall have regard to the annual turnover of the financial institution concerned for the preceding business year and shall be:

(a) at the lower end of the limit for entities with an annual turnover below EUR 10 million;

(b) the middle of the limit for entities with an annual turnover between EUR 10 and 50 million;

(c) the higher end of the limit for entities with an annual turnover higher than EUR 50 million.

The basic amounts defined within the limits set out in paragraph 2 shall be adjusted, where necessary, by taking into account aggravating or mitigating factors in accordance with the relevant coefficients set out in paragraph 5.

The relevant aggravating coefficient shall be applied one by one to the basic amount. Where more than one aggravating coefficient is applicable, the difference between the basic amount and the amount resulting from the application of each individual aggravating coefficient shall be added to the basic amount.

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The relevant mitigating coefficient shall be applied one by one to the basic amount. Where more than one mitigating coefficient is applicable, the difference between the basic amount and the amount resulting from the application of each individual mitigating coefficient shall be subtracted from the basic amount.

4. The following adjustment coefficients shall be applied cumulatively to the basic amount referred to in paragraph 2, based on the following:

(a) the adjustment coefficients linked to aggravating factors are as follows:

(i) where the infringement has been committed repeatedly, an additional coefficient of 1.1 shall apply each time the infringement has been repeated;

(ii) where the infringement lasted for more than six months, a coefficient of 1.5 shall apply;

(iii) where the infringement has been committed intentionally, a coefficient of 2 shall apply;

(iv) where no remedial action has been taken since the infringement has been identified, a coefficient of 1.7 shall apply;

(v) where the financial institution's senior management has not cooperated with the Authority, a coefficient of 1.5 shall apply.

(b) the adjustment coefficients linked to mitigating factors are as follows:

(i) where the infringement lasted fewer than 10 working days, a coefficient of 0.9 shall apply;

(ii) where the financial institution's senior management can demonstrate that they have taken all the necessary measures to prevent the failure to comply with a request pursuant to Article 35(6a), a coefficient of 0.7 shall apply;

(iii) where the financial institution has brought the infringement to the Authority's attention quickly, effectively and completely, a coefficient of 0.4 shall apply y;

(iv) where the financial institution has voluntarily taken measures to ensure that similar infringement cannot be committed in the future, a coefficient of 0.6 shall apply.

5. Notwithstanding paragraphs 2 and 3, the total fine shall not exceed 20% of the annual turnover of the financial institution concerned in the preceding business year unless the financial institution has directly or indirectly benefitted financially from the infringement. In that case, the total fine shall be at least equal to that financial benefit.

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Article 35e

Periodic penalty payments

1. The Authority shall adopt decisions to impose a periodic penalty payment in order to compel institutions or entities referred to in Article 35b(1) to provide information requested by decision in accordance with Article 35b(3)..

2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed on a daily basis until the financial institution concerned complies with the relevant decision referred to in paragraph 1.

3. Notwithstanding paragraph 2, the amount of a periodic penalty payment shall be 3% of the average daily turnover of the financial institution concerned in the preceding business year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.

4. A periodic penalty payment may be imposed for a period of no more than six months following the notification of the Authority's decision.

Article 35f

Right to be heard

1. Before taking any decision to impose a fine and periodic penalty payment under Articles 35d and 35e, the Authority shall give the financial institution subject to the request for information the opportunity to be heard.

The Authority shall base its decisions only on the findings on which the financial institutions concerned have had the opportunity to comment.

2. The rights of defence of the financial institution referred to in paragraph 1 shall be fully respected during the procedure. The financial institution shall be entitled to have access to the Authority's file, subject to the legitimate interest of other persons in protecting their business secrets. The right of access to the file shall not extend to confidential information or internal preparatory documents of the Authority.

Article 35g

Disclosure, nature, enforcement and allocation of fines and periodic penalty payments

1. Fines and periodic penalty payments imposed pursuant to Articles 35d and 35e shall be of an administrative nature and shall be enforceable.

2. Enforcement of the fine and periodic penalty payment shall be governed by the rules of procedure in force in the Member State in the territory of which the enforcement is carried out. The enforcement order shall be appended to the decision imposing a fine or a periodic penalty payment without the requirement for any other

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formality than the verification of the authenticity of the decision by an authority which each Member State shall designate for that purpose and shall make known to the Authority and to the Court of Justice of the European Union.

3. Where the formalities referred to in paragraph 2 have been completed on application by the party concerned, the party concerned may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent body.

4. Enforcement of the fine or periodic penalty payment may only be suspended by a decision of the Court of Justice of the European Union. However, the courts of the Member State concerned shall have jurisdiction over complaints that the enforcement of the fine or periodic penalty payment is being carried out in an irregular manner.

5. The Authority shall disclose to the public every fine and periodic penalty payment that has been imposed pursuant to Articles 35d and 35e, unless such disclosure to the public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

6. The amounts of the fine and periodic penalty payment shall be allocated to the general budget of the European Union.

Article 35h

Review by the Court of Justice of the European Union

The Court of Justice of the European Union shall have unlimited jurisdiction to review decisions whereby the Authority has imposed a fine or a periodic penalty payment. It may annul, reduce or increase the fine or periodic penalty payment imposed by the Authority.";

(80) In paragraph 5 of Article 36, the first subparagraph is replaced by the following:

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

(81) Article 37 is amended as follows:

in paragraph 5 the last sentence of the first subparagraph is replaced by the following:

"Members of the Insurance and Reinsurance Stakeholder Group and of the Occupational Pensions Stakeholder Group shall serve for a period of four years, following which a new selection procedure shall take place.";

in paragraph 6, the following subparagraphs are added:

"Where members of the Banking Stakeholder Group cannot reach a common opinion or advice, the members representing one group of stakeholders shall be permitted to issue a separate opinion or separate advice.

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The Insurance and Reinsurance Stakeholder Group, and the Occupational Pensions Stakeholder Group, the Banking Stakeholder Group, the Securities and Markets Stakeholder Group may issue joint opinions and advice on issues related to the work of the European Supervisory Authorities under Article 56 of this Regulation on joint positions and common acts.";

(82) Article 39 is replaced by the following:

"Article 39

Decision-making procedures

1. The Authority shall act in accordance with paragraphs 2 to 6 when adopting decisions provided for in this Regulation, save for those decisions adopted in accordance with Articles 35b, 35d and 35e.

2. The Authority shall inform any addressee of a decision of its intention to adopt the decision, setting a time limit within which the addressee may express its views on the subject-matter of the decision, taking full account of the urgency, complexity and potential consequences of the matter. The provision laid down in the first sentence shall apply *mutatis mutandis* to recommendations as referred to in Article 17(3).

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

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

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

6. The adoption of the decisions which the Authority takes pursuant to Articles 17, 18 or 19 shall be made public. The publication shall disclose the identity of the competent authority or financial institution concerned and the main content of the decision, unless such publication is in conflict with the legitimate interest of those financial institutions or with 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.";

(83) Article 40 is amended as follows:

paragraph 1 is amended as follows:

(i) the following point (aa) is inserted:

"(aa) the full time members of the Executive Board referred to Article 45(1), who shall be non-voting;";

in paragraph 7, the second subparagraph is deleted;

the following paragraph 8 is added;

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"8. Where the national public authority referred to in paragraph 1(b) is not responsible for the enforcement of consumer protection rules, the member of the Board of Supervisors referred to in that point may decide to invite a representative from the Member State's consumer protection authority, who shall be non-voting. In the case where the responsibility for consumer protection is shared by several authorities in a Member State, those authorities shall agree on a common representative.";

(84) Article 41 is replaced by the following"

"Article 41

Internal committees

"The Board of Supervisors may establish internal committees for specific tasks attributed to it. The Board of Supervisors may provide for the delegation of certain clearly defined tasks and decisions to internal committees, to the Executive Board or to the Chairperson.";

;

(85) in Article 42, the first paragraph is replaced by the following:

"When carrying out the tasks conferred upon them by this Regulation 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.";

(86) Article 43 is amended as follows:

paragraph 1 is replaced by the following:

"1. The Board of Supervisors shall give guidance to the work of the Authority. Save as otherwise provided in this Regulation the Board of Supervisors shall adopt the opinions, recommendations, guidelines and decisions of the Authority, and issue the advice referred to in Chapter II, based on a proposal from the Executive Board.";

paragraphs 2 and 3 are deleted;

in paragraph 4, the first sub-paragraph is replaced by the following:

"The Board of Supervisors shall adopt, before 30 September of each year, on the basis of a proposal by the Executive 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.";

paragraph 5 is replaced by the following:

"5. The Board of Supervisors shall adopt, on the basis of a proposal by the Executive Board, the annual report on the activities of the Authority, including on the

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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.";

(e) paragraph 8 is deleted;

(87) Article 44 is amended as follows:

in the second subparagraph of paragraph 1, the following sentence is added:

"The full time members of the Executive Board and the Chairperson shall not vote on these decisions.";

in paragraph 1, the third and the fourth subparagraphs are deleted;

paragraph 4 is replaced by the following:

"4. The non-voting members and the observers shall not participate in 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).";

The first subparagraph shall not apply to the Chairperson, the members that are also members of the Executive Board and the European Central Bank representative nominated by its Supervisory Board.";

(88) in Chapter III, the title of Section 2 is replaced by the following:

"Executive Board";

(89) Article 45 is replaced by the following:

"Article 45

Composition

"1. The Executive Board shall be composed of the Chairperson and three full time members. The Chairperson shall assign clearly defined policy and managerial tasks to each of the full time members. One of the full time members shall be assigned responsibility for budgetary matters and for matters relating to the work programme of the Authority ("Member in charge"). One of the full time members shall act as a Vice Chairperson and carry out the tasks of the Chairperson in his or her absence or reasonable impediment, in accordance with this Regulation. .

2. The full time members shall be selected on the basis of merit, skills, knowledge of financial institutions and markets, and experience relevant to financial supervision and regulation. The full time members shall have extensive management experience. The selection shall be based on an open call for candidates, to be published in the

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Official Journal of the European Union, following which the Commission shall draw up a shortlist of qualified candidates.

The Commission shall submit the shortlist to the European Parliament for approval. Following the approval of that shortlist, the Council shall adopt a decision to appoint the full time members of the Executive Board including the Member in charge.

3. Where a full time member of the Executive Board no longer fulfil the conditions set out in Article 46 or has been found guilty of serious misconduct, the Council may, on a proposal from the Commission which has been approved by the European Parliament, adopt a decision to remove him or her from office.

4. The term of office of the full time members shall be 5 years and shall be renewable once. In the course of the 9 months preceding the end of the 5-year term of office of the full time member, the Board of Supervisors shall evaluate:

(a) the results achieved in the first term of office and the way in which they were achieved;

(b) the Authority's duties and requirements in the coming years.

Taking into account the evaluation, the Commission shall submit the list of the full time members to be renewed to the Council. Based on this list and taking into account the evaluation, the Council may extend the term of office of the full time members.";

(90) the following Article 45a is inserted:

"Article 45a

Decision-making

1. Decisions by the Executive Board shall be adopted by simple majority of its members. Each member shall have one vote. In the event of a tie, the Chairperson shall have a casting vote.

2. The representative of the Commission shall participate in meetings of the Executive Board without the right to vote save in respect of matters referred to in Article 63.

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

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

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

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5. The members of the Executive Board may, subject to the rules of procedure, be assisted by advisers or experts. The non-voting participants shall not attend any discussions within the Executive Board relating to individual financial institutions.";

(91) the following Article 45b is inserted:

"Article 45b

Internal committees

The Executive Board may establish internal committees for specific tasks attributed to it.";

(92) Article 46 is replaced by the following:

"Article 46

Independence

"The members of the Executive 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 Executive Board in the performance of their tasks.";

(93) Article 47 is replaced by the following:

"Article 47

Tasks

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

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

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

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For the purposes of Articles 17, 19, 22, 29a, 30, 31a, 32 and 35b to 35h, the Executive Board shall be competent to act and to take decisions. The Executive Board shall keep the Board of Supervisors informed of the decisions taken.

3a. The Executive Board shall examine, give an opinion and made proposal on all matters to be decided by the Board of Supervisors.

4. The Executive 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 ('the Staff Regulations').

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

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

8 The members of the Executive Board shall make public all meetings held and any hospitality received. Expenses shall be recorded publicly in accordance with the Staff Regulations.

9. The Member in charge shall have the following specific tasks:

(a) to implement the annual work programme of the Authority under the guidance of the Board of Supervisors and under the control of the Executive Board;

(b) to take all 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;

(c) to prepare a multi-annual work programme, as referred to in Article 47(2);

(d) to prepare a work programme by 30 June of each year for the following year, as referred to in Article 47(2) ;

(e) to draw up a preliminary draft budget of the Authority pursuant to Article 63 and to implement the budget of the Authority pursuant to Article 64;

(f) to prepare an annual draft report to include a section on the regulatory and supervisory activities of the Authority and a section on financial and administrative matters;

(g) to exercise in respect to the Authority's staff the powers laid down in Article 68 and to manage staff matters.";

(94) Article 48 is amended as follows:

in paragraph 1, the second subparagraph is replaced by the following:

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"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 Executive Board.";

paragraph 2 is replaced by the following:

"2. The Chairperson shall be selected on the basis of merit, skills, knowledge of financial institutions and markets, and of experience relevant to financial supervision and regulation, following an open call for candidates to be published in the Official Journal of the European Union. The Commission shall submit a shortlist of candidates for the position of the Chairperson to the European Parliament for approval. Following the approval of that shortlist, the Council shall adopt a decision to appoint the Chairperson.

Where the Chairperson no longer fulfil the conditions referred to in Article 49 or has been found guilty of serious misconduct, the Council may, on a proposal from the Commission which has been approved by the European Parliament, adopt a decision to remove him or her from office.";

in paragraph 4, the second subparagraph is replaced by the following:

"The Council, on a proposal from the Commission and taking into account the evaluation, may extend the term of office of the Chairperson once.";

paragraph 5 is deleted;

(95) the following Article 49a is inserted:

"Article 49a

Expenses

"The Chairperson shall make all public meetings held and any hospitality received. Expenses shall be recorded publicly in accordance with the Staff Regulations.";

(96) Articles 51, 52 and 53 are deleted;

(97) Article 54 is amended as follows:

(a) in paragraph 2 ~~of Article 54~~, the following indent is added:

" — consumer and investor protection issues;" ;

(b) **in paragraph 2, the fifth indent is deleted;**

(c) the following paragraph 2a is inserted:

"2a. The Joint Committee shall serve as a forum in which the Authority shall cooperate with the European Banking Authority and the European Securities and Markets Authority on matters relating to the interaction between the tasks of the Authority and of the European Securities and

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Markets Authority and the specific tasks referred to in point (l) of Article 8(1) of Regulation (EU) No 1093/2010 conferred on the European Banking Authority.";

(98) in Article 55 paragraph 2 is replaced by the following:

"2. One member of the Executive Board, The Member in charge in accordance with Article 47(8a), the 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.";

(99) Article 58 is amended as follows:

paragraph 3 is replaced by the following:

"3. Two members of the Board of Appeal and two alternates shall be appointed by the Executive 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.";

paragraph 5 is replaced by the following:

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

(100) in Article 59 paragraph 1 is replaced by the following:

"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 Executive Board or its Board of Supervisors.";

(101) in Article 60 paragraph 1 is replaced by the following:

"1. Any natural or legal person, including competent authorities, may appeal against a decision of the Authority referred to in Articles 17, 18, 19 and 35 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.";

(102) Article 62 is amended as follows:

paragraph 1 is replaced by the following:

"1. The revenues of the Authority shall consist, without prejudice to other types of revenue, of any combination of the following:

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(a) a balancing contribution from the Union, entered in the General Budget of the Union (Commission section) which shall not exceed 40% of the estimated revenues of the Authority;

(b) annual contributions from financial institutions, based on the annual estimated expenditure relating to the activities required by this Regulation and by the Union Acts referred to in Article 1(2) for each category of participants within the remit of the Authority;

(c) any fees paid to the Authority in the cases specified in the relevant instruments of Union law.

(d) any voluntary contribution from Member States or observers;

(e) charges for publications, training and for any other services requested by competent authorities.";

the following paragraphs 5 and 6 are added:

"5. The annual contributions referred to in paragraph 1(b) shall be collected each year from individual financial institutions by the authorities designated by each Member State. By 31 March of each financial year, each Member State shall pay to the Authority the amount that it is required to collect in accordance with the criteria set out in the delegated act referred in to Article 62a.

6. Voluntary contributions from Members States and observers as referred to in point (d) of paragraph 1 shall not be accepted if such acceptance could cast doubt on the independence and impartiality of the Authority.";

(103) the following Article 62a is inserted:

"Article 62a

Delegated acts on the calculation of annual contributions by financial institutions

The Commission shall be empowered, in accordance with Article 75a, to adopt delegated acts determining how annual contributions by individual financial institutions referred to in point (e) of Article 62 are to be calculated, establishing the following:

(a) a methodology to allocate the estimated expenditure to categories of financial institutions as a basis for determining the share of contributions to be made by financial institutions of each category;

(b) appropriate and objective criteria to determine the annual contributions payable by individual financial institutions within the scope of the Union Acts referred to in Article 1(2) based on their size so as to approximately reflect their importance in the market.

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The criteria referred to in point (b) of the first paragraph may establish either *de minimis* thresholds below which no contribution is due or minima below which contributions must not fall.";

(104) Article 63 is replaced by the following:

"Article 63

Establishment of the budget

1. Each year, the Member in charge shall draw up a provisional draft single programming document of the Authority for the three following financial years setting out the estimated revenue and expenditure, as well as information on staff, from its annual and multi-annual programming and shall forward it to the Executive Board and the Board of Supervisors, together with the establishment plan.

1a. The Executive Board shall, on the basis of the draft which has been approved by the Board of Supervisors adopt the draft single programming document for the three following financial years.

1b. The draft single programming document shall be transmitted by the Executive Board to the Commission, the European Parliament and the Council by 31 January.

2. On the basis of the draft single programming document, the Commission shall enter in the draft budget of the Union the estimates it deems necessary in respect of the establishment plan and the amount of the balancing contribution to be charged to the general budget of the Union in accordance with Articles 313 and 314 of the Treaty.

3. The budgetary authority shall adopt the establishment plan for the Authority. The budgetary authority shall authorise the appropriations for the balancing contribution to the Authority.

4. 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 Union. Where necessary, it shall be adjusted accordingly.

5. The Executive 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.";

(105) Article 64 is replaced by the following:

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Article 64

Implementation and control of the budget

1. The Member in charge shall act as authorising officer and shall implement the Authority's budget.

2. The Authority's accounting officer shall send their provisional accounts to the Commission's accounting officer and to the Court of Auditors by 1 March of the following year.

3. The Authority's accounting officer shall send by 1 March of the following year the required accounting information for consolidation purposes to the accounting officer of the Commission, in the manner and format laid down by that accounting officer.

4. The Authority's accounting officer shall send the report on budgetary and financial management to the members of the Board of Supervisors, the European Parliament, the Council and the Court of Auditors by 31 March of the following year.

5. After receiving the observations of the Court of Auditors on the provisional accounts of the Authority in accordance with Article 148 of the Financial Regulation, the Authority's accounting officer shall draw up the Authority's final accounts. The Member in charge shall send them to the Board of Supervisors, which shall deliver an opinion on these accounts.

6. The Authority's accounting officer shall send the final accounts, accompanied by the opinion of the Board of Supervisors, by 1 July of the following year, to the accounting officer of the Commission, the European Parliament, the Council and the Court of Auditors.

The Authority's accounting officer shall also send by 1 July, a reporting package to the Commission's accounting officer, in a standardised format as laid down by the Commission's accounting officer for consolidation purposes.

7. The final accounts shall be published in the Official Journal of the European Union by 15 November of the following year.

8. The Member in charge 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 Executive Board and the Commission.

9. The Member in charge shall submit to the European Parliament, at the latter's request and as provided for in Article 165(3) of the Financial Regulation, any information necessary for the smooth application of the discharge procedure for the financial year in question.

10. 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 for the financial year N.";

(106) Article 65 is replaced by the following:

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"Article 65

Financial rules

The financial rules applicable to the Authority shall be adopted by the Executive Board after consulting the Commission. Those rules may not depart from Commission Delegated Regulation (EU) No 1271/2013* for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 unless the specific operational needs for the functioning of the Authority so require and only with the prior agreement of the Commission.

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

(107) in Article 66, paragraph 1 is replaced by the following:

"1. For the purposes of combating fraud, corruption and any other illegal activity, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council* shall apply to the Authority without any restriction.

*Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).";

(108) Article 68 is amended as follows:

paragraphs 1 and 2 are replaced by the following:

"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 the full time members of the Executive Board and its Chairperson.

2. The Executive 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.";

paragraph 4 is replaced by the following:

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

(109) Article 70 is amended as follows:

the first subparagraph of paragraph 1 is replaced by the following:

"1. Members of the Board of Supervisors and all members of the staff of the Authority including officials seconded by Member States on a temporary basis and

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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.";

in paragraph 2, the second subparagraph is replaced by the following:

"Moreover, the obligation under paragraph 1 and the first subparagraph of this paragraph shall not prevent the Authority and the competent 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.";

the following paragraph 2a is inserted:

"2a. The Executive Board and the Board of Supervisors shall ensure that individuals who provide any service, directly or indirectly, permanently or occasionally, relating to the tasks of the Authority, including officials and other persons authorised by the Executive Board and the Board of Supervisors or appointed by the competent authorities for that purpose, are subject to the requirements of professional secrecy equivalent to those in the previous paragraphs.

The same requirements for professional secrecy shall also apply to observers who attend the meetings of the Executive Board and the Board of Supervisors who take part in the activities of the Authority.";

in paragraph 3, the first subparagraph is replaced by the following:

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

(110) In Article 71 is replaced by the following:

"This Regulation shall be without prejudice to the obligations of Member States relating to their processing of personal data under Regulation (EU) 2016/679 or the obligations of the Authority relating to its processing of personal data under Regulation (EU) No 2018/XXX (Data Protection Regulation for EU institutions and Bodies) when fulfilling its responsibilities.";

(111) in Article 72, paragraph 2 is replaced by the following:

"2. The Executive Board shall adopt practical measures for applying Regulation (EC) No 1049/2001.";

(112) in Article 73, paragraph 2 is replaced by the following:

"2. The Executive Board shall decide on the internal language arrangements for the Authority.";

(113) in Article 74, the first paragraph is replaced by the following:

"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

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available by that Member State, as well as the specific rules applicable in that Member State to 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 Executive Board.";

(114) the following Article 75a is inserted:

"Article 75a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 35c and Article 62a shall be conferred for an indeterminate period of time.

3. The delegation of power referred to in Article 35c and Article 62a may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 35c or Article 62a shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.";

(115) Article 76 is replaced by the following:

"Article 76

Relationship with CEIOPS

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

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transfer. That statement shall be audited and approved by CEIOPS and by the Commission."

(116) new Article 77a is inserted:

Article 77a

Transitional provisions

The tasks and position of the Executive Director appointed in accordance with Regulation No 1094/2010 as last amended by Directive 2014/51/EU and in office on [PO: please insert date 3 months after the entry into force of this Regulation] shall cease on that date.

The tasks and position of the Chairperson appointed in accordance with Regulation No 1094/2010 as last amended by Directive 2014/51/EU and in office on [PO: please insert date 3 months after the entry into force of this Regulation] shall continue until its expiry.

The tasks and position of the members of the Management Board appointed in accordance with Regulation No 1094/2010 as last amended by Directive 2014/51/EU and in office on [PO: please insert date 3 months after the entry into force of this Regulation] shall cease on that date.".

Article 3

Amendments to Regulation (EU) No 1095/2010

Regulation (EU) 1095/2010 is amended as follows:

(117) Article 1 is amended as follows:

paragraph 2 is replaced by the following:

"2. The Authority shall act within the powers conferred by this Regulation and within the scope of Directive 97/9/EC, Directive 98/26/EC, Directive 2001/34/EC, Directive 2002/47/EC, Directive 2003/71/EC, Directive 2004/39/EC, Directive 2004/109/EC, Directive 2009/65/EC, Directive 2011/61/EU of the European Parliament and of the Council * Regulation 1606/2002 of the European Parliament and of the Council**, Directive 2013/34/EU of the European Parliament and of the Council***, 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 (EU) 2015/849,~~ 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.

* Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives

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2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

**Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).

***Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).";

the following paragraph 3a is inserted:

"3a. This Regulation shall apply without prejudice to other Union acts conferring the functions of authorisation or supervision and corresponding powers upon the Authority.";

(118) in Article 2 paragraph 5 the following subparagraph is inserted:

"References to supervision in this Regulation include the activities of all competent authorities to be carried out pursuant to the legislative acts referred to in Article 1(2).;

(119) in point (3) of Article 4, point (ii) is replaced by the following:

"(ii) with regard to Directives 2002/65/EC and (EU) 2015/849, 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;";

(120) Article 6 is amended as follows:

point (2) is replaced by the following:

"(2) an Executive Board, which shall exercise the tasks set out in Article 47;";

point (4) is deleted;

(121) Article 8 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the following point (aa) is inserted:

"(aa) to develop and maintain up to date a Union supervisory handbook on the supervision of financial market participants in the Union;";

(ii) points (e) and (f) are replaced by the following:

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"(e) to organise and conduct reviews of competent authorities and, in that context, to issue guidelines and recommendations and to identify best practices, with a view to strengthening consistency in supervisory outcomes;

(f) to monitor and assess market developments in the area of its competence including, where relevant, developments relating to trends in innovative financial services;";

(iii) point (h) is replaced by the following:

"(h) to foster consumer and investor protection;";

(iv) point (l) is deleted;

(b) a new paragraph 1a is inserted:

"1a. " When carrying out its tasks in accordance with this Regulation, the authority shall take account of technological innovation, innovative and sustainable business models, and the integration of environmental, social and governance related factors.";

in paragraph 2, the following are amended:

(i) point (ca) is inserted:

"(c) issue recommendations as laid down in Articles 29a and 31a;";

(ii) point h) is replaced by the following:

"(h) collect the necessary information concerning financial institutions as provided for in Article 35 and Article 35b";

(c) the following paragraph 3 is added:

"3. When carrying out the tasks referred to in paragraph 1 and exercising the powers referred to in paragraph 2, the Authority shall have due regard to the principles of better regulation, including the results of cost-benefit analyses produced in accordance with this Regulation.";

(122) Article 9 is amended as follows:

(a) in paragraph 1, the following points (aa) and (ab) are inserted:

"(aa) undertaking in-depth thematic reviews of market conduct, building a common understanding of markets practices in order to identify potential problems and analyse their impact;

(ab) developing retail risk indicators for the timely identification of potential causes of consumer and investor harm;";

(b) paragraph 2 is replaced by the following:

"2. The Authority shall monitor new and existing financial activities and may adopt guidelines and recommendations with a view to promoting the safety and

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soundness of markets, and convergence of regulatory and supervisory practices.";

(c) paragraph 4 is replaced by the following:

"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 and authorities responsible for consumer protection, 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. The Authority may also include national data protection authorities as part of the Committee.";

(123) Article 16 is amended as follows:

(a) in paragraph 1, the following subparagraph is added:

"The Authority may also address guidelines and recommendations to the authorities of Member States that are not defined as competent authorities under this Regulation but that are empowered to ensure the application of the acts referred to in Article 1(2).";

(b) paragraph 2 is replaced by the following:

"2. The Authority shall, save in exceptional circumstances, conduct open public consultations regarding the guidelines and recommendations which it issues and shall analyse the related potential costs and benefits of issuing such guidelines and recommendations. Those consultations and analyses shall be proportionate in relation to the scope, nature and impact of the guidelines or recommendations. The Authority shall, save in exceptional circumstances, also request opinions or advice from the Securities and Markets Stakeholder Group referred to in Article 37.";

(c) in paragraph 4, the following sentence is added:

"The report shall also explain how the Authority has justified the issue of its guidelines and recommendations and summarise the feedback from public consultations on issued guidelines and recommendations.";

(d) the following paragraph 5 is added:

"5. Where two thirds of the members of the Securities and Markets Stakeholder Group are of the opinion that the Authority has exceeded its competence by issuing certain guidelines or recommendations, they may send a reasoned opinion to the Commission.

The Commission shall request an explanation justifying the issuance of the guidelines or recommendations concerned from the Authority. The Commission shall, on receipt of the explanation from the Authority, assess the scope of the guidelines or recommendations in view of the Authority's competence. Where the Commission considers that the Authority has exceeded its competence, and after having given the Authority the opportunity to state its views, the Commission may

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adopt an implementing decision requiring the Authority to withdraw the guidelines or recommendations concerned. The decision of the Commission shall be made public.";

(124) in paragraph 2 of Article 17, the following subparagraphs are added:

Without prejudice to the powers laid down in Article 35, the Authority may address a duly justified and reasoned request for information directly to other competent authorities or relevant financial market participants, whenever deemed necessary for the purpose of investigating an alleged breach or non-application of Union law. Where it is addressed to financial market participants, the reasoned request shall explain why the information is necessary for the purposes of investigating an alleged breach or non-application of Union law.

The addressee of such a request shall provide the Authority with clear, accurate and complete information without undue delay.

Where a request for information has been addressed to a financial market participant, the Authority shall inform the relevant competent authorities of such a request. The competent authorities shall assist the Authority in collecting the information, where so requested by the Authority.";

(125) Article 19 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. In cases specified in the Union acts referred to in Article 1(2) and without prejudice to the powers laid down in Article 17, the Authority may assist the competent authorities in reaching an agreement in accordance with the procedure set out in paragraphs 2 to 4 in either of the following circumstances:

a) at the request of one or more of the competent authorities concerned where a competent authority disagrees with the procedure or content of an action, proposed action, or inactivity of another competent authority;

(b) on its own initiative where on the basis of objective criteria, disagreement can be determined between competent authorities.

In cases where the acts referred to in Article 1(2) require a joint decision to be taken by competent authorities, a disagreement shall be presumed in the absence of a joint decision being taken by those authorities within the time limits set out in those acts;";

(b) the following paragraphs 1a and 1b are inserted:

"1a. The competent authorities concerned shall in the following cases notify the Authority without delay that an agreement has not been reached:

(a) where a time limit for reaching an agreement between competent authorities has been provided for in the Union acts, referred to in Article 1(2), and the earlier of the following occurs :

(i) the time limit has expired;

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(ii) one or more of the competent authorities conclude that a disagreement exists, on the basis of objective factors;

(b) where no time limit for reaching an agreement between competent authorities has been provided in the Union acts referred to in Article 1(2) , and the earlier of the following occurs:

(i) one or more of the competent authorities concerned conclude that a disagreement exists on the basis of objective factors; or

(ii) two months have elapsed from the date of receipt by a competent authority of a request from another competent authority to take certain action in order to comply with Union law and the requested authority has not yet adopted a decision that satisfies the request.

1b. The Chairperson shall assess whether the Authority should act in accordance with paragraph 1. Where the intervention is at the Authority's own initiative, the Authority shall notify the competent authorities concerned of its decision regarding the intervention.

Pending the Authority's decision in accordance with the procedure set out in Article 47(3a), in cases where the acts referred to in Article 1(2) require a joint decision to be taken, all competent authorities involved in the joint decision shall defer their individual decisions. Where the Authority decides to act, all the competent authorities involved in the joint decision shall defer their decisions until the procedure set out in paragraphs 2 and 3 is concluded.";

(c) paragraph 3 is replaced by the following:

"Where the competent authorities concerned fail to reach an agreement within the conciliation phase referred to in paragraph 2, the Authority may take a decision requiring those authorities to take specific action or to refrain from certain action in order to settle the matter, in order to ensure compliance with Union law. The decision of the Authority shall be binding on the competent authorities concerned. The Authority's decision may require competent authorities to revoke or amend a decision that they have adopted or to make use of the powers which they have under the relevant Union law.";

(d) the following paragraph 3a is inserted:

"3a. The Authority shall notify the competent authorities concerned of the conclusion of the procedures under paragraphs 2 and 3 together, where applicable with its decision taken under paragraph 3.";

(e) paragraph 4 is replaced by the following:

"4. Without prejudice to the powers of the Commission pursuant to Article 258 of the Treaty, 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

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participant requiring the necessary action to comply with its obligations under Union law, including the cessation of any practice.";

(126) in Article 22(4), the second subparagraph is replaced by the following:

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

(127) Article 29 is amended as follows:

paragraph 1 is amended as follows:

(i) the following point (aa) is inserted:

"(aa) issuing the Strategic Supervisory Plan in accordance with Article 29a;";

(ii) point (b) is replaced by the following:

"(b) promoting an effective bilateral and multilateral exchange of information between competent authorities, pertaining to all relevant issues, including cyber security and cyber-attacks as appropriate, with full respect for the applicable confidentiality and data protection provisions provided for in the relevant Union legislation;";

(iii) point (e) is replaced by the following:

"(e) establishing sectoral and cross-sectoral training programmes, including with respect to technological innovation, facilitating personnel exchanges and encouraging competent authorities to intensify the use of secondment schemes and other tools;";

in paragraph 2, the following subparagraph is added:

"For the purpose of establishing a common supervisory culture, the Authority shall develop and maintain an up to date Union supervisory handbook on the supervision of financial market participants in the Union, taking into account, inter alia, changing business practices and business models, including due to technological innovation, of financial market participants. The Union supervisory handbook shall set out supervisory best practices and high quality methodologies and processes.";

(128) the following Article 29a is inserted:

"Article 29a

Strategic Supervisory Plan

1. Upon the entry into application of Regulation [XXX insert reference to amending Regulation] and every three years thereafter by 31 March, the Authority shall issue a recommendation addressed to competent authorities, laying down supervisory strategic objectives and priorities ("Strategic Supervisory Plan") and, taking into account any contributions from competent authorities,. The Authority shall transmit

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the Strategic Supervisory Plan for information to the European Parliament, the Council and the Commission and shall make it public on its website.

The Strategic Supervisory Plan shall identify specific priorities for supervisory activities in order to promote consistent, efficient and effective supervisory practices and the common, uniform and consistent application of Union lawand to address relevant micro-prudential trends, potential risks and vulnerabilities identified in accordance with Article 32.

2. By 30 September of each year, each competent authority shall submit a draft annual work programme for the following year to the Authority for consideration and specifically stipulate how that draft programme is aligned with the Strategic Supervisory Plan.

The draft annual work programme shall contain specific objectives and priorities for supervisory activities and quantitative and qualitative criteria for the selection of financial market participants, market practices and behaviours and financial markets to be examined by the competent authority submitting the draft work programme during the year covered by that programme.

3. The Authority shall assess the draft annual work programme and where there are material risks for not attaining the priorities set out in the Strategic Supervisory Plan the Authority shall issue a recommendation to the relevant competent authority aiming at the alignment of the relevant competent authority's annual work programme with the Strategic Supervisory Plan.

By 31 December of each year, the competent authorities shall adopt their annual work programmes taking into account any such recommendations.

4. By 31 March of each year, each competent authority shall transmit to the Authority a report on the implementation of the annual work programme.

The report shall include at least the following information:

(a) a description of the supervisory activities and examinations of financial institutions, market practices and behaviours and of financial markets, and on the administrative measures and sanctions imposed against financial institutions responsible for breaches of Union and national law;

(b) a description of activities that were carried out and which were not foreseen in the annual work programme;

(c) an account of the activities provided for in the annual work programme that were not carried out and of the objectives of that programme that were not met, as well as the reasons for the failure to carry out those activities and to reach those objectives.

5. The Authority shall assess the implementation reports of the competent authorities. Where there are material risks of not attaining the priorities set out in the Strategic Supervisory Plan the Authority shall issue a recommendation to each competent authority concerned on how the relevant shortcomings in its activities can be remedied.

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Based on the reports and its own assessment of risks, the Authority shall identify the activities of the competent authority that are critical to fulfilling the Strategic Supervisory Plan, and shall as appropriate conduct reviews under Article 30 of those activities.

6. The Authority shall make best practices identified during the assessment of the annual work programmes publicly available.";

(129) Article 30 is amended as follows:

(a) the title of the article is replaced by the following:

"Reviews of competent authorities";

(b) paragraph 1 is replaced by the following:

"1. The Authority shall periodically conduct 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 competent authorities reviewed. When conducting reviews, existing information and evaluations already made with regard to the competent authority concerned, including all information provided to the Authority in accordance with Article 35, and any information from stakeholders shall be taken into account.";

(c) the following paragraph 1a is inserted:

"1a. For the purposes of this Article, the Authority shall establish a review committee, exclusively composed of staff from the Authority. The Authority may delegate certain tasks or decisions related to reviews of competent authorities to the review committee.""

(d) paragraph 2 is amended as follows:

(i) the introductory sentence is replaced by the following:

"The review shall include an assessment of, but shall not be limited to:";

(ii) point (a) is replaced by the following:

"(a) the adequacy of resources, the degree of independence, and governance arrangements of the competent authority, with particular regard to the effective application of the Union acts referred to in Article 1(2) and the capacity to respond to market developments;";

(e) paragraph 3 is replaced by the following:

"3. The Authority shall produce a report setting out the results of the review. That report shall explain and indicate the follow-up measures that are foreseen as a result of the review. Those follow-up measures may be adopted in the form of guidelines and recommendations pursuant to Article 16 and opinions pursuant to Article 29(1)(a).

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In accordance with Article 16(3), the competent authorities shall make every effort to comply with any guidelines and recommendations issued. Where competent authorities do not take action to address the follow-up measures indicated in the report, the Authority shall issue a follow-up report.

When developing draft regulatory technical standards or draft implementing standards in accordance with Articles 10 to 15, or guidelines or recommendations in accordance with Article 16, the Authority shall take into account the outcome of reviews conducted in accordance with this Article, along with any other information acquired by the Authority in carrying out its tasks, in order to ensure convergence of the highest quality supervisory practices.";

(f) the following paragraph 3a is inserted:

"3a. The Authority shall submit an opinion to the Commission where, having regard to the outcome of the review or to any other information acquired by the Authority in carrying out its tasks, it considers further harmonisation of the rules applicable to financial market participants or competent authorities would be necessary.";

(g) paragraph 4 is replaced by the following:

"4. The Authority shall publish the report referred to in paragraph 3 including any follow-up report, unless publication would involve risks to the stability of the financial system. The competent authority that is subject to the review shall be invited to comment before the publication of any report. Those comments shall be made publicly available unless publication would involve risks to the stability of the financial system.";

(130) in Article 31a new paragraph is added:

"Regarding activity of competent authorities intended to facilitate entry into the market of operators or products relying on technological or other innovation, the Authority shall promote supervisory convergence, in particular through the exchange of information and best practices. Where appropriate, the Authority may adopt guidelines or recommendations in accordance with Article 16.";

(131) new Article 31a is inserted:

"Article 31a

Coordination on delegation and outsourcing of activities as well as of risk transfers

"1. The Authority shall on an ongoing basis coordinate supervisory actions of competent authorities with a view to promoting supervisory convergence in the fields of delegation and outsourcing of activities by financial market participants as well as in relation to risk transfers conducted by them, in accordance with paragraphs 2, 3 and 4.

2. The competent authorities shall notify the Authority where they intend to carry out an authorisation or registration related to a financial market participant which is

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under supervision of the competent authority concerned in accordance with the acts referred to in Article 1(2) and where the business plan of the financial market participant entails the outsourcing or delegation of a material part of its activities or any of the key functions or the risk transfer of a material part of its activities into third countries, to benefit from the EU passport while essentially performing substantial activities or functions outside the Union. The notification to the Authority shall be sufficiently detailed to allow for a proper assessment by the Authority.

Where the Authority considers it necessary to issue an opinion to a competent authority regarding the non-compliance of an authorisation or registration notified pursuant to the first subparagraph with Union law or guidelines, recommendations or opinions adopted by the Authority, the Authority shall inform that competent authority thereof within 20 working days of the receipt of the notification by that competent authority. In that case the competent authority concerned shall await the opinion of the Authority before carrying out the registration or authorisation.

At the request of the Authority, the competent authority shall within 15 working days of the receipt of such a request provide information related to its decisions to authorise or register a financial market participant which is under its supervision in accordance with the acts referred to in Article 1(2).

The Authority shall issue the opinion, without prejudice to any time limits set out in Union law, at the latest within 2 months of the receipt of the notification pursuant to the first subparagraph.

3. A financial market participant shall notify the competent authority of the outsourcing or delegation of a material part of its activities or any of its key functions, and the risk transfer of a material part of its activities, to another entity or its own branch established in a third country. The competent authority concerned shall inform the Authority of such notifications on a semi-annual basis.

Without prejudice to Article 35, at the request of the Authority, the competent authority shall provide information in relation to the outsourcing, delegation or risk transfer arrangements by financial market participants.

The Authority shall monitor whether the competent authorities concerned verify that outsourcing, delegation or risk transfer arrangements referred to in the first subparagraph are concluded in accordance with Union law, comply with guidelines, recommendations or opinions from the Authority and do not prevent effective supervision by the competent authorities and enforcement in a third country.

4. The Authority may issue recommendations to the competent authority concerned, including recommendations to review a decision or to withdraw an authorisation. Where the competent authority concerned does not follow the recommendations of the Authority within 15 working days, the competent authority shall state the reasons and the Authority shall make its recommendation public together with those reasons.";

(132) new Article 31b is inserted:

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"Article 31b

Coordination function in relation to orders, transactions and activities with significant cross-border effects

1. Where the Authority has reasonable grounds to suspect that orders, transactions or any other activity with significant cross-border effects threaten the orderly functioning and integrity of financial markets or the financial stability in the Union, it shall recommend that competent authorities of the Member States concerned initiate an investigation and shall provide those competent authorities with the relevant information.

2. Where a competent authority has reasonable grounds to suspect that orders, transactions or any other activity with significant cross-border effects threaten the orderly functioning and integrity of financial markets or the financial stability in the Union, it shall promptly notify the Authority and provide the relevant information. The Authority may recommend the competent authorities of the Member States where the suspected activity has occurred to take action after transmitting the relevant information to those competent authorities.

3. To facilitate the exchange of information between the Authority and the competent authorities, the Authority shall establish and maintain a data storage facility designed for that purpose.";

(133) in Article 32 a new paragraph 2a is inserted:

"2a. At least annually, the Authority shall consider whether it is appropriate to carry out Union-wide assessments referred to in paragraph 2 and shall inform the European Parliament, the Council and the Commission of its reasoning. Where such Union-wide assessments are carried out and the Authority considers it appropriate to do so, it shall disclose the results for each participating financial institution.

Professional secrecy obligations of competent authorities shall not prevent the competent authorities from publishing the outcome of Union-wide assessments referred to in paragraph 2 or from transmitting the outcome of such assessments to the Authority for the purpose of the publication by the Authority of the results of Union-wide assessments of the resilience of financial institutions.";

(134) Article 33 is amended as follows:

paragraph 2 is replaced by the following:

"2. The Authority shall assist the Commission in preparing equivalence decisions pertaining to regulatory and supervisory regimes in third countries following a specific request for advice from the Commission or where required to do so by the acts referred to in Article 1(2).";

the following paragraphs 2a, 2b and 2c are inserted:

"2a. The Authority shall monitor the regulatory and supervisory developments and enforcement practices and relevant market developments in third countries for which

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equivalence decisions have been adopted by the Commission pursuant to the acts referred to in Article 1(2) in order to verify whether the criteria, on the basis of which those decisions have been taken and any conditions set out therein, are still fulfilled. It shall take into account the market relevance of the third countries concerned. The Authority shall submit a confidential report on its findings to the Commission on an annual basis

Without prejudice to specific requirements set out in the acts referred to in Article 1(2) and subject to the conditions set out in the second sentence of paragraph 1 the Authority shall cooperate where possible with the relevant competent authorities, and where appropriate, also with resolution authorities, of third countries whose regulatory and supervisory regimes have been recognised as equivalent. That cooperation shall be pursued on the basis of administrative arrangements concluded with the relevant authorities of those third countries. When negotiating such administrative arrangements, the Authority shall seek to include provisions on the following:

a) the mechanisms which would allow the Authority to obtain relevant information, including information on the regulatory regime, as well as the supervisory approach, relevant market developments and any changes that may affect the decision on equivalence;

b) to the extent necessary for the follow up of such decisions, the procedures concerning the coordination of supervisory activities including, where necessary, on-site inspections.

The Authority shall inform the Commission where a third -country competent authority refuses to conclude such administrative arrangements or when it refuses to effectively cooperate. The Commission shall take this information into account when reviewing the relevant equivalence decisions.

2b. Where the Authority identifies developments in relation to the regulation, supervision or the enforcement practices in the third countries referred to in paragraph 2a that may impact the financial stability of the Union or of one or more of its Member States, market integrity or investor protection or the functioning of the internal market, it shall inform the Commission on a confidential basis and without delay.

The Authority shall on an annual basis submit a confidential report to the Commission on the regulatory, supervisory, enforcement and market developments in the third countries referred to in paragraph 2a with a particular focus on their implications for financial stability, market integrity, investor protection or the functioning of the internal market.

2c. The competent authorities shall inform the Authority in advance of their intentions to conclude any administrative arrangements with third-country supervisory authorities in any of the areas governed by the acts referred to in Article 1(2) including in relation to branches of third country entities. They shall provide simultaneously to the Authority a draft of such planned arrangements.

The Authority may develop model administrative arrangements, with a view to establishing consistent, efficient and effective supervisory practices within the Union

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and to strengthening international supervisory coordination. In accordance with Article 16(3), the competent authorities shall make every effort to follow such model arrangements.

In the report referred to in Article 43(5), the Authority shall include information on the administrative arrangements agreed upon with supervisory authorities, international organisations or administrations in third countries, the assistance provided by the Authority to the Commission in preparing equivalence decisions and the monitoring activity pursued by the Authority in accordance with paragraph 2a.";

(135) in Article 34, paragraph 2, the last sentence is replaced by the following:

"Articles 35 and 35b shall apply to the areas in respect of which the Authority may issue an opinion."

(136) Article 35 is amended as follows:

paragraphs 1, 2 and 3 are replaced by the following:

"1. At the request of the Authority, the competent authorities shall provide the Authority with all the necessary information to carry out the tasks conferred on it by this Regulation, provided that they have legal access to the relevant information.

The information provided shall be accurate, complete and submitted within the time limit prescribed by the Authority."

2. The Authority may also request information to be provided at recurring intervals and in specified format or by way of comparable templates approved by the Authority. Such requests shall, where possible, be made using common reporting formats.

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

paragraph 5 is replaced by the following:

"5. Where information requested in accordance with paragraph 1 is not available or is not made available by the competent authorities within the time limit set by the Authority, the Authority may address a duly justified and reasoned request to any of the following:

(a) other supervisory authorities with supervisory functions;,

(b) to the ministry responsible for finance in the Member State concerned where it has at its disposal prudential information;,

(c) to the national central bank or to the statistical office of the Member State concerned;

(d) to the statistical office of the Member State concerned..

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

paragraphs 6 and 7 are deleted;

(137) The following Articles 35a to 35 h are inserted:

"Article 35a

Exercise of the powers referred to in Article 35b

The powers conferred on the Authority or any of its official or other person authorised by the Authority in accordance with Article 35b shall not be used to require the disclosure of information or documents that are subject to legal privilege.

Article 35b

Request for information to financial market participants

1. Where information requested under paragraph 1 or paragraph 5 of Article 35 is not available or is not made available within the time limit set by the Authority, it may by simple request or by decision require the relevant financial market participants to provide all necessary information to enable the Authority to carry out its duties under this Regulation.

2. Any simple request for information referred to in paragraph 1 shall:

(a) refer to this Article as the legal base of that request;

(b) state the purpose of the request;

(c) specify the information required;

(d) include a time limit within which the information is to be provided;

(e) include a statement that there is no obligation on the person from whom the information is requested to provide that information but that in case of a voluntary reply to the request, the information provided must not be incorrect or misleading;

(f) indicate the amount of the fine to be issued in accordance with Article 35c where the information provided is incorrect or misleading information."

3. When requesting to supply information by decision, the Authority shall:

(a) refer to this Article as the legal base of that request;

(b) state the purpose of the request;

(c) specify the information required;

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(d) set a time limit within which the information is to be provided;

(e) indicate the periodic penalty payments provided for in Article 35d where the production of the required information is incomplete;

(f) indicate the fine provided for in Article 35c where the answers to the questions are incorrect or misleading information;

(g) indicated the right to appeal the decision before the Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union in accordance with Articles 60 and 61.

4. The relevant financial market participants or their representatives and, in the case of legal persons or associations having no legal personality, the persons authorised to represent them by law or by their constitution shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.

5. The authority shall send, without delay, a copy of the simple request or of its decision to the competent authority of the Member State where the relevant financial market participant concerned by the request for information is domiciled or established.

6. The Authority may use confidential information received in accordance with this Article only for the purposes of carrying out the tasks assigned to it by this Regulation.";

Article 35c

Procedural rules for imposing fines

1. Where, in carrying out its duties under this Regulation, the authority finds that there are serious indications of the possible existence of facts liable to constitute an infringement as referred to in Article 35d(1), the Authority shall appoint an independent investigation officer within the Authority to investigate the matter. The appointed officer shall not be involved or have been directly or indirectly involved in the direct or indirect supervision of the financial market participants concerned and shall perform his or her functions independently from the Board of Supervisors.

2. The investigation officer referred to in paragraph 1 shall investigate the alleged infringements, taking into account any comments submitted by the persons who are subject to the investigations, and shall submit a complete file with his or her findings to the Board of Supervisors.

3. In order to carry out his or her tasks, the investigation officer shall have the power to request information in accordance with Article 35b.

4. Where carrying out his or her tasks, the investigation officer shall have access to all documents and information gathered by the Authority in its supervisory activities.

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5. Upon completion of his investigation and before submitting the file with his or her findings to the Board of supervisors, the investigation officer shall give the persons subject to the investigations the opportunity to be heard on the matters being investigated. The investigation officer shall base his or her findings only on facts on which the persons concerned have had the opportunity to comment.

6. The rights of defence of the persons subject to the investigations shall be fully respected during investigations undertaken pursuant to this Article.

7. Upon submission of the file with his finding to the Board of Supervisors, the investigation officer shall notify the persons who are subject to the investigations. The persons subject to the investigations shall be entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information affecting third parties.

8. On the basis of the file containing the investigation officer's findings and, when requested by the persons subject to the investigations, after having heard those persons in accordance with Article 35f, the Authority shall decide if one or more of the infringements as referred to in Article 35d(1) has been committed by the persons subject to the investigations and, in such a case, shall take a measure in accordance with that Article.

9. The investigation officer shall not participate in the deliberations of the Board of Supervisors or intervene in any way in the decision-making process of the Board of Supervisors.

10. The Commission shall adopted delegated acts in accordance with Article 75a to specify the rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including rules on the following:

(a) rights of defence

(b) temporal provisions,

(c) provisions specifying how fines or periodic penalty payments are to be collected,

(d) provisions specifying the limitation periods for the imposition and enforcement of fines and periodic penalty payments.

11. The Authority shall refer matters for criminal prosecution to the relevant national authorities where, in carrying out its duties under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. In addition, the Authority shall refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from identical fact or facts which are substantially the same has already acquired the force of res judicata as the result of criminal proceedings under national law.

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Article 35d

Fines

1. The Authority shall adopt a decision to impose a where it finds that a financial market participant has, intentionally or negligently, failed to provide information in response to a decision requiring information pursuant to Article 35b(3) or has provided incomplete, incorrect or misleading information in response to a simple request for information or a decision pursuant to Article 35b(2).

2. The basic amount of the fine referred to in paragraph 1 shall amount to at least EUR 50 000 and shall not exceed EUR 200 000.

3. When setting the basic amount of the fine referred to in paragraph 2, the Authority shall have regard to the annual turnover of the financial market participant concerned for the preceding business year and shall be:

(a) at the lower end of the limit for entities with an annual turnover below EUR 10 million;

(b) the middle of the limit for entities with an annual turnover between EUR 10 and 50 million;

(c) the higher end of the limit for entities with an annual turnover higher than EUR 50 million.

The basic amounts defined within the limits set out in paragraph 2 shall be adjusted, where necessary, by taking into account aggravating or mitigating factors in accordance with the relevant coefficients set out in paragraph 5.

The relevant aggravating coefficient shall be applied one by one to the basic amount. Where more than one aggravating coefficient is applicable, the difference between the basic amount and the amount resulting from the application of each individual aggravating coefficient shall be added to the basic amount.

The relevant mitigating coefficient shall be applied one by one to the basic amount. Where more than one mitigating coefficient is applicable, the difference between the basic amount and the amount resulting from the application of each individual mitigating coefficient shall be subtracted from the basic amount.

4. The following adjustment coefficients shall be applied cumulatively to the basic amount referred to in paragraph 2, based on the following:

(a) the adjustment coefficients linked to aggravating factors are as follows:

(i) where the infringement has been committed repeatedly, an additional coefficient of 1.1 shall apply each time the infringement has been repeated;

(ii) where the infringement lasted for more than six months, a coefficient of 1.5 shall apply;

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(iii) where the infringement has been committed intentionally, a coefficient of 2 shall apply;

(iv) where no remedial action has been taken since the infringement has been identified, a coefficient of 1.7 shall apply;

(v) where the financial market participant's senior management has not cooperated with the Authority, a coefficient of 1.5 shall apply.

(b) the adjustment coefficients linked to mitigating factors are as follows:

(i) where the infringement lasted fewer than 10 working days, a coefficient of 0.9 shall apply;

(ii) where the financial market participant's senior management can demonstrate that they have taken all the necessary measures to prevent the failure to comply with a request pursuant to Article 35(6a), a coefficient of 0.7 shall apply;

(iii) where the financial market participant has brought the infringement to the Authority's attention quickly, effectively and completely, a coefficient of 0.4 shall apply;

(iv) where the financial market participant has voluntarily taken measures to ensure that similar infringement cannot be committed in the future, a coefficient of 0.6 shall apply.

5. Notwithstanding paragraphs 2 and 3, the total fine shall not exceed 20% of the annual turnover of the financial market participant concerned in the preceding business year unless the financial market participant has directly or indirectly benefitted financially from the infringement. In that case, the total fine shall be at least equal to that financial benefit.

Article 35e

Periodic penalty payments

1. The Authority shall adopt decisions to impose a periodic penalty payment in order to compel financial market participants referred to in Article 35b(1) to provide information requested by decision in accordance with Article 35b(3).

2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed on a daily basis until the financial market participant concerned complies with the relevant decision referred to in paragraph 1.

3. Notwithstanding paragraph 2, the amount of a periodic penalty payment shall be 3% of the average daily turnover of the financial market participant in the preceding business year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.

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4. A periodic penalty payment may be imposed for a period of no more than six months following the notification of the Authority's decision.

Article 35f

Right to be heard

1. Before taking any decision to impose a fine and periodic penalty payment under Articles 35d and 35e, the Authority shall give the financial market participant subject to the request for information the opportunity to be heard.

The Authority shall base its decisions only on the findings on which the financial market participants concerned have had the opportunity to comment.

2. The rights of defence of the financial market participant referred to in paragraph 1 shall be fully respected during the procedure. The financial market participant shall be entitled to have access to the Authority's file, subject to the legitimate interest of other persons in protecting their business secrets. The right of access to the file shall not extend to confidential information or internal preparatory documents of the Authority.

Article 35g

Disclosure, nature, enforcement and allocation of fines and periodic penalty payments

1. Fines and periodic penalty payments imposed pursuant to Articles 35d and 35e shall be of an administrative nature and shall be enforceable.

2. Enforcement of the fine and periodic penalty payment shall be governed by the rules of procedure in force in the Member State in the territory of which the enforcement is carried out. The enforcement order shall be appended to the decision imposing a fine or a periodic penalty payment without the requirement for any other formality than the verification of the authenticity of the decision by an authority which each Member State shall designate for that purpose and shall make known to the Authority and to the Court of Justice of the European Union.

3. Where the formalities referred to in paragraph 2 have been completed on application by the party concerned, the party concerned may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent body.

4. Enforcement of the fine or periodic penalty payment may only be suspended by a decision of the Court of Justice of the European Union. However, the courts of the Member State concerned shall have jurisdiction over complaints that the enforcement of the fine or periodic penalty payment is being carried out in an irregular manner.

5. The Authority shall disclose to the public every fine and periodic penalty payment that has been imposed pursuant to Articles 35d and 35e, unless such disclosure to the

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public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

6. The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the European Union.

Article 35h

Review by the Court of Justice of the European Union

The Court of Justice of the European Union shall have unlimited jurisdiction to review decisions whereby the Authority has imposed a fine or a periodic penalty payment. It may annul, reduce or increase the fine or periodic penalty payment imposed by the Authority.";

(138) In paragraph 5 of Article 36, the first subparagraph is replaced by the following:

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

(139) Article 37 is amended as follows:

(a) in paragraph 4 the last sentence of the first subparagraph is replaced by the following:

"Members of the Securities and Markets Stakeholder Group shall serve for a period of four years, following which a new selection procedure shall take place.";

(b) in paragraph 5, the following subparagraphs are added:

"Where members of the Securities and Markets Stakeholder Group cannot reach a common opinion or advice, the members representing one group of stakeholders shall be permitted to issue a separate opinion or separate advice.

The Securities and Markets Stakeholder Group, the Banking Stakeholder Group, the Insurance and Reinsurance Stakeholder Group, and the Occupational Pensions Stakeholder Group may issue joint opinions and advice on issues related to the work of the European Supervisory Authorities under Article 56 of this Regulation on joint positions and common acts.";

(140) Article 39 is replaced by the following:

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"Article 39

Decision making procedure

"1. The Authority shall act in accordance with paragraphs 2 to 6 when adopting decisions provided for in this Regulation, save for those decisions adopted in accordance with Articles 35b, 35d and 35e.

2. The Authority shall inform any addressee of a decision of its intention to adopt the decision, setting a time limit within which the addressee may express its views on the subject-matter of the decision, taking full account of the urgency, complexity and potential consequences of the matter. The provision laid down in the first sentence shall apply mutatis mutandis to recommendations as referred to in Article 17(3).

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

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

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

6. The adoption of the decisions which the Authority takes pursuant to Articles 17, 18 or 19 shall be made public. The publication shall disclose 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 interest of financial market participants or with 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.";

(141) Article 40 is amended as follows:

paragraph 1 is amended as follows:

(i) the following point (aa) is inserted:

"(aa) the full time members of the Executive Board referred to Article 45(1), who shall be non-voting;";

in paragraph 6, the second subparagraph is deleted;

the following paragraph 7 is added:

"7. Where the national public authority referred to in paragraph 1(b) is not responsible for the enforcement of consumer protection rules, the member of the Board of Supervisors referred to in that point may decide to invite a representative from the Member State's consumer protection authority, who shall be non-voting. In the case where the responsibility for consumer protection is shared by several authorities in a Member State, those authorities shall agree on a common representative.";

(142) Article 41 is replaced by the following:

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"Article 41

Internal committees

(143) "The Board of Supervisors may establish internal committees for specific tasks attributed to it. The Board of Supervisors may provide for the delegation of certain clearly defined tasks and decisions to internal committees, to the Executive Board or to the Chairperson."

(144) in Article 42, the first paragraph is replaced by the following:

"When carrying out the tasks conferred upon them by this Regulation the voting members of the Board of Supervisors, as well as the voting CCP specific and permanent members of the CCP Executive Session, 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.";

(145) Article 43 is amended as follows:

paragraph 1 is replaced by the following:

"The Board of Supervisors shall give guidance to the work of the Authority.

It shall adopt the opinions, recommendations, guidelines and decisions of the Authority, and issue the advice referred to in Chapter II, except for those tasks and powers for which the CCP Executive Session is responsible pursuant to Article 44b and the Executive Board is responsible pursuant to Article 47. It shall act on a proposal from the Executive Board.";

paragraphs 2 and 3 are deleted;

in paragraph 4, the first subparagraph is replaced by the following:

"The Board of Supervisors shall adopt, before 30 September of each year, on the basis of a proposal by the Executive 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.";

Paragraph 5 is replaced by the following:

"5. The Board of Supervisors shall adopt, on the basis of a proposal by the Executive Board, 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.";

paragraph 8 is deleted.

(146) Article 44 is amended as follows:

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in the second subparagraph of paragraph 1, the following sentence is added:

"The full time members of the Executive Board and the Chairperson shall not vote on those decisions.";

in paragraph 1, the third and fourth sub-paragraphs are deleted.

paragraph 4 is replaced by the following:

"4. The non-voting members and the observers shall not participate in 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).";

The first subparagraph shall not apply to the Chairperson, the members that are also members of the Executive Board and the European Central Bank representative nominated by its Supervisory Board.";

(147) in Chapter III, the title of Section 2 is replaced by the following:

"Executive Board";

(148) Article 45 is replaced by the following:

"Article 45

Composition

"1. The Executive Board shall be composed of the Chairperson and five full time members. The Chairperson shall assign clearly defined policy and managerial tasks to each of the full time members. One of the full time members shall be assigned responsibilities for budgetary matters and for matters relating to the work programme of the Authority ("Member in charge"). One of the full time members shall act as a Vice Chairperson and carry out the tasks of the Chairperson in his or her absence or reasonable impediment, in accordance with this Regulation. The Head of the CCP Executive Session shall participate as observer to all meetings of the Executive Board.

2. The full time members shall be selected on the basis of merit, skills, knowledge of financial market participants and markets, and experience relevant to financial supervision and regulation. The full time members shall have extensive management experience. The selection shall be based on an open call for candidates, to be published in the Official Journal of the European Union, following which the Commission shall draw up a shortlist of qualified candidates.

The Commission shall submit the shortlist to the European Parliament for approval. Following the approval of that shortlist, the Council shall adopt a decision to appoint the full time members of the Executive Board including the Member in charge. The Executive Board shall be balanced and proportionate and shall reflect the Union as a whole.

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3. Where a full time member of the Executive Board no longer fulfil the conditions set out in Article 46 or has been found guilty of serious misconduct, the Council may, on a proposal from the Commission which has been approved by the European Parliament, adopt a decision to remove him or her from office.

4. The term of office of the full time members shall be 5 years and shall be renewable once. In the course of the 9 months preceding the end of the 5-year term of office of the full time member, the Board of Supervisors shall evaluate:

(a) the results achieved in the first term of office and the way in which they were achieved;

(b) the Authority's duties and requirements in the coming years.

Taking into account the evaluation, the Commission shall submit the list of the full time members to be renewed to the Council. Based on this list and taking into account the evaluation, the Council may extend the term of office of the full time members.";

(149) the following Article 45a is inserted:

"Article 45a

Decision-making

1. Decisions by the Executive Board shall be adopted by simple majority of its members. Each member shall have one vote. In the event of a tie, the Chairperson shall have a casting vote.

2. The representative of the Commission shall participate in meetings of the Executive Board without the right to vote save in respect of matters referred to in Article 63.

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

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

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

5. The members of the Executive Board may, subject to the rules of procedure, be assisted by advisers or experts. The non-voting participants shall not attend any discussions within the Executive Board relating to individual financial market participants.";

(150) the following Article 45b is inserted:

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"Article 45b

Internal committees

The Executive Board may establish internal committees for specific tasks attributed to it.";

(151) Article 46 is replaced by the following:

"Article 46

Independence

"The members of the Executive 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 Executive Board in the performance of their tasks.";

(152) Article 47 is replaced by the following:

"Article 47

Tasks

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

2. The Executive Board shall propose, for adoption by the Board of Supervisors, an annual and multi-annual work programme, which includes a part on CCP matters.

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

For the purposes of Articles 17, 19, 22, 29a, 30, 31a, 32 and 35b to 35h, the Executive Board shall be competent to act and to take decisions, except with regard to CCP matters for which the CCP Executive Session shall be competent. The Executive Board shall keep the Board of Supervisors informed of the decisions it takes.

3a. The Executive Board shall examine, give an opinion and make a proposal on all matters to be decided by the Board of Supervisors.

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4. The Executive Board shall examine and prepare decisions for adoption by the Board of Supervisors on all matters where acts referred to in Article 1(2) have conferred functions of authorisation or supervision and corresponding powers upon the Authority.4. The Executive 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 ('the Staff Regulations').

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

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

8. The members of the Executive Board shall make public all meetings held and hospitality received. Expenses shall be recorded publicly in accordance with the Staff Regulations. .

9. The Member in charges shall have the following tasks:

(a) to implement the annual work programme of the Authority under the guidance of the Board of Supervisors, and of the CCP Executive Session for the tasks and powers referred to in Article 44b(1), and under the control of the Executive Board;

(b) to take all 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;

(c) to prepare a multi-annual work programme, as referred to in paragraph 2;

(d) to prepare a work programme by 30 June of each year for the following year, as referred to in Article 47(2);

(e) to draw up a preliminary draft budget of the Authority pursuant to Article 63 and implement the budget of the Authority pursuant to Article 64;

(f) to prepare an annual draft report to include a section on the regulatory and supervisory activities of the Authority and a section on financial and administrative matters;

(g) to exercise in respect to the Authority's staff the powers laid down in Article 68 and to manage staff matters.

However, in respect of the part on CCP matters, as referred to in paragraph 2, the CCP Executive Session shall carry out the tasks referred to in points (c) and (d) of the first subparagraph.

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In respect of the annual draft report referred to in point (f) of the first subparagraph, the CCP Executive Session shall carry out the tasks referred to therein with regard to CCP matters.

.";

(153) The title of Section III of Chapter III is replaced by the following:

"Chairperson, Head of CCP Executive Session and Directors of CCP Executive Session";

(154) Article 48 is amended as follows:

in paragraph 1, the second sub-paragraph is replaced by the following:

"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 Executive Board.";

paragraph 2 is replaced by the following:

"2. The Chairperson shall be selected 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 call for candidates to be published in the Official Journal of the European Union. The Commission shall submit a shortlist of candidates for the position of the Chairperson to the European Parliament for approval. Following the approval of that shortlist, the Council shall adopt a decision to appoint the Chairperson.

"Where the Chairperson no longer fulfils the conditions referred to in Article 49 or has been found guilty of serious misconduct, the Council may, on a proposal from the Commission which has been approved by the European Parliament, adopt a decision to remove him or her from office.";

in paragraph 4, the second subparagraph is replaced by the following:

"The Council, on a proposal from the Commission and taking into account the evaluation, may extend the term of office of the Chairperson once.";

paragraph 5 is deleted;

(155) the following Article 49a is inserted:

"Article 49a

Expenses

"The Chairperson shall make public all meetings held and any hospitality received. Expenses shall be recorded publicly in accordance with the Staff Regulations.";

(156) Articles 51, 52 and 53 are deleted;

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(157) **Article 54 is amended as follows:**

(a) in paragraph 2 ~~of Article 54~~, the following indent is added:

" — consumer and investor protection issues;" ;

(b) **in paragraph 2, the fifth indent is deleted;**

(c) **the following paragraph 2a is inserted:**

"2a. The Joint Committee shall serve as a forum in which the Authority shall cooperate with the European Banking Authority and the European Insurance and Occupational Pensions Authority on matters relating to the interaction between the tasks of the Authority and of the European Insurance and Occupational Pensions Authority and the specific tasks referred to in point (l) of Article 8(1) of Regulation (EU) No 1093/2010 conferred on the European Banking Authority.";

(158) in Article 55, paragraph 2 is replaced by the following:

"2. One member of the Executive Board, the 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.";

(159) Article 58 is amended as follows:

paragraph 3 is replaced by the following:

"3. Two members of the Board of Appeal and two alternates shall be appointed by the Executive 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.";

paragraph 5 is replaced by the following:

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

(160) in Article 59, paragraph 1 is replaced by the following:

"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 Executive Board or its Board of Supervisors.";

(161) in Article 60, paragraph 1 is replaced by the following:

"1. Any natural or legal person, including competent authorities, may appeal against a decision of the Authority referred to in Articles 17, 18, 19 and 35 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

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in the form of a decision addressed to another person, is of direct and individual concern to that person.";

(162) Article 62 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. The revenues of the Authority shall consist, without prejudice to other types of revenue, of any combination of the following:

(a) a balancing contribution from the Union, entered in the General Budget of the Union (Commission section) which shall not exceed 40% of the estimated revenues of the Authority;

(b) annual contributions from financial institutions, based on the annual estimated expenditure relating to the activities required by this Regulation and by the Union Acts referred to in Article 1(2) for each category of participants within the remit of the Authority;

(c) any fees paid to the Authority in the cases specified in the relevant instruments of Union law.

(d) any voluntary contribution from Member States or observers;

(e) charges for publications, training and for any other services requested by competent authorities.";

(b) the following paragraphs 5 and 6 are added::

"5. The annual contributions referred to in paragraph 1(b) shall be collected each year from individual financial institutions by the authorities designated by each Member State. By 31 March of each financial year, each Member State shall pay to the Authority the amount that it is required to collect in accordance with the criteria set out in the delegated act referred in to Article 62a.

6. Voluntary contributions from Members States and observers as referred to in point (d) of paragraph 1 shall not be accepted if such acceptance would cast doubt on the independence and impartiality of the Authority.";

(163) the following Article 62a is inserted:

"Article 62a

Delegated acts on the calculation of annual contributions by financial institutions

The Commission shall be empowered, in accordance with Article 75a, to adopt delegated acts determining how annual contributions by individual financial institutions referred to in point (e) of Article 62 are to be calculated, establishing the following:

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(a) a methodology to allocate the estimated expenditure to categories of financial institutions as a basis for determining the share of contributions to be made by financial institutions of each category;

(b) appropriate and objective criteria to determine the annual contributions payable by individual financial institutions within the scope of the Union Acts referred to in Article 1(2) based on their size so as to approximately reflect their importance in the market.

The criteria referred to in point (b) of the first paragraph may establish either *de minimis* thresholds below which no contribution is due or minima below which contributions must not fall.";

(164) Article 63 is replaced by the following:

"Article 63

Establishment of the Budget

1. Each year, the Member in charge shall draw up a provisional draft single programming document of the Authority for the three following financial years setting out the estimated revenue and expenditure, as well as information on staff, from its annual and multi-annual programming and shall forward it to the Executive Board and the Board of Supervisors, together with the establishment plan.

ESMA's expenditure and fees relating to the tasks and powers referred to in Article 44b (1) shall be separately identifiable within the statement of estimates referred to in the first subparagraph. Prior to the adoption of that statement of estimates, the draft prepared by the Member in charge relating to such expenditure and fees shall be approved by the CCP Executive Session.

The annual accounts of ESMA drawn up and published in accordance with Article 64(6) shall include the income and expenses related to the tasks referred to in Article 44b(1).

1a. The Executive Board shall, on the basis of the draft which has been approved by the Board of Supervisors and by the CCP Executive Session for expenditures and fees relating to tasks and powers referred to in Article 44b(1), adopt the draft single programming document for the three following financial years..

1b. The draft single programming document shall be transmitted by the Executive Board to the Commission, the European Parliament and the Council by 31 January.

2. On the basis of the draft single programming document, the Commission shall enter in the draft budget of the Union the estimates it deems necessary in respect of the establishment plan and the amount of the balancing contribution to be charged to the general budget of the Union in accordance with Articles 313 and 314 of the Treaty.

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3. The budgetary authority shall adopt the establishment plan for the Authority. The budgetary authority shall authorise the appropriations for the balancing contribution to the Authority.

4. 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 Union. Where necessary, it shall be adjusted accordingly.

5. The Executive 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.";

(165) Article 64 is replaced by the following:

"Article 64

Implementation and control of the budget

1. The Member in charge shall act as authorising officer and shall implement the Authority's budget.

2. The Authority's accounting officer shall send the provisional accounts to the Commission's accounting officer and to the Court of Auditors by 1 March of the following year.

3. The Authority's accounting officer shall send by 1 March of the following year the required accounting information for consolidation purposes to the accounting officer of the Commission, in the manner and format laid down by that accounting officer.

4. The Authority's accounting officer shall send the report on budgetary and financial management to the members of the Board of Supervisors, the European Parliament, the Council and the Court of Auditors by 31 March of the following year.

5. After receiving the observations of the Court of Auditors on the provisional accounts of the Authority in accordance with Article 148 of the Financial Regulation, the Authority's accounting officer shall draw up the Authority's final accounts. The Member in charge shall send them to the Board of Supervisors, which shall deliver an opinion on these accounts.

6. The Authority's accounting officer shall send the final accounts, accompanied by the opinion of the Board of Supervisors, by 1 July of the following year, to the accounting officer of the Commission, the European Parliament, the Council and the Court of Auditors.

The Authority's accounting officer shall also send by 1 July a reporting package to the Commission's accounting officer, in a standardised format as laid down by the Commission's accounting officer for consolidation purposes.

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7. The final accounts shall be published in the Official Journal of the European Union by 15 November of the following year.

8. The Member in charge 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 Executive Board and the Commission.

9. The Member in charge shall submit to the European Parliament, at the latter's request and as provided for in Article 165(3) of the Financial Regulation, any information necessary for the smooth application of the discharge procedure for the financial year in question.

10. 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 for the financial year N.";

(166) Article 65 is replaced by the following:

"Article 65

Financial Rules

The financial rules applicable to the Authority shall be adopted by the Executive Board after consulting the Commission. Those rules may not depart from Commission Delegated Regulation (EU) No 1271/2013* for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 unless the specific operational needs for the functioning of the Authority so require and only with the prior agreement of the Commission.

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

(167) in Article 66, paragraph 1 is replaced by the following:

"1. For the purposes of combating fraud, corruption and any other illegal activity, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council* shall apply to the Authority without any restriction.

*Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).";

(168) Article 68 is amended as follows:

paragraphs 1 and 2 is replaced by the following:

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"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 the full time members of the Executive Board, the Chairperson, the Head of the CCP Executive Session and the Directors referred to in point (i) of Article 44a(1)(a).

2. The Executive 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.";

paragraph 4 is replaced by the following:

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

(169) Article 70 is amended as follows:

paragraph 1 is replaced by the following:

"1. Members of the Board of Supervisors and all 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.";

in paragraph 2, the second subparagraph is replaced by the following:

"Moreover, the obligation under paragraph 1 and the first subparagraph of this paragraph shall not prevent the Authority and the competent 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.";

the following paragraph 2a is inserted:

"2a. The Executive Board, the CCP Executive Session and the Board of Supervisors shall ensure that individuals who provide any service, directly or indirectly, permanently or occasionally, relating to the tasks of the Authority, including officials and other persons authorised by the Executive Board and the Board of Supervisors or appointed by the competent authorities for that purpose, are subject to the requirements of professional secrecy equivalent to those in the previous paragraphs.

The same requirements for professional secrecy shall also apply to observers who attend the meetings of the Executive Board, the CCP Executive Session and the Board of Supervisors who take part in the activities of the Authority.";

in paragraph 3, the first subparagraph is replaced by the following:

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

(170) Article 71 is replaced by the following:

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"This Regulation shall be without prejudice to the obligations of Member States relating to their processing of personal data under Regulation (EU) 2016/679 or the obligations of the Authority relating to its processing of personal data under Regulation (EU) No 2018/XXX (Data Protection Regulation for EU institutions and Bodies) when fulfilling its responsibilities.";

(171) in Article 72, paragraph 2 is replaced by the following:

"2. The Executive Board shall adopt practical measures for applying Regulation (EC) No 1049/2001."

(172) in Article 73, paragraph 2 is replaced by the following:

"2. The Executive Board shall decide on the internal language arrangements for the Authority.";

(173) in Article 74, the first paragraph is replaced by the following:

"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 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 Executive Board.";

(174) the following Article 75a is inserted:

"Article 75a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 35c and Article 62a shall be conferred for an indeterminate period of time.

3. The delegation of power referred to in Article 35c and Article 62a may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

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6. A delegated act adopted pursuant to Article 35c or Article 62(2a) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.";

(175) Article 76 is replaced by the following:

"Article 76

Relationship with the CESR

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 assets and liability situation as of the date of that transfer. That statement shall be audited and approved by CESR and by the Commission."

(176) new Article 77a is inserted:

Article 77a

Transitional provisions

The tasks and position of the Executive Director appointed in accordance with Regulation No 1095/2010 as last amended by Directive 2014/51/EU and in office on [PO: please insert date 3 months after the entry into force of this Regulation] shall cease on that date.

The tasks and position of the Chairperson appointed in accordance with Regulation No 1095/2010 as last amended by Directive 2014/51/EU and in office on [PO: please insert date 3 months after the entry into force of this Regulation] shall continue until its expiry.

The tasks and position of the members of the Management Board appointed in accordance with Regulation No 1095/2010 as last amended by Directive 2014/51/EU and in office on [PO: please insert date 3 months after the entry into force of this Regulation] shall cease on that date.".

Article 4

Amendments to Regulation (EU) No 345/2013 on European venture capital funds

Regulation (EU) No 345/2013 is amended as follows:

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(1) Article 2 is amended as follows:

in paragraph 1, point (c) is deleted;

paragraph 2 is replaced by the following:

"2. Articles 3 to 6, Article 12, points (c) and (i) of Article 13(1), Articles 14a to 19, 19a to 19c, 20, 20a to 20c, 21, 21a to 21d, and 25 of this Regulation shall apply to managers of collective investment undertakings authorised under Article 6 of Directive 2011/61/EU that manage portfolios of qualifying venture capital funds and intend to use the designation 'EuVECA' in relation to the marketing of those funds in the Union.";

in Article 3, the first paragraph is amended as follows:

point (m) is replaced by the following:

"(m) 'competent authority' means any competent authority referred to in points (f) and (h) of Article 4(1) of Directive 2011/61/EU;";

point (n) is deleted;

in Article 7 the following subparagraphs are added:

"ESMA shall develop draft regulatory technical standards specifying the criteria to be used to assess whether managers of qualifying venture capital funds comply with their obligations under points (a) to (g) of paragraph 1, ensuring consistency with Article 12(1) of Directive 2011/61/EU.

ESMA shall submit those draft regulatory technical standards to the Commission by [[PO: Please insert date 24 months after the date of entry into force]].

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 Article 8, the following paragraph 3 is added:

"3. The Commission shall adopt delegated acts in accordance with Article 25 specifying the requirements for the delegation of functions referred to in paragraph 2, ensuring consistency with the requirements applicable to the delegation of functions set out in Article 20 of Directive 2011/61/EU.";

Article 10 is amended as follows:

in the second and in the last sentence of paragraph 3, the words "the competent authority of their home Member State" are replaced by the words "ESMA";

in paragraph 5 the words "the competent authority of their home Member State" are replaced by the word "ESMA";

the following paragraph 7 is added:

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"7. ESMA shall develop draft regulatory technical standards specifying the appropriate human and technical resources necessary for the proper management of the qualifying venture capital funds referred to in paragraph 1.

ESMA shall submit those draft regulatory technical standards to the Commission by [PO: Please insert date 24 months after the date of entry into force].

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 Article 11, the following paragraphs 3 and 4 are added:

"3. ESMA shall develop draft regulatory technical standards specifying the rules and procedures for the valuation of assets referred to in paragraph 1, ensuring consistency with the requirements applicable to the valuation of assets set out in Article 19 of Directive 2011/61/EU.

ESMA shall submit those draft regulatory technical standards to the Commission by [PO: Please insert date 24 months after the date of entry into force].

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..";

Article 12 is amended as follows:

in paragraph 1, in the first sentence of the first subparagraph, the words "the competent authority of the home Member State" are replaced by the word "ESMA";

paragraph 4 is replaced by the following:

"4. ESMA shall make available, upon request, information gathered under this Article to competent authorities in a timely manner.";

Article 14 is amended as follows:

paragraph 1 is amended as follows:

(i) in the introductory words, the words "the competent authority of their home Member State" are replaced by the word "ESMA";

(ii) the following point (-a) is inserted:

"(-a) the Member State in which the manager of a qualifying venture capital fund has its registered office";

(iii) point (b) is re2placed by the following:

"(b) the identity and the domicile of the qualifying venture capital funds the units or shares of which are to be marketed and their investment strategies";

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in the introductory words of paragraph 2 , the words “the competent authority of the home Member State” are replaced by the word “ESMA”;

paragraph 4 is replaced by the following:

“4. ESMA shall inform all of the following whether the manager referred to in paragraph 1 have been registered as a manager of a qualifying venture capital fund no later than two months after it has provided all the information referred to in that paragraph:

(a) the manager referred to in paragraph 1;

(b) the competent authorities of the Member States referred to in point (-a) of paragraph 1;

(c) the competent authorities of the Member States refer to in point (d) of paragraph 1.";

paragraph 6 is amended as follows:

(i) in the first subparagraph, the words “the competent authority of their home Member State” are replaced by the word “ESMA”;

(ii) the second subparagraph is replaced by the following:

“Where ESMA objects to the changes referred to in the first subparagraph, it shall inform the manager of the qualifying venture capital fund within two months of the notification of those changes and shall state the reasons for the objection. The changes referred to in the first subparagraph may only be implemented provided that ESMA does not object to those changes within that period.”;

paragraphs 7 and 8 are replaced by the following:

“7. ESMA shall develop draft regulatory technical standards specifying the criteria to assess the sufficient good repute and the sufficient experience referred to in point (a) of paragraph 2.

ESMA shall submit those draft regulatory technical standards to the Commission by [PO: Please insert date 24 months after the date of entry into force].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

8. ESMA shall develop draft implementing technical standards on specifying the forms, templates and procedures for the provision of the information referred to in paragraph 1, including the information to be provided for the purposes of point (a) of paragraph 2.

ESMA shall submit those draft implementing technical standards to the Commission by [PO: Please insert date 24 months after the date of entry into force].

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Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.";

Article 14a is amended as follows:

in the introductory words of paragraph 2, the words "the competent authority of the qualifying venture capital fund" are replaced by the word "ESMA";

paragraph 3 is replaced by the following:

"3. For the purposes of assessing an application for registration pursuant to paragraph 1, ESMA shall ask the competent authority of the manager submitting the application whether the qualifying venture capital fund falls within the scope of that manager's authorisation to manage collective investment undertakings and whether the conditions laid down in point (a) of Article 14(2) are fulfilled.

ESMA may request clarification and information as regards the documentation and information provided under the first subparagraph.

The competent authority of the manager shall provide an answer within one month of the date of receipt of a request submitted by ESMA pursuant to first or second subparagraphs.";

in paragraph 5 the words "the competent authority of the qualifying venture capital fund" are replaced by the word "ESMA";

paragraph 6 is replaced by the following:

"6. ESMA shall inform all of the following whether a fund has been registered as a qualifying venture capital fund no later than two months after the managers of those funds have provided all the documentation referred to in paragraph 2:

(a) the manager referred to in paragraph 1;

(b) the competent authorities of the Member State referred to in Article 14(1)(-a);

(c) the competent authorities of the Member States referred to in Article 14(1)(d);

(d) the competent authorities of the Member States referred to in Article 14a(2)(d).";

paragraph 8 is replaced by the following:

"8. ESMA shall develop draft implementing technical standards to specify the standard forms, templates and procedures for the provision of the information referred to in accordance with paragraph 2.

ESMA shall submit those draft implementing technical standards to the Commission by [PO: Please insert date 24 months after the date of entry into force].

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Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.";

paragraphs 9 and 10 are deleted;

Article 14b is replaced by the following:

"Article 14b

ESMA shall notify any decision refusing to register a manager referred to in Article 14 or a fund referred to in Article 14a to the managers referred to in those Articles.";

the following Article 14c is inserted:

"Article 14c

1. Without prejudice to Article 20, ESMA shall withdraw the registration for an EuVECA where the manager of that EuVECA meets any of the following conditions:

(a) the manager has expressly renounced the authorisation or has not made use of the authorisation within six months after the authorisation has been granted;

(b) the manager has obtained the authorisation by making false statements or by any other irregular means;

(c) the EuVECA no longer meets the conditions under which it was authorised.

2. The withdrawal of the authorisation shall have immediate effect throughout the Union.";

in Article 15, the words "the competent authority of the home Member State" are replaced by the word "ESMA";

Article 16 is amended as follows:

paragraph 1 is replaced by the following:

"1. ESMA shall notify the competent authorities referred to in point (4) of Article 14 and in point (6) of Article 14a immediately of any registration or removal from the register of a manager of a qualifying venture capital fund, any addition to or removal from the register of a qualifying venture capital fund and any addition to or removal from the list of Member States in which a manager of a qualifying venture capital fund intends to market those funds.";

paragraph 3 is replaced by the following:

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"3. In order to ensure uniform application of this Article, ESMA shall develop draft implementing technical standards to determine the format of notification under this Article.

ESMA shall submit those draft implementing technical standards to the Commission by [PO: Please insert date 24 months after the date of entry into force].

Power is conferred on the Commission to adopt the implementing technical standards referred to in paragraph 3 of this Article in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1095/2010.";

paragraphs 4 and 5 are deleted:

Article 16a is deleted;

Article 18 is replaced by the following:

"Article 18

1. ESMA shall ensure that this Regulation is applied on an ongoing basis.

2. For the managers referred to in Article 2(1), ESMA shall supervise compliance with the requirements laid down in this Regulation.

3. For the managers referred to in Article 2(2), ESMA shall supervise the compliance with the rules laid down in provisions listed in Article 2(2) and the relevant requirements of Directive 2011/61/EU in respect of the qualifying venture capital fund.

ESMA shall be responsible for supervising the qualifying venture capital fund´s compliance with the obligations set out in the fund's rules and instruments of incorporation.

4. For the purposes of carrying out the tasks conferred on it by this Regulation, and with the objective of ensuring high standards of supervision, ESMA shall apply all relevant Union law, and where that Union law is composed of directives, the national legislation transposing those directives.

5. Competent authorities shall monitor that collective investment undertakings established or marketed in their territories do not use the designation 'EuVECA' or do not suggest that they are an EuVECA unless they are registered in accordance with this Regulation.

Where a competent authority believes that a collective investment undertaking uses the designation 'EuVECA', or suggests that it is an EuVECA without having been registered in accordance with this Regulation, it shall promptly inform ESMA thereof.";

Article 19 is replaced by the following:

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"Article 19

The powers conferred on ESMA or any official of or other person authorised by ESMA by Articles 19a to 19c shall not be used to require the disclosure of information or documents which are subject to legal privilege.";

the following Articles 19a, 19b and 19c are inserted:

"Article 19a

1. ESMA may by simple request or by decision require the following persons to provide all necessary information to enable ESMA to carry out its duties under this Regulation:

(a) managers of qualifying venture capital funds;

(b) persons involved in the management of qualifying venture capital funds;

(c) third parties to whom a manager of an qualifying venture capital fund has delegated functions;

(d) persons otherwise closely and substantially related or connected to the management of qualifying venture capital funds.

2. Any simple request for information referred to in paragraph 1 shall:

(a) refer to this Article as the legal basis of that request;

(b) state the purpose of the request;

(c) specify the information required;

(d) include a time limit within which the information is to be provided;

(e) include a statement that there is no obligation on the person from whom the information is requested to provide that information but that in case of a voluntary reply to the request, the information provided must not be incorrect or misleading;

(e) indicate the amount of the fine to be issued in accordance with Article 20a where the information provided is incorrect or misleading.

3. When requiring to supply information under paragraph 1 by decision, ESMA shall:

(a) refer to this Article as the legal basis of that request;

(b) state the purpose of the request;

(c) specify the information required;

(d) set a time limit within which the information is to be provided;

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(e) indicate the periodic penalty payments provided for in Article 20b where the production of the required information is incomplete;

(f) indicate the fine provided for in Article 20a, where the answers to questions asked are incorrect or misleading;

(g) indicate the right to appeal the decision before ESMA's Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union ('Court of Justice') in accordance with Articles 60 and 61 of Regulation (EU) No 1095/2010.

4. The persons referred to in paragraph 1 or their representatives and, in the case of legal persons or associations having no legal personality, the persons authorised to represent them by law or by their constitution shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.

5. ESMA shall, 4. without delay, send a copy of the simple request or of its decision to the competent authority of the Member State where the persons referred to in paragraph 1 concerned by the request for information are domiciled or established.

Article 19b

1. In order to carry out its duties under this Regulation, ESMA may conduct necessary investigations of persons referred to in Article 19a(1). To that end, the officials and other persons authorised by ESMA shall be empowered to:

(a) examine any records, data, procedures and any other material relevant to the execution of its tasks irrespective of the medium on which they are stored;

(b) take or obtain certified copies of or extracts from such records, data, procedures and other material;

(c) summon and ask any person referred to in Article 19a(1) or their representatives or staff for oral or written explanations on facts or documents relating to the subject matter and purpose of the inspection and to record the answers;

(d) interview any other natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;

(e) request records of telephone and data traffic.

2. The officials and other persons authorised by ESMA for the purposes of the investigations referred to in paragraph 1 shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the investigation. That authorisation shall also indicate the periodic penalty payments provided for in Article 20b where the production of the required records, data, procedures or any other material, or the answers to questions asked to persons

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referred to in Article 19a(1) are not provided or are incomplete, and the fines provided for in Article 20, where the answers to questions asked to persons referred to in Article 19a(1) are incorrect or misleading.

3. The persons referred to in Article 19a(1) are required to submit to investigations launched on the basis of a decision of ESMA. The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 20b, the legal remedies available under Regulation (EU) No 1095/2010 and the right to have the decision reviewed by the Court of Justice.

4. In good time before an investigation referred to in paragraph 1, ESMA shall inform the competent authority of the Member State where the investigation is to be carried out of the investigation and of the identity of the authorised persons. Officials of the competent authority concerned shall, upon the request of ESMA, assist those authorised persons in carrying out their duties. Officials of the competent authority concerned may also attend the investigations upon request.

5. If a request for records of telephone or data traffic referred to in point (e) of paragraph 1 requires authorisation from a national judicial authority according to applicable national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

6. Where a national judicial authority receives an application for the authorisation of a request for records of telephone or data traffic referred to in point (e) of paragraph 1, that authority shall verify the following:

(a) the decision adopted by ESMA referred to in paragraph 3 is authentic;

(b) any measures to be taken are proportionate and not arbitrary or excessive.

7. For the purposes of point (b), the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice following the procedure set out in Article 61 of Regulation (EU) No 1095/2010.

Article 19c

1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary on-site inspections at any business premises of the persons referred to in Article 19a(1).

2. The officials and other persons authorised by ESMA to conduct an on-site inspection may enter any business premises of the persons subject to an investigation decision adopted by ESMA and shall have all the powers stipulated in Article 19b(1).

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They shall also have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.

3. In sufficient time before the inspection, ESMA shall give notice of the inspection to the competent authority of the Member State where the inspection is to be conducted. Where the proper conduct and efficiency of the inspection so require, ESMA, after informing the relevant competent authority, may carry out the on-site inspection without prior notice. Inspections in accordance with this Article shall be conducted provided that the relevant authority has confirmed that it does not object to those inspections.

4. The officials and other persons authorised by ESMA to conduct an on-site inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection and the periodic penalty payments provided for in Article 20b where the persons concerned do not submit to the inspection.

5. The persons referred to in Article 19a(1) shall submit to on-site inspections ordered by decision of ESMA. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the periodic penalty payments provided for in Article 20b, the legal remedies available under Regulation (EU) No 1095/2010 as well as the right to have the decision reviewed by the Court of Justice.

6. Officials of, as well as those authorised or appointed by, the competent authority of the Member State where the inspection is to be conducted shall, at the request of ESMA, actively assist the officials and other persons authorised by ESMA. Officials of that competent authority may also attend the on-site inspections upon request.

7. ESMA may also require competent authorities to carry out specific investigatory tasks and on-site inspections as provided for in this Article and in Article 19b(1) on its behalf. To that end, competent authorities shall enjoy the same powers as ESMA as set out in this Article and in Article 19b(1).

8. Where the officials and other accompanying persons authorised by ESMA find that a person opposes an inspection ordered pursuant to this Article, the competent authority of the Member State concerned shall afford them the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, to enable them to conduct their on-site inspection.

9. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7 requires authorisation by a national judicial authority according to the applicable national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

10. Where a national judicial authority receives an application for the authorisation of an on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7, that authority shall verify the following:

(a) the decision adopted by ESMA referred to in paragraph 4 is authentic;

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(b) any measures to be taken are proportionate and not arbitrary or excessive.

11. For the purposes of point (b), the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice following the procedure set out in Article 61 of Regulation (EU) No 1095/2010.";

Article 20 is replaced by the following:

"Article 20

1. Where, in accordance with Article 21(5), ESMA finds that a person has committed one of the infringements listed in Article 20a(2), it shall take one or more of the following actions:

(a) withdraw the registration of the manager of the qualifying venture capital fund or the qualifying venture capital fund;

(b) adopt a decision requiring the person to bring the infringement to an end;

(c) adopt a decision imposing fines;

(d) issue public notices.

2. When taking the actions referred to in paragraph 1, ESMA shall take into account the nature and seriousness of the infringement, having regard to the following criteria:

(a) the duration and frequency of the infringement;

(b) whether financial crime has been occasioned, facilitated or otherwise attributable to the infringement;

(c) whether the infringement has been committed intentionally or negligently;

(d) the degree of responsibility of the person responsible for the infringement;

(e) the financial strength of the person responsible for the infringement, as indicated by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;

(f) the impact of the infringement on retail investors' interests;

(g) the importance of the profits gained, losses avoided by the person responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;

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(h) the level of cooperation of the person responsible for the infringement with ESMA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(i) previous infringements by the person responsible for the infringement;

(j) measures taken after the infringement by the person responsible for the infringement to prevent its repetition.

3. Without undue delay, ESMA shall notify any action taken pursuant to paragraph 1 to the person responsible for the infringement, and shall communicate it to the competent authorities of the Member States and to the Commission. It shall publicly disclose any such action on its website within 10 working days from the date when it was adopted.

4. The disclosure to the public referred to in the first subparagraph shall include the following:

(a) a statement affirming the right of the person responsible for the infringement to appeal the decision;

(b) where relevant, a statement affirming that an appeal has been lodged and specifying that such an appeal does not have suspensive effect;

(c) a statement asserting that it is possible for ESMA's Board of Appeal to suspend the application of the contested decision in accordance with Article 60(3) of Regulation (EU) No 1095/20101.";

the following Articles 20a, 20b, and 20c are inserted:

"Article 20a

1. Where, in accordance with Article 21(8), ESMA finds that any person has, intentionally or negligently, committed one or more of the infringements listed in paragraph 2, it shall adopt a decision imposing a fine in accordance with paragraph 3 of this Article.

An infringement shall be considered to have been committed intentionally if ESMA finds objective factors which demonstrate that a person acted deliberately to commit the infringement.

2. The list of infringements referred to in paragraph 1 shall be the following:

(a) failure to comply with the requirements that apply to portfolio composition, in breach of Article 5;

(b) marketing, in breach of Article 6, the units and shares of a qualifying venture capital fund to non-eligible investors;

(c) using the designation 'EuVECA' without having been registered in accordance with Article 14, or without having registered a collective investment undertaking in accordance with Article 14a;

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(d) using the designation ‘EuVECA’ for the marketing of funds which are not established in accordance with point (b)(iii) of the first paragraph of Article 3;

(e) obtaining registration through false statements or any other irregular means, in breach of Article 14 or Article 14a;

(f) failure to act honestly, fairly or with due skill, care or diligence, in conducting business, in breach of point (a) of the first paragraph of Article 7;

(g) failure to apply appropriate policies and procedures for preventing malpractices, in breach of point (b) of the first paragraph of Article 7;

(h) repeated failure to comply with the requirements under Article 12 regarding the annual report;

(i) repeated failure to comply with the obligation to inform investors in accordance with Article 13.

3. The amount of the fines referred to in paragraph 1 shall amount to at least EUR 500 000 and shall not exceed EUR 5 million for the infringements referred to in points (a) to (i) of paragraph 2.

4. When determining the level of a fine pursuant to paragraph 3, ESMA shall take into account the criteria set out in Article 20(2).

5. Notwithstanding paragraph 3, where a person has directly or indirectly benefited financially from the infringement, the amount of the fine shall be at least equal to that benefit.

Where an act or omission of a person constitutes more than one infringement listed in paragraph 2, only the higher fine calculated in accordance with paragraph 4 and relating to one of those infringements shall apply.

Article 20b

1. ESMA shall, by decision, impose periodic penalty payments in order to compel:

(a) a person to put an end to an infringement in accordance with a decision taken pursuant to Article 20(1)(b);

(b) a person referred to in Article 19a(1):

(i) to supply complete information which has been requested by a decision pursuant to Article 19a;

(ii) to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by a decision pursuant to Article 19b;

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(iii) to submit to an on-site inspection ordered by a decision taken pursuant to Article 19c.

2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed for each day of delay.

3. Notwithstanding paragraph 2, the amount of the periodic penalty payments shall be 3% of the average daily turnover in the preceding business year, or, in the case of natural persons, 2% of the average daily income in the preceding calendar year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.

A periodic penalty payment shall be imposed for a maximum period of six months following the notification of ESMA's decision. Following the end of the period, ESMA shall review the measure.

Article 20c

1. ESMA shall disclose to the public every fine and periodic penalty payment that has been imposed pursuant to Articles 20a and 20b unless such disclosure to the public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

2. Fines and periodic penalty payments imposed pursuant to Articles 20a and 20b shall be of an administrative nature.

3. Where ESMA decides to impose no fines or penalty payments, it shall inform the European Parliament, the Council, the Commission, and the competent authorities of the Member State concerned accordingly and shall set out the reasons for its decision.

4. Fines and periodic penalty payments imposed pursuant to Articles 20a and 20b shall be enforceable.

Enforcement shall be governed by the rules of civil procedure in force in the Member State or third-country in which it is carried out.

5. The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the European Union.";

Articles 21 and 21a are replaced by the following:

"Article 21

1. Where, in carrying out its duties under this Regulation, ESMA finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in Article 20a(2), ESMA shall appoint an independent investigation officer within ESMA to investigate the matter. The appointed officer shall not be involved or have been directly or indirectly involved in the approval of

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the prospectus to which the infringement relates and shall perform his functions independently from ESMA's Board of Supervisors.

2. The investigation officer referred to in paragraph 1 shall investigate the alleged infringements, taking into account any comments submitted by the persons who are subject to the investigations, and shall submit a complete file with his findings to ESMA's Board of Supervisors.

3. In order to carry out his tasks, the investigation officer shall have the power to request information in accordance with Article 19a and to conduct investigations and on-site inspections in accordance with Articles 19b and 19c.

4. Where carrying out his tasks, the investigation officer shall have access to all documents and information gathered by ESMA in its supervisory activities.

5. Upon completion of his investigation and before submitting the file with his findings to ESMA's Board of Supervisors, the investigation officer shall give the persons subject to the investigations the opportunity to be heard on the matters being investigated. The investigation officer shall base his findings only on facts on which the persons concerned have had the opportunity to comment.

6. The rights of the defence of the persons subject to the investigations shall be fully respected during investigations under this Article.

7. Upon submission of the file with his findings to ESMA's Board of Supervisors, the investigation officer shall notify the persons who are subject to the investigations. The persons subject to the investigations shall be entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information affecting third parties.

8. On the basis of the file containing the investigation officer’s findings and, when requested by the persons subject to the investigations, after having heard those persons in accordance with Article 20b, ESMA shall decide if one or more of the infringements listed in Article 20a(2) has been committed by the persons subject to the investigations and, in such a case, shall take a supervisory measure in accordance with Article 20.

9. The investigation officer shall not participate in the deliberations of ESMA's Board of Supervisors or in any other way intervene in the decision-making process of ESMA’s Board of Supervisors.

10. The Commission shall adopt delegated acts in accordance with Article 25 by [PO: Please insert date 24 months after the date of entry into force] to specify the rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on rights of defence, temporal provisions, and the collection of fines or periodic penalty payments, and the limitation periods for the imposition and enforcement of fines and periodic penalty payments.

11. ESMA shall refer matters for criminal prosecution to the relevant national authorities where, in carrying out its duties under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal

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offences. In addition, ESMA shall refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from identical fact or facts which are substantially the same has already acquired the force of *res judicata* as the result of criminal proceedings under national law."

"Article 21a

1. Before taking any decision pursuant to Articles 20, 20a and 20b ESMA shall give the persons subject to proceedings the opportunity to be heard on its findings. ESMA shall base its decisions only on findings on which the persons subject to proceedings have had an opportunity to comment.

The first subparagraph shall not apply where urgent action pursuant to Article 20 is needed in order to prevent significant and imminent damage to the financial system. In such a case ESMA may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.

2. The rights of defence of the persons subject to proceedings shall be fully respected in the proceedings. They shall be entitled to have access to ESMA's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or ESMA's internal preparatory documents.

the following Articles 21b, 21c, and 21d are inserted;

"Article 21b

The Court of Justice shall have unlimited jurisdiction to review decisions whereby ESMA has imposed a fine or a periodic penalty payment. It may annul, reduce or increase the fine or periodic penalty payment imposed.

Article 21c

1. ESMA shall charge fees to managers of qualifying venture capital funds in accordance with this Regulation and in accordance with the delegated acts adopted pursuant to paragraph 3. Those fees shall fully cover ESMA's necessary expenditure relating to registration authorisation and supervision of managers of qualifying venture capital funds and qualifying venture capital funds and the reimbursement of any costs that the competent authorities may incur carrying out work pursuant to this Regulation in particular as a result of any delegation of tasks in accordance with Article 21d.

2. The amount of an individual fee charged to a particular manager of a qualifying venture capital fund shall cover all administrative costs incurred by ESMA for its activities in relation to registration and on-going supervision of a manager of qualifying venture capital funds and a qualifying venture capital fund. It shall be proportionate to assets under management of the qualifying venture capital fund concerned or, where relevant, own funds of the manager of qualifying venture capital fund.

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3. The Commission shall adopt delegated acts in accordance with Article 25 by [PO: Please insert date 24 months after the date of entry into force] to specify the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid.

Article 21d

1. Where necessary for the proper performance of a supervisory task, ESMA may delegate specific supervisory tasks to the competent authority of a Member State in accordance with the guidelines issued by ESMA pursuant to Article 16 of Regulation (EU) No 1095/2010. Such specific supervisory tasks may, in particular, include the power to carry out requests for information in accordance with Article 19a and to conduct investigations and on-site inspections in accordance with Article 19b and Article 19c.

By way of derogation from the first subparagraph, the registrations pursuant to Articles 14 and 14a shall not be delegated.

2. Prior to the delegation of a task in accordance with paragraph 1, ESMA shall consult the relevant competent authority about:

(a) the scope of the task to be delegated;

(b) the timetable for the performance of the task; and

(c) the transmission of necessary information by and to ESMA.

3. ESMA shall reimburse a competent authority for costs incurred as a result of carrying out delegated tasks in accordance with the delegated act referred to in Article 21c(3).

4. ESMA shall review any delegation made in accordance with paragraph 1 at appropriate intervals. A delegation may be revoked at any time.

5. A delegation of tasks shall not affect the responsibility of ESMA and shall not limit ESMA's ability to conduct and oversee the delegated activity.";

Article 25 is replaced by the following:

"Article 25

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 8(3), 21(10) and 21c(3) shall be conferred on the Commission for an indeterminate period of time from [PO: Please insert date of entry into force].

3. The delegation of power referred to in Articles 8(3), 21(10) and 21c(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It

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shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles 8(3), 21(10) and 21c(3) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of [two months] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.";

Article 26 is amended as follows:

in paragraph 1,

(i) point (f) is replaced by the following:

"(f) the effectiveness, proportionality and application of fines and periodic penalty payments provided for in accordance with this Regulation;"

(ii) the following point (k) is added:

"(k) an evaluation of the role of ESMA, its investigatory powers, the delegation of tasks to competent authorities, and the effectiveness of supervisory measures taken.";

in paragraph 2, t he following point (c) is added:

"(c) by [PO: Please insert date 84 months after entry into force] as regards points (f) and (k).";

the following Article 27a is inserted:

"Article 27a

1. All competences and duties related to the supervisory and enforcement activity in the field of qualifying venture capital funds that are conferred on competent authorities shall be terminated on [PO: Please insert date 36 months after entry into force]. Those competences and duties shall be taken-up by ESMA on the same date.

2. Any files and working documents related to the supervisory and enforcement activity in the field of qualifying venture capital funds, including any ongoing

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examinations and enforcement actions, or certified copies thereof, shall be taken over by ESMA on the date referred to in paragraph 1.

However, an application for registration that has been received by competent authorities before [PO: Please insert date 30 months after entry into force] shall not be transferred to ESMA, and the decision to register or refuse registration shall be taken by the relevant authority.

3. The competent authorities referred to in paragraph 1 shall ensure that any existing records and working papers, or certified copies thereof, shall be transferred to ESMA as soon as possible and in any event by qualifying venture capital funds. Those competent authorities shall also render all necessary assistance and advice to ESMA to facilitate effective and efficient transfer and taking-up of supervisory and enforcement activity in the field of qualifying venture capital funds.

4. ESMA shall act as the legal successor of the competent authorities referred to in paragraph 1 in any administrative or judicial proceedings that result from supervisory and enforcement activity pursued by those competent authorities in relation to matters that fall under this Regulation.

5. Any registration of a manager of a qualifying venture capital fund or of a qualifying venture capital fund granted by a competent authority referred to in paragraph 1 shall remain valid after the transfer of competences to ESMA..".

Article 5

Amendments to Regulation (EU) No 346/2013 on European social entrepreneurship funds

Regulation (EU) No 346/2013 is amended as follows:

(1) Article 2 is amended as follows:

in paragraph 1, point (c) is deleted;

paragraph 2 is replaced by the following:

"2. Articles 3 to 6, Articles 10 and 13, points (d), (e) and (f) of Article 14(1), Articles 15a to 20, 20a to 20c, 21, 21a to 21c, 22, 22a to 22d and 26 of this Regulation shall apply to managers of collective investment undertakings authorised under Article 6 of Directive 2011/61/EU that manage portfolios of qualifying social entrepreneurship funds and intend to use the designation 'EuSEF' in relation to the marketing of those funds in the Union.";

in Article 3, the first paragraph is amended as follows:

point (m) is replaced by the following:

"(m) 'competent authority' means any competent authority referred to in points (f) and (h) of Article 4(1) of Directive 2011/61/EU;";

point (n) is deleted;

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Article 7 the following subparagraphs are added:

"ESMA shall develop draft regulatory technical standards specifying the criteria to be used to assess whether managers of qualifying social entrepreneurship funds comply with their obligations under points (a) to (g) of paragraph 1, ensuring consistency with Article 12(1) of Directive 2011/61/EU.

ESMA shall submit those draft regulatory technical standards to the Commission by [PO: Please insert date 24 months after the date of entry into force].

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 Article 8, the following paragraph 3 is added:

"3. The Commission shall adopt delegated acts in accordance with Article 26 specifying the requirements for the delegation of functions referred to in paragraph 2, ensuring consistency with the requirements applicable to the delegation of functions set out in Article 20 of Directive 2011/61/EU.";

Article 11 is amended as follows:

in the second and in the last sentence of paragraph 3, the words "the competent authority of their home Member State" are replaced by the words "ESMA";

in paragraph 5 the words "the competent authority of their home Member State" are replaced by the word "ESMA";

the following paragraph 7 is added:

"7. ESMA shall develop draft regulatory technical standards specifying the appropriate human and technical resources necessary for the proper management of the qualifying social entrepreneurship funds referred to in paragraph 1 .

ESMA shall submit those draft regulatory technical standards to the Commission by [PO: Please insert date 24 months after the date of entry into force].

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 Article 12, the following paragraphs 3 and 4 are added:

"3. ESMA shall develop draft regulatory technical standards specifying the rules and procedures for the valuation of assets referred to in paragraph 1, ensuring consistency with the requirements applicable to the valuation of assets set out in Article 19 of Directive 2011/61/EU.

ESMA shall submit those draft regulatory technical standards to the Commission by [PO: Please insert date 24 months after the date of entry into force].

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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.

Article 13 is amended as follows:

in paragraph 1, in the first sentence of the first subparagraph, the words "the competent authority of the home Member State" are replaced by the word "ESMA";

paragraph 4 is replaced by the following:

"4. ESMA shall make available, upon request, information gathered under this Article to competent authorities in a timely manner.";

Article 15 is amended as follows:

paragraph 1 is amended as follows:

(i) in the introductory words, the words "the competent authority of their home Member State" are replaced by the word "ESMA";

(ii) the following point (-a) is inserted:

"(-a) the Member State in which the manager of a qualifying social entrepreneurship fund has its registered office";

(iii) point (b) is replaced by the following:

"(b) the identity and the domicile of the qualifying social entrepreneursh2ip funds the units or shares of which are to be marketed and their investment strategies";

in the introductory words of paragraph 2, the words "the competent authority of the home Member State" are replaced by the word "ESMA";

paragraph 4 is replaced by the following:

"4. ESMA shall inform all of the following whether the manager referred to in paragraph 1 have been registered as a manager of a qualifying social entrepreneurship fund no later than two months after it has provided all the information referred to in that paragraph:

(a) the manager referred to in paragraph 1;

(b) the competent authorities of the Member States referred to in point (-a) of paragraph 1;

(c) the competent authorities of the Member States refer to in point (d) of paragraph 1.";

paragraph 6 is amended as follows:

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(i) in the first subparagraph, the words “the competent authority of their home Member State” are replaced by the word “ESMA”;

(ii) the second subparagraph is replaced by the following:

“Where ESMA objects to the changes referred to in the first subparagraph, it shall inform the manager of the qualifying social entrepreneurship fund within two months of the notification of those changes and shall state the reasons for the objection. The changes referred to in the first subparagraph may only be implemented provided that ESMA does not object to those changes within that period.”;

paragraphs 7 and 8 are replaced by the following:

“7. ESMA shall develop draft regulatory technical standards specifying the criteria to assess the sufficient good repute and the sufficient experience referred to in point (a) of paragraph 2.

ESMA shall submit those draft regulatory technical standards to the Commission by [PO: Please insert date 24 months after the date of entry into force of this Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

8. ESMA shall develop draft implementing technical standards on specifying the forms, templates and procedures for the provision of the information referred to in paragraph 1, including the information to be provided for the purposes of point (a) of paragraph 2.

ESMA shall submit those draft implementing technical standards to the Commission by [PO: Please insert date 24 months after the date of entry into force of this Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.”;

Article 15a is amended as follows:

in the introductory words of paragraph 2, the words “the competent authority of the qualifying social entrepreneurship fund” are replaced by the word “ESMA”;

paragraph 3 is replaced by the following:

“3. For the purposes of assessing an application for registration pursuant to paragraph 1, ESMA shall ask the competent authority of the manager submitting the application whether the qualifying social entrepreneurship fund falls within the scope of that manager's authorisation to manage collective

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investment undertakings and whether the conditions laid down in point (a) of Article 15(2) are fulfilled.

ESMA may request clarification and information as regards the documentation and information provided under the first subparagraph.

The competent authority of the manager shall provide an answer within one month of the date of receipt of a request submitted by ESMA pursuant to first or second subparagraphs.";

in paragraph 5 the words "the competent authority of the qualifying social entrepreneurship fund" are replaced by the word "ESMA";

paragraph 6 is replaced by the following:

"6. ESMA shall inform all of the following whether a fund has been registered as a qualifying social entrepreneurship fund no later than two months after the managers of those funds have provided all the documentation referred to in paragraph 2:

(a) the manager referred to in paragraph 1;

(b) the competent authorities of the Member State referred to in Article 15(1)(-a);

(c) the competent authorities of the Member States referred to in Article 15(1)(d);

(d) the competent authorities of the Member States referred to in Article 15a(2)(d).";

the first subparagraph of paragraph 8 is replaced by the following:

"8. ESMA shall develop draft regulatory technical standards to specify the information to be provided pursuant to paragraph 2.

ESMA shall submit those draft regulatory technical standards to the Commission by [PO: Please insert date 24 months after the date of entry into force of this Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.";

paragraphs 9 and 10 are deleted;

Article 15b is replaced by the following:

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"Article 15b

ESMA shall notify any decision refusing to register a manager referred to in Article 15 or a fund referred to in Article 15a to the managers referred to in those Articles.";

the following Article 15c is inserted:

"Article 15c

1. Without prejudice to Article 21, ESMA shall withdraw the registration for an EuSEF where the manager of that EuSEF meets any of the following conditions:

(a) the manager has expressly renounced the authorisation or has not made use of the authorisation within six months after the authorisation has been granted;

(b) the manager has obtained the authorisation by making false statements or by any other irregular means;

(c) the EuSEF no longer meets the conditions under which it was authorised.

2. The withdrawal of the authorisation shall have immediate effect throughout the Union.";

in Article 16, the words "the competent authority of the home Member State" are replaced by the word "ESMA";

Article 17 is amended as follows:

paragraph 1 is replaced by the following:

"1. ESMA shall notify the competent authorities referred to in point (4) of Article 15 and in point (6) of Article 15a immediately of any registration or removal from the register of a manager of a qualifying social entrepreneurship fund, any addition to or removal from the register of a qualifying social entrepreneurship fund and any addition to or removal from the list of Member States in which a manager of a qualifying social entrepreneurship fund intends to market those funds.";

paragraph 3 is replaced by the following:

"3. In order to ensure uniform application of this Article, ESMA shall develop draft implementing technical standards to determine the format of notification under this Article.

ESMA shall submit those draft implementing technical standards to the Commission by [PO: Please insert date 24 months after the date of entry into force of this Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in paragraph 3 of this Article in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1095/2010.";

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paragraphs 4 and 5 are deleted;

Article 17a is deleted;

Article 19 is replaced by the following:

"*Article 19*

1. ESMA shall ensure that this Regulation is applied on an ongoing basis.

2. For the managers referred to in Article 2(1), ESMA shall supervise compliance with the requirements laid down in this Regulation.

3. For the managers referred to in Article 2(2), ESMA shall supervise the compliance with the rules laid down in provisions listed in Article 2(2) and the relevant requirements of Directive 2011/61/EU in respect of the qualifying social entrepreneurship fund.

ESMA shall be responsible for supervising the qualifying social entrepreneurship fund´s compliance with the obligations set out in the fund's rules and instruments of incorporation.

4. For the purposes of carrying out the tasks conferred on it by this Regulation, and with the objective of ensuring high standards of supervision, ESMA shall apply all relevant Union law, and where that Union law is composed of directives, the national legislation transposing those directives.

5. Competent authorities shall monitor that collective investment undertakings established or marketed in their territories do not use the designation 'EuSEF' or do not suggest that they are a EuSEF unless they are registered in accordance with this Regulation.

Where a competent authority believes that a collective investment undertaking uses the designation 'EuSEF', or suggests that it is a EuSEF without having been registered in accordance with this Regulation, it shall promptly inform ESMA thereof.";

Article 20 is replaced by the following:

"Article 20

The powers conferred on ESMA or any official of or other person authorised by ESMA by Articles 20a to 20c shall not be used to require the disclosure of information or documents which are subject to legal privilege.";

the following Articles 20a, 20b and 20c are inserted:

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"Article 20a

1. ESMA may by simple request or by decision require the following persons to provide all necessary information to enable ESMA to carry out its duties under this Regulation:

(a) managers of qualifying social entrepreneurship funds;

(b) persons involved in the management of qualifying social entrepreneurship funds;

(c) third parties to whom a manager of an qualifying social entrepreneurship fund has delegated functions;

(d) persons otherwise closely and substantially related or connected to the management of qualifying social entrepreneurship funds.

2. Any simple request for information referred to in paragraph 1 shall:

(a) refer to this Article as the legal basis of that request;

(b) state the purpose of the request;

(c) specify the information required;

(d) include a time limit within which the information is to be provided;

(e) include a statement that there is no obligation on the person from whom the information is requested to provide that information but that in case of a voluntary reply to the request, the information provided must not be incorrect or misleading;

(f) indicate the amount of the fine to be issued in accordance with Article 21a where the information provided is incorrect or misleading.

3. When requiring to supply information under paragraph 1 by decision, ESMA shall:

(a) refer to this Article as the legal basis of that request;

(b) state the purpose of the request;

(c) specify the information required;

(d) set a time limit within which the information is to be provided;

(e) indicate the periodic penalty payments provided for in Article 21b where the production of the required information is incomplete;

(f) indicate the fine provided for in Article 21a, where the answers to questions asked are incorrect or misleading;

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(g) indicate the right to appeal the decision before ESMA's Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union ('Court of Justice') in accordance with Articles 60 and 61 of Regulation (EU) No 1095/2010.

4. The persons referred to in paragraph 1 or their representatives and, in the case of legal persons or associations having no legal personality, the persons authorised to represent them by law or by their constitution shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.

5. ESMA shall, without delay, send a copy of the simple request or of its decision to the competent authority of the Member State where the persons referred to in paragraph 1 concerned by the request for information are domiciled or established.

Article 20b

1. In order to carry out its duties under this Regulation, ESMA may conduct necessary investigations of persons referred to in Article 20a(1). To that end, the officials and other persons authorised by ESMA shall be empowered to:

(a) examine any records, data, procedures and any other material relevant to the execution of its tasks irrespective of the medium on which they are stored;

(b) take or obtain certified copies of or extracts from such records, data, procedures and other material;

(c) summon and ask any person referred to in Article 20a(1) or their representatives or staff for oral or written explanations on facts or documents relating to the subject matter and purpose of the inspection and to record the answers;

(d) interview any other natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;

(e) request records of telephone and data traffic.

2. The officials and other persons authorised by ESMA for the purposes of the investigations referred to in paragraph 1 shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the investigation. That authorisation shall also indicate the periodic penalty payments provided for in Article 21b where the production of the required records, data, procedures or any other material, or the answers to questions asked to persons referred to in Article 20a(1) are not provided or are incomplete, and the fines provided for in Article 21, where the answers to questions asked to persons referred to in Article 20a(1) are incorrect or misleading.

3. The persons referred to in Article 20a(1) are required to submit to investigations launched on the basis of a decision of ESMA. The decision shall specify the subject

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matter and purpose of the investigation, the periodic penalty payments provided for in Article 21b, the legal remedies available under Regulation (EU) No 1095/2010 and the right to have the decision reviewed by the Court of Justice.

4. In good time before an investigation referred to in paragraph 1, ESMA shall inform the competent authority of the Member State where the investigation is to be carried out of the investigation and of the identity of the authorised persons. Officials of the competent authority concerned shall, upon the request of ESMA, assist those authorised persons in carrying out their duties. Officials of the competent authority concerned may also attend the investigations upon request.

5. If a request for records of telephone or data traffic referred to in point (e) of paragraph 1 requires authorisation from a national judicial authority according to applicable national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

6. Where a national judicial authority receives an application for the authorisation of a request for records of telephone or data traffic referred to in point (e) of paragraph 1, that authority shall verify the following:

(a) the decision adopted by ESMA referred to in paragraph 3 is authentic;

(b) any measures to be taken are proportionate and not arbitrary or excessive.

For the purposes of point (b), the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice following the procedure set out in Article 61 of Regulation (EU) No 1095/2010.

Article 20c

1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary on-site inspections at any business premises of the persons referred to in Article 20a(1).

2. The officials and other persons authorised by ESMA to conduct an on-site inspection may enter any business premises of the persons subject to an investigation decision adopted by ESMA and shall have all the powers stipulated in Article 20b(1). They shall also have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.

3. In sufficient time before the inspection, ESMA shall give notice of the inspection to the competent authority of the Member State where the inspection is to be conducted. Where the proper conduct and efficiency of the inspection so require, ESMA, after informing the relevant competent authority, may carry out the on-site

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inspection without prior notice. Inspections in accordance with this Article shall be conducted provided that the relevant authority has confirmed that it does not object to those inspections.

4. The officials and other persons authorised by ESMA to conduct an on-site inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection and the periodic penalty payments provided for in Article 21b where the persons concerned do not submit to the inspection.

5. The persons referred to in Article 20a(1) shall submit to on-site inspections ordered by decision of ESMA. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the periodic penalty payments provided for in Article 21b, the legal remedies available under Regulation (EU) No 1095/2010 as well as the right to have the decision reviewed by the Court of Justice.

6. Officials of, as well as those authorised or appointed by, the competent authority of the Member State where the inspection is to be conducted shall, at the request of ESMA, actively assist the officials and other persons authorised by ESMA. Officials of that competent authority may also attend the on-site inspections upon request.

7. ESMA may also require competent authorities to carry out specific investigatory tasks and on-site inspections as provided for in this Article and in Article 20b(1) on its behalf. To that end, competent authorities shall enjoy the same powers as ESMA as set out in this Article and in Article 20b(1).

8. Where the officials and other accompanying persons authorised by ESMA find that a person opposes an inspection ordered pursuant to this Article, the competent authority of the Member State concerned shall afford them the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, to enable them to conduct their on-site inspection.

9. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7 requires authorisation by a national judicial authority according to the applicable national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

10. Where a national judicial authority receives an application for the authorisation of an on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7, that authority shall verify the following:

(a) the decision adopted by ESMA referred to in paragraph 4 is authentic;

(b) any measures to be taken are proportionate and not arbitrary or excessive.

11. For the purposes of point (b), the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the

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necessity for the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice following the procedure set out in Article 61 of Regulation (EU) No 1095/2010.";

Article 21 is replaced by the following:

"Article 21

1. Where, in accordance with Article 22(5), ESMA finds that a person has committed one of the infringements listed in Article 21a(2), it shall take one or more of the following actions:

(a) withdraw the registration of the manager of the qualifying social entrepreneurship fund or the qualifying social entrepreneurship fund;

(b) adopt a decision requiring the person to bring the infringement to an end;

(c) adopt a decision imposing fines;

(d) issue public notices.

2. When taking the actions referred to in paragraph 1, ESMA shall take into account the nature and seriousness of the infringement, having regard to the following criteria:

(a) the duration and frequency of the infringement;

(b) whether financial crime has been occasioned, facilitated or otherwise attributable to the infringement;

(c) whether the infringement has been committed intentionally or negligently;

(d) the degree of responsibility of the person responsible for the infringement;

(e) the financial strength of the person responsible for the infringement, as indicated by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;

(f) the impact of the infringement on retail investors' interests;

(g) the importance of the profits gained, losses avoided by the person responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;

(h) the level of cooperation of the person responsible for the infringement with ESMA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(i) previous infringements by the person responsible for the infringement;

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(j) measures taken after the infringement by the person responsible for the infringement to prevent its repetition.

3. Without undue delay, ESMA shall notify any action taken pursuant to paragraph 1 to the person responsible for the infringement, and shall communicate it to the competent authorities of the Member States and to the Commission. It shall publicly disclose any such action on its website within 10 working days from the date when it was adopted.

4. The disclosure to the public referred to in the first subparagraph shall include the following:

(a) a statement affirming the right of the person responsible for the infringement to appeal the decision;

(b) where relevant, a statement affirming that an appeal has been lodged and specifying that such an appeal does not have suspensive effect;

(c) a statement asserting that it is possible for ESMA's Board of Appeal to suspend the application of the contested decision in accordance with Article 60(3) of Regulation (EU) No 1095/20101.";

the following Articles 21a, 21b, and 21c are inserted:

"Article 21a

1. Where, in accordance with Article 22(8), ESMA finds that any person has, intentionally or negligently, committed one or more of the infringements listed in paragraph 2, it shall adopt a decision imposing a fine in accordance with paragraph 3 of this Article.

An infringement shall be considered to have been committed intentionally if ESMA finds objective factors which demonstrate that a person acted deliberately to commit the infringement.

3. The list of infringements referred to in paragraph 1 shall be the following:

(a) failure to comply with the requirements that apply to portfolio composition, in breach of Article 5;

(b) marketing, in breach of Article 6, the units and shares of a qualifying social entrepreneurship fund to non-eligible investors;

(c) using the designation 'EuSEF' without having been registered in accordance with Article 15, or without having registered a collective investment undertaking in accordance with Article 15a;

(d) using the designation 'EuSEF' for the marketing of funds which are not established in accordance with point (b)(iii) of the first paragraph of Article 3;

(e) obtaining registration through false statements or any other irregular means, in breach of Article 15 or Article 15a;

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(f) failure to act honestly, fairly or with due skill, care or diligence, in conducting business, in breach of point (a) of the first paragraph of Article 7;

(g) failure to apply appropriate policies and procedures for preventing malpractices, in breach of point (b) of the first paragraph of Article 7;

(h) repeated failure to comply with the requirements under Article 13regarding the annual report;

(i) repeated failure to comply with the obligation to inform investors in accordance with Article 14.

3. The amount of the fines referred to in paragraph 1 shall amount to at least EUR 500 000 and shall not exceed EUR 5 million for the infringements referred to in points (a) to (i) of paragraph 2..

4. When determining the level of a fine pursuant to paragraph 3, ESMA shall take into account the criteria set out in Article 21(2).

5. Notwithstanding paragraph 3, where a person has directly or indirectly benefited financially from the infringement, the amount of the fine shall be at least equal to that benefit.

6. Where an act or omission of a person constitutes more than one infringement listed in paragraph 2, only the higher fine calculated in accordance with paragraph 4 and relating to one of those infringements shall apply.

Article 21b

1. ESMA shall, by decision, impose periodic penalty payments in order to compel:

(a) a person to put an end to an infringement in accordance with a decision taken pursuant to Article 21(1)(b);

(b) a person referred to in Article 20a(1):

(i) to supply complete information which has been requested by a decision pursuant to Article 20a;

(ii) to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by a decision pursuant to Article 20b;

(iii) to submit to an on-site inspection ordered by a decision taken pursuant to Article 20c.

2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed for each day of delay.

3. Notwithstanding paragraph 2, the amount of the periodic penalty payments shall be 3% of the average daily turnover in the preceding business year, or, in the case of

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natural persons, 2% of the average daily income in the preceding calendar year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.

A periodic penalty payment shall be imposed for a maximum period of six months following the notification of ESMA's decision. Following the end of the period, ESMA shall review the measure.

Article 21c

1. ESMA shall disclose to the public every fine and periodic penalty payment that has been imposed pursuant to Articles 21a and 21b unless such disclosure to the public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

2. Fines and periodic penalty payments imposed pursuant to Articles 21a and 21b shall be of an administrative nature.

3. Where ESMA decides to impose no fines or penalty payments, it shall inform the European Parliament, the Council, the Commission, and the competent authorities of the Member State concerned accordingly and shall set out the reasons for its decision.

4. Fines and periodic penalty payments imposed pursuant to Articles 21a and 21b shall be enforceable.

Enforcement shall be governed by the rules of civil procedure in force in the Member State or third-country in which it is carried out.

5. The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the European Union.";

Articles 22 and 22a are replaced by the following:

"Article 22

1. Where, in carrying out its duties under this Regulation, ESMA finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in Article 21a(2), ESMA shall appoint an independent investigation officer within ESMA to investigate the matter. The appointed officer shall not be involved or have been directly or indirectly involved in the approval of the prospectus to which the infringement relates and shall perform his functions independently from ESMA's Board of Supervisors.

2. The investigation officer referred to in paragraph 1 shall investigate the alleged infringements, taking into account any comments submitted by the persons who are subject to the investigations, and shall submit a complete file with his findings to ESMA's Board of Supervisors.

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3. In order to carry out his tasks, the investigation officer shall have the power to request information in accordance with Article 20a and to conduct investigations and on-site inspections in accordance with Articles 20b and 20c.

4. Where carrying out his tasks, the investigation officer shall have access to all documents and information gathered by ESMA in its supervisory activities.

5. Upon completion of his investigation and before submitting the file with his findings to ESMA's Board of Supervisors, the investigation officer shall give the persons subject to the investigations the opportunity to be heard on the matters being investigated. The investigation officer shall base his findings only on facts on which the persons concerned have had the opportunity to comment.

6. The rights of the defence of the persons subject to the investigations shall be fully respected during investigations under this Article.

7. Upon submission of the file with his findings to ESMA's Board of Supervisors, the investigation officer shall notify the persons who are subject to the investigations. The persons subject to the investigations shall be entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information affecting third parties.

8. On the basis of the file containing the investigation officer's findings and, when requested by the persons subject to the investigations, after having heard those persons in accordance with Article 21b, ESMA shall decide if one or more of the infringements listed in Article 21a(2) has been committed by the persons subject to the investigations and, in such a case, shall take a supervisory measure in accordance with Article 21.

9. The investigation officer shall not participate in the deliberations of ESMA's Board of Supervisors or in any other way intervene in the decision-making process of ESMA's Board of Supervisors.

10 The Commission shall adopt delegated acts in accordance with Article 26 by [PO: Please insert date 24 months after entry into force] to specify the rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on rights of defence, temporal provisions, and the collection of fines or periodic penalty payments, and the limitation periods for the imposition and enforcement of fines and periodic penalty payments.

11. ESMA shall refer matters for criminal prosecution to the relevant national authorities where, in carrying out its duties under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. In addition, ESMA shall refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from identical fact or facts which are substantially the same has already acquired the force of *res judicata* as the result of criminal proceedings under national law.";

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Article 22a

1. Before taking any decision pursuant to Articles 21, 21a and 21b ESMA shall give the persons subject to proceedings the opportunity to be heard on its findings. ESMA shall base its decisions only on findings on which the persons subject to proceedings have had an opportunity to comment.

2. The first subparagraph shall not apply where urgent action pursuant to Article 21 is needed in order to prevent significant and imminent damage to the financial system. In such a case ESMA may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.

3. The rights of defence of the persons subject to proceedings shall be fully respected in the proceedings. They shall be entitled to have access to ESMA's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or ESMA's internal preparatory documents.";

the following Articles 22b, 22c, and 22d are inserted:

"Article 22b

The Court of Justice shall have unlimited jurisdiction to review decisions whereby ESMA has imposed a fine or a periodic penalty payment. It may annul, reduce or increase the fine or periodic penalty payment imposed.

Article 22c

1. ESMA shall charge fees to managers of qualifying social entrepreneurship funds in accordance with this Regulation and in accordance with the delegated acts adopted pursuant to paragraph 3. Those fees shall fully cover ESMA's necessary expenditure relating to registration authorisation and supervision of managers of qualifying social entrepreneurship funds and qualifying social entrepreneurship funds and the reimbursement of any costs that the competent authorities may incur carrying out work pursuant to this Regulation in particular as a result of any delegation of tasks in accordance with Article 22d.

2. The amount of an individual fee charged to a particular manager of a qualifying social entrepreneurship fund shall cover all administrative costs incurred by ESMA for its activities in relation to registration and on-going supervision of a manager of qualifying social entrepreneurship funds and a qualifying social entrepreneurship fund. It shall be proportionate to assets under management of the qualifying social entrepreneurship fund concerned or, where relevant, own funds of the manager of qualifying social entrepreneurship fund.

3. The Commission shall adopt delegated acts in accordance with Article 26 by [PO: Please insert date 24 months after entry into force] to specify the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid.

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Article 22d

1. Where necessary for the proper performance of a supervisory task, ESMA may delegate specific supervisory tasks to the competent authority of a Member State in accordance with the guidelines issued by ESMA pursuant to Article 16 of Regulation (EU) No 1095/2010. Such specific supervisory tasks may, in particular, include the power to carry out requests for information in accordance with Article 20a and to conduct investigations and on-site inspections in accordance with Article 20b and Article 20c.

By way of derogation from the first subparagraph, the registrations pursuant to Articles 15 and 15a shall not be delegated.

2. Prior to the delegation of a task in accordance with paragraph 1, ESMA shall consult the relevant competent authority about:

(a) the scope of the task to be delegated;

(b) the timetable for the performance of the task; and

(c) the transmission of necessary information by and to ESMA.

3. ESMA shall reimburse a competent authority for costs incurred as a result of carrying out delegated tasks in accordance with the delegated act referred to in Article 22c(3).

4. ESMA shall review any delegation made in accordance with paragraph 1 at appropriate intervals. A delegation may be revoked at any time.

5. A delegation of tasks shall not affect the responsibility of ESMA and shall not limit ESMA's ability to conduct and oversee the delegated activity.";

Article 26 is replaced by the following:

"Article 26

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 8(3), 22(10) and 22c(3) shall be conferred on the Commission for an indeterminate period of time from [PO: Please insert date of entry into force].

3. The delegation of power referred to in Articles 8(3), 22(10) and 22c(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles 8(3), 22(10) and 22c(3) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of [two months] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.";

Article 27 is amended as follows:

in paragraph 1,

(i) point (n) is added:

"(n) the effectiveness, proportionality and application of fines and periodic penalty payments provided for in accordance with this Regulation;"

(ii) the following point (o) is added:

"(o) an evaluation of the role of ESMA, its investigatory powers, the delegation of tasks to competent authorities, and the effectiveness of supervisory measures taken.";

(b) in paragraph 2, the following point (c) is added:

"(c) by [PO: Please insert date 84 months after entry into force] as regards points (n) and (o).";

the following Article 28a is inserted:

"Article 28a

1. All competences and duties related to the supervisory and enforcement activity in the field of qualifying social entrepreneurship funds that are conferred on competent authorities shall be terminated on [PO: Please insert date 36 months after entry into force]. Those competences and duties shall be taken-up by ESMA on the same date.

2. Any files and working documents related to the supervisory and enforcement activity in the field of qualifying social entrepreneurship funds, including any ongoing examinations and enforcement actions, or certified copies thereof, shall be taken over by ESMA on the date referred to in paragraph 1.

However, an application for registration that has been received by competent authorities before [PO: Please insert date 30 months after entry into force] shall not

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be transferred to ESMA, and the decision to register or refuse registration shall be taken by the relevant authority.

3. The competent authorities referred to in paragraph 1 shall ensure that any existing records and working papers, or certified copies thereof, shall be transferred to ESMA as soon as possible and in any event by qualifying social entrepreneurship funds. Those competent authorities shall also render all necessary assistance and advice to ESMA to facilitate effective and efficient transfer and taking-up of supervisory and enforcement activity in the field of qualifying social entrepreneurship funds.

4. ESMA shall act as the legal successor of the competent authorities referred to in paragraph 1 in any administrative or judicial proceedings that result from supervisory and enforcement activity pursued by those competent authorities in relation to matters that fall under this Regulation.

5. Any registration of a manager of a qualifying social entrepreneurship fund or of a qualifying social entrepreneurship fund granted by a competent authority referred to in paragraph 1 shall remain valid after the transfer of competences to ESMA..".

”.

Article 6

Amendments to Regulation (EU) No 600/2014 on markets in financial instruments

Regulation (EU) No 600/2104 is amended as follows:

Article 1 is amended as follows:

in paragraph 1, the following point (g) is added:

'(g) the authorisation and supervision of data reporting service providers';

in Article 1, the following paragraph 5a is inserted:

‘‘5a. Articles 40 and 42 also apply to in respect of management companies of undertakings for collective investment in transferable securities (UCITS) and UCITS investment companies authorised in accordance with Directive 2009/65/EC and of managers of alternative investment funds (AIFMs) authorized in accordance with Directive 2011/61/EU .";

Article 2(1) is amended as follows:

points (34), (35) and (36) are replaced by the following:

"(34) ‘approved publication arrangement’ or ‘APA’ means a person authorised under this Regulation to provide the service of publishing trade reports on behalf of investment firms pursuant to Articles 20 and 21;

(35) ‘consolidated tape provider’ or ‘CTP’ means a person authorised under this Regulation to provide the service of collecting trade reports for financial instruments

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listed in Articles 6, 7, 10, 12 and 13, 20 and 21 from regulated markets, MTFs, OTFs and APAs and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument;

(36) ‘approved reporting mechanism’ or ‘ARM’ means a person authorised under this Regulation to provide the service of reporting details of transactions to competent authorities or to ESMA on behalf of investment firms;";

the following point (36a) is inserted:

'(36a) ‘data reporting service providers’ means the persons referred to in points (34) to (36) and persons referred to in Article 38a27a(2)];';

Article 22 is replaced by the following:

'Article 22

Providing information for the purposes of transparency and other calculations

1. In order to carry out calculations for determining the requirements for the pre-trade and post-trade transparency and the trading obligation regimes referred to in Articles 3 to 11, Articles 14 to 21 and Article 32, which are applicable to financial instruments and for determining whether an investment firm is a systematic internaliser, ESMA and competent authorities may require information from:

(a) trading venues;

(b) APAs; and

(c) CTPs.

2. Trading venues, APAs and CTPs shall store the necessary data for a sufficient period of time.

3. ESMA shall develop draft regulatory technical standards to specify the content and frequency of data requests and the formats and the timeframe in which trading venues, APAs and CTPs are to respond to data requests referred to in paragraph 1, the type of data that is to be stored, and the minimum period of time for which trading venues, APAs and CTPs are to store data in order to be able to respond to data requests in accordance with paragraph 2.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.';

Article 26 is replaced by the following:

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'Article 26

Obligation to report transactions

1. Investment firms which execute transactions in financial instruments shall report complete and accurate details of such transactions to ESMA as quickly as possible, and no later than the close of the following working day.

ESMA shall make available to the competent authorities any information reported in accordance with this Article.

2. The obligation laid down in paragraph 1 shall apply to:

(a) financial instruments which are admitted to trading or traded on a trading venue or for which a request for admission to trading has been made;

(b) financial instruments where the underlying is a financial instrument traded on a trading venue; and

(c) financial instruments where the underlying is an index or a basket composed of financial instruments traded on a trading venue

The obligation shall apply to transactions in financial instruments referred to in points (a) to (c) irrespective of whether or not such transactions are carried out on the trading venue.

3. The reports shall, in particular, include details of the names and numbers of the financial instruments bought or sold, the quantity, the dates and times of execution, the transaction prices, a designation to identify the clients on whose behalf the investment firm has executed that transaction, a designation to identify the persons and the computer algorithms within the investment firm responsible for the investment decision and the execution of the transaction, a designation to identify the applicable waiver under which the trade has taken place, means of identifying the investment firms concerned, and a designation to identify a short sale as defined in Article 2(1)(b) of Regulation (EU) No 236/2012 in respect of any shares and sovereign debt within the scope of Articles 12, 13 and 17 of that Regulation. For transactions not carried out on a trading venue, the reports shall include a designation identifying the types of transactions in accordance with the measures to be adopted pursuant to Article 20(3)(a) and Article 21(5)(a). For commodity derivatives, the reports shall indicate whether the transaction reduces risk in an objectively measurable way in accordance with Article 57 of Directive 2014/65/EU.

4. Investment firms which transmit orders shall include in the transmission of that order all the details as specified in paragraphs 1 and 3. Instead of including the mentioned details when transmitting orders, an investment firm may choose to report the transmitted order, if it is executed, as a transaction in accordance with the requirements under paragraph 1. In that case, the transaction report by the investment firm shall state that it pertains to a transmitted order.

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5. The operator of a trading venue shall report details of transactions in financial instruments traded on its platform which are executed through its systems by a firm which is not subject to this Regulation in accordance with paragraphs 1 and 3.

6. In reporting the designation to identify the clients as required under paragraphs 3 and 4, investment firms shall use a legal entity identifier established to identify clients that are legal persons.

ESMA shall develop by [PO: Please insert date 24 months after date of entry into force] guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 to ensure that the application of legal entity identifiers within the Union complies with international standards, in particular those established by the Financial Stability Board.

7. The reports shall be made to ESMA either by the investment firm itself, an ARM acting on its behalf or by the trading venue through whose system the transaction was completed, in accordance with paragraphs 1, 3 and 9.

Investment firms shall have responsibility for the completeness, accuracy and timely submission of the reports which are submitted to ESMA.

By way of derogation from that responsibility, where an investment firm reports details of those transactions through an ARM which is acting on its behalf or a trading venue, the investment firm shall not be responsible for failures in the completeness, accuracy or timely submission of the reports which are attributable to the ARM or trading venue. In those cases and subject to Article 66(4) of Directive 2014/65/EU the ARM or trading venue shall be responsible for those failures.

Investment firms must nevertheless take reasonable steps to verify the completeness, accuracy and timeliness of the transaction reports which were submitted on their behalf.

The home Member State shall require the trading venue, when making reports on behalf of the investment firm, to have sound security mechanisms in place designed to guarantee the security and authentication of the means of transfer of information, to minimise the risk of data corruption and unauthorised access and to prevent information leakage maintaining the confidentiality of the data at all times. The home Member State shall require the trading venue to maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

Trade-matching or reporting systems, including trade repositories registered or recognised in accordance with Title VI of Regulation (EU) No 648/2012, may be approved by ESMA as an ARM in order to transmit transaction reports to ESMA in accordance with paragraphs 1, 3 and 9.

Where transactions have been reported to a trade repository in accordance with Article 9 of Regulation (EU) No 648/2012 which is approved as an ARM and where those reports contain the details required under paragraphs 1, 3 and 9 and are transmitted to ESMA by the trade repository within the time limit set in paragraph 1, the obligation on the investment firm laid down in paragraph 1 shall be considered to have been complied with.

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Where there are errors or omissions in the transaction reports, the ARM, investment firm or trading venue reporting the transaction shall correct the information and submit a corrected report to ESMA.

8. When, in accordance with Article 35(8) of Directive 2014/65/EU, reports provided for under this Article are transmitted to ESMA, it shall transmit that information to the competent authorities of the home Member State of the investment firm, unless the competent authorities of the home Member State decide that they do not want to receive that information.

9. ESMA shall develop draft regulatory technical standards to specify:

(a) data standards and formats for the information to be reported in accordance with paragraphs 1 and 3, including the methods and arrangements for reporting financial transactions and the form and content of such reports;

(b) the criteria for defining a relevant market in accordance with paragraph 1;

(c) the references of the financial instruments bought or sold, the quantity, the dates and times of execution, the transaction prices, the information and details of the identity of the client, a designation to identify the clients on whose behalf the investment firm has executed that transaction, a designation to identify the persons and the computer algorithms within the investment firm responsible for the investment decision and the execution of the transaction, a designation to identify the applicable waiver under which the trade has taken place, the means of identifying the investment firms concerned, the way in which the transaction was executed, data fields necessary for the processing and analysis of the transaction reports in accordance with paragraph 3; and

(d) the designation to identify short sales of shares and sovereign debt as referred to in paragraph 3;

(e) the relevant categories of financial instrument to be reported in accordance with paragraph 2;

(f) the conditions upon which legal entity identifiers are developed, attributed and maintained, by Member States in accordance with paragraph 6, and the conditions under which those legal entity identifiers are used by investment firms so as to provide, pursuant to paragraphs 3, 4 and 5, for the designation to identify the clients in the transaction reports they are required to establish pursuant to paragraph 1;

(g) the application of transaction reporting obligations to branches of investment firms;

(h) what constitutes a transaction and execution of a transaction for the purposes of this Article.

(i) when an investment firm is deemed to have transmitted an order for the purposes of paragraph 4.

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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.

10. By [PO: Please insert date 24 months after date of entry into force], ESMA shall submit a report to the Commission on the functioning of this Article, including its interaction with the related reporting obligations under Regulation (EU) No 648/2012, and whether the content and format of transaction reports received and transmitted to competent authorities comprehensively enables monitoring of the activities of investment firms in accordance with Article 24 of this Regulation. The Commission may take steps to propose any changes in this regard. The Commission shall forward ESMA's report to the European Parliament and to the Council.';

Article 27 is replaced by the following:

'Article 27

Obligation to supply financial instrument reference data

1. With regard to financial instruments admitted to trading on regulated markets or traded on MTFs or OTFs, trading venues shall provide ESMA with identifying reference data for the purposes of transaction reporting under Article 26.

With regard to other financial instruments covered by Article 26(2) traded on its system, each systematic internaliser shall provide ESMA with reference data relating to those financial instruments.

Identifying reference data shall be made ready for submission to ESMA in an electronic and standardised format before trading commences in the financial instrument that it refers to. The financial instrument reference data shall be updated whenever there are changes to the data with respect to a financial instrument. ESMA shall publish those reference data immediately on its website. ESMA shall give competent authorities access without delay to those reference data.

2. In order to allow competent authorities to monitor, pursuant to Article 26, 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, ESMA shall, after consultation with the competent authorities, establish the necessary arrangements in order to ensure that:

(a) ESMA effectively receives the financial instrument reference data pursuant to paragraph 1;

(b) the quality of the data so received is appropriate for the purpose of transaction reporting under Article 26;

(c) the financial instrument reference data received pursuant to paragraph 1 is efficiently and without delay transmitted to the relevant competent authorities.

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(d) there are effective mechanisms in place between ESMA and the competent authorities to resolve data delivery or data quality issues.

3. ESMA shall develop draft regulatory technical standards to specify:

(a) data standards and formats for the financial instrument reference data in accordance with paragraph 1, including the methods and arrangements for supplying the data and any update thereto to ESMA and transmitting it to competent authorities in accordance with paragraph 1, and the form and content of such data;

(b) the technical measures that are necessary in relation to the arrangements to be made by ESMA and the competent authorities pursuant to 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.

the following Title IVa is inserted:

'TITLE IVa

DATA REPORTING SERVICES

CHAPTER 1

Authorisation of data reporting service providers

Article 27a

Requirement for authorisation

1. The operation of an APA, a CTP or an ARM as a regular occupation or business shall be subject to prior authorisation by ESMA in accordance with this Title.

2. An investment firm or a market operator operating a trading venue may also provide the services of an APA, a CTP or an ARM, subject to the prior verification by ESMA that the investment firm or the market operator comply with this Title. The provision of those services shall be included in their authorisation.

3. ESMA shall establish a register of all data reporting services providers in the Union. The register shall be publicly available and shall contain information on the services for which the data reporting services provider is authorised and it shall be updated on a regular basis.

Where ESMA has withdrawn an authorisation in accordance with Article 27d, that withdrawal shall be published in the register for a period of 5 years..

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4. Data reporting services providers shall provide their services under the supervision of ESMA. ESMA shall regularly review the compliance of data reporting services providers with this Title. ESMA shall monitor that data reporting services providers comply at all times with the conditions for initial authorisation established under this Title.

Article 27b

Authorisation of data reporting service providers

1. Data reporting service providers shall be authorised by ESMA for the purposes of Title IVa where:

(a) the data service provider is a legal person established in the Union; and

(b) the data service provider meets the requirements laid down in Title IVa.

2. The authorisation referred to in paragraph 1 shall specify the data reporting service which the data reporting services provider is authorised to provide. Where an authorised data reporting services provider seeks to extend its business to additional data reporting services, it shall submit a request to ESMA for extension of that authorisation.

3. An authorised data reporting service provider shall comply at all times with the conditions for authorisation referred to in Title IVa. An authorised data reporting service provider shall, without undue delay, notify ESMA of any material changes to the conditions for authorisation.

4. The authorisation referred to in paragraph 1 shall be effective and valid for the entire territory of the Union and shall allow the data reporting service provider to provide the services for which it has been authorised, throughout the Union.

Article 27c

Procedures for granting and refusing applications for authorisation

1. The applicant data reporting service provider shall submit an application providing all information necessary to enable ESMA to confirm that the data reporting service provider has established, at the time of initial authorisation, all the necessary arrangements to meet its obligations under the provisions of this Title, including a programme of operations setting out, inter alia, the types of services envisaged and the organisational structure..

2. ESMA shall assess whether the application for authorisation is complete within 20 working days of receipt of the application.

Where the application is not complete, ESMA shall set a deadline by which the data reporting service provider is to provide additional information.

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After assessing an application as complete, ESMA shall notify the data reporting service provider accordingly.

3. ESMA shall, within six months from the receipt of a complete application, assess the compliance of the data reporting service provider with this Title and shall adopt a fully reasoned decision granting or refusing authorisation and shall notify the applicant data service provider accordingly within five working days.

4. ESMA shall develop draft regulatory technical standards to determine:

(a) the information to be provided to it under paragraph 6, including the programme of operations;

(b) the information included in the notifications under Article 27b(3).

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.

8. ESMA shall develop draft implementing technical standards to determine standard forms, templates and procedures for the notification or provision of information provided for in paragraph 2 of this Article and in Article 27e(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.

Article 27d

Withdrawal of authorisation

1. ESMA may withdraw the authorisation of a data reporting service provider where the latter:

(a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has provided no services for the preceding six months;

(b) obtained the authorisation by making false statements or by any other irregular means;

(c) no longer meets the conditions under which it was authorised;

(d) has seriously and systematically infringed the provisions of this Regulation.

2. ESMA shall, without undue delay, notify the competent authority in the Member State where the data reporting service provider is established of a decision to withdraw the authorisation of a data reporting service provider.';

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Article 27e

Requirements for the management body of a data reporting services provider

1. The management body of a data reporting services provider shall at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties.

The management body shall possess adequate collective knowledge, skills and experience to be able to understand the activities of the data reporting services provider. Each member of the management body shall act with honesty, integrity and independence of mind to effectively challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making where necessary.

Where a market operator seeks authorisation to operate an APA, a CTP or an ARM pursuant to Article 27c and the members of the management body of the APA, the CTP or the ARM are the same as the members of the management body of the regulated market, those persons are deemed to comply with the requirement laid down in the first subparagraph.

2. Data reporting services provider shall notify to ESMA all members of its management body and of any changes to its membership, along with all information needed to assess whether the entity complies with paragraph 1.

3. The management body of a data reporting services provider shall define and oversee the implementation of the governance arrangements that ensure effective and prudent management of an organisation including the segregation of duties in the organisation and the prevention of conflicts of interest, and in a manner that promotes the integrity of the market and the interest of its clients.

4. ESMA shall refuse authorisation if it is not satisfied that the person or the persons who shall effectively direct the business of the data reporting services provider are of sufficiently good repute, or if there are objective and demonstrable grounds for believing that proposed changes to the management of the provider pose a threat to its sound and prudent management and to the adequate consideration of the interest of its clients and the integrity of the market.

5. ESMA shall develop draft regulatory technical standards [PO: Please insert date 24 months after entry into force] for the assessment of the suitability of the members of the management body described in paragraph 1, taking into account different roles and functions carried out by them and the need to avoid conflicts of interest between members of the management body and users of the APA, CTP or ARM.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

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Chapter 2

CONDITIONS FOR APAS, CTPS AND ARMS

Article 27f

Organisational requirements for APAs

1. An APA shall have adequate policies and arrangements in place to make public the information required under Articles 20 and 21 as close to real time as is technically possible, on a reasonable commercial basis. The information shall be made available free of charge 15 minutes after the APA has published it. The APA shall efficiently and consistently disseminate such information in a way that ensures fast access to the information, on a non-discriminatory basis and in a format that facilitates the consolidation of the information with similar data from other sources.

2. The information made public by an APA in accordance with paragraph 1 shall include, at least, the following details:

(a) the identifier of the financial instrument;

(b) the price at which the transaction was concluded;

(c) the volume of the transaction;

(d) the time of the transaction;

(e) the time the transaction was reported;

(f) the price notation of the transaction;

(g) the code for the trading venue the transaction was executed on, or where the transaction was executed via a systematic internaliser the code 'SI' or otherwise the code 'OTC';

(h) if applicable, an indicator that the transaction was subject to specific conditions.

3. An APA shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients. In particular, an APA who is also a market operator or investment firm shall treat all information collected in a non-discriminatory fashion and shall operate and maintain appropriate arrangements to separate different business functions.

4. An APA shall have sound security mechanisms in place designed to guarantee the security of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage before publication. The APA shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

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5. The APA shall have systems in place that can effectively check trade reports for completeness, identify omissions and obvious errors and request re-transmission of any such erroneous reports.

6. ESMA shall develop draft regulatory technical standards to determine common formats, data standards and technical arrangements facilitating the consolidation of information as referred to in paragraph 1.

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.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 50 specifying what constitutes a reasonable commercial basis to make information public as referred to in paragraph 1 of this Article.

8. ESMA shall develop draft regulatory technical standards specifying:

(a) the means by which an APA may comply with the information obligation referred to in paragraph 1;

(b) the content of the information published under paragraph 1, including at least the information referred to in paragraph 2 in such a way as to enable the publication of information required under this Article;

(c) the concrete organisational requirements laid down in paragraphs 3, 4 and 5.

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.

Article 27g

Organisational requirements for CTPs

1. A CTP shall have adequate policies and arrangements in place to collect the information made public in accordance with Articles 6 and 20, consolidate it into a continuous electronic data stream and make the information available to the public as close to real time as is technically possible, on a reasonable commercial basis.

That information shall include, at least, the following details:

(a) the identifier of the financial instrument;

(b) the price at which the transaction was concluded;

(c) the volume of the transaction;

(d) the time of the transaction;

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(e) the time the transaction was reported;

(f) the price notation of the transaction;

(g) the code for the trading venue the transaction was executed on, or where the transaction was executed via a systematic internaliser the code 'SI' or otherwise the code 'OTC';

(h) where applicable, the fact that a computer algorithm within the investment firm was responsible for the investment decision and the execution of the transaction;

(i) if applicable, an indicator that the transaction was subject to specific conditions;

(j) if the obligation to make public the information referred to in Article 3(1) was waived in accordance with point (a) or (b) of Article 4(1), a flag to indicate which of those waivers the transaction was subject to.

The information shall be made available free of charge 15 minutes after the CTP has published it. The CTP shall be able to efficiently and consistently disseminate such information in a way that ensures fast access to the information, on a non-discriminatory basis and in formats that are easily accessible and utilisable for market participants.

2. A CTP shall have adequate policies and arrangements in place to collect the information made public in accordance with Article 10 and Article 21, consolidate it into a continuous electronic data stream and make following information available to the public as close to real time as is technically possible, on a reasonable commercial basis including, at least, the following details:

(a) the identifier or identifying features of the financial instrument;

(b) the price at which the transaction was concluded;

(c) the volume of the transaction;

(d) the time of the transaction;

(e) the time the transaction was reported;

(f) the price notation of the transaction;

(g) the code for the trading venue the transaction was executed on, or where the transaction was executed via a systematic internaliser the code 'SI' or otherwise the code 'OTC';

(h) if applicable, an indicator that the transaction was subject to specific conditions.

The information shall be made available free of charge 15 minutes after the CTP has published it. The CTP shall be able to efficiently and consistently disseminate such information in a way that ensures fast access to the information, on a non-

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discriminatory basis and in generally accepted formats that are interoperable and easily accessible and utilisable for market participants.

3. The CTP shall ensure that the data provided is consolidated from all the regulated markets, MTFs, OTFs and APAs and for the financial instruments specified by regulatory technical standards under point (c) of paragraph 8.

4. The CTP shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest. In particular, a market operator or an APA, who also operate a consolidated tape, shall treat all information collected in a non-discriminatory fashion and shall operate and maintain appropriate arrangements to separate different business functions.

5. The CTP shall have sound security mechanisms in place designed to guarantee the security of the means of transfer of information and to minimise the risk of data corruption and unauthorised access. The CTP shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

ESMA shall develop draft regulatory technical standards to determine data standards and formats for the information to be published in accordance with Articles 6, 10, 20 and 21 , including financial instrument identifier, price, quantity, time, price notation, venue identifier and indicators for specific conditions the transactions was subject to as well as technical arrangements promoting an efficient and consistent dissemination of information in a way ensuring for it to be easily accessible and utilisable for market participants as referred to in paragraphs 1 and 2, including identifying additional services the CTP could perform which increase the efficiency of the market.

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. The Commission shall adopt delegated acts in accordance with Article 89 clarifying what constitutes a reasonable commercial basis to provide access to data streams as referred to in paragraphs 1 and 2 of this Article.

7. ESMA shall develop draft regulatory technical standards specifying:

(a) the means by which the CTP may comply with the information obligation referred to in paragraphs 1 and 2;

(b) the content of the information published under paragraphs 1 and 2;

(c) the financial instruments data of which must be provided in the data stream and for non-equity instruments the trading venues and APAs which need to be included;

(d) other means to ensure that the data published by different CTPs is consistent and allows for comprehensive mapping and cross-referencing against similar data from other sources, and is capable of being aggregated at Union level;

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(e) the concrete organisational requirements laid down in paragraphs 4 and 5.

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.

Article 27h

Organisational requirements for ARMs

1. An ARM shall have adequate policies and arrangements in place to report the information required under Article 26 as quickly as possible, and no later than the close of the working day following the day upon which the transaction took place.

2. The ARM shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients. In particular, an ARM that is also a market operator or investment firm shall treat all information collected in a non-discriminatory fashion and shall operate and maintain appropriate arrangements to separate different business functions.

3. The ARM shall have sound security mechanisms in place designed to guarantee the security and authentication of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage, maintaining the confidentiality of the data at all times. The ARM shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

4. The ARM shall have systems in place that can effectively check transaction reports for completeness, identify omissions and obvious errors caused by the investment firm and where such error or omission occurs, to communicate details of the error or omission to the investment firm and request re-transmission of any such erroneous reports.

The ARM shall have systems in place to enable the ARM to detect errors or omissions caused by the ARM itself and to enable the ARM to correct and transmit, or re-transmit as the case may be, correct and complete transaction reports to the competent authority.

5. ESMA shall develop draft regulatory technical standards specifying:

(a) the means by which the ARM may comply with the information obligation referred to in paragraph 1; and

(b) the concrete organisational requirements laid down in paragraphs 2, 3 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.

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the following Title VIa is inserted:

'TITLE VIa

ESMA powers and competences

CHAPTER 1

COMPETENCES AND PROCEDURES

Article 38a

Exercise of ESMA's powers

The powers conferred on ESMA or any official of or other person authorised by ESMA by Articles 38b to 38e shall not be used to require the disclosure of information or documents which are subject to legal privilege.

Article 38b

Request for information

1. ESMA may by simple request or by decision require the following persons to provide all information to enable ESMA to carry out its duties under this Regulation:

(a) an APA, a CTP, an ARM, and an investment firm or a market operator operating a trading venue to operate the data reporting services of an APA, a CTP or an ARM, and the persons that control them or are controlled by them;

(b) the managers of the persons referred to in point (a);

(c) the auditors and advisors of the persons referred to in point (a);

2. Any simple request for information referred to in paragraph 1 shall:

(a) refer to this Article as the legal basis of that request;

(b) state the purpose of the request;

(c) specify the information required;

(d) include a time limit within which the information is to be provided;

(e) include a statement that there is no obligation on the person from whom the information is requested to provide that information but that in case of a

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voluntary reply to the request, the information provided must not be incorrect or misleading;

(f) indicate the amount of the fine to be issued in accordance with Article 38e where the information provided is incorrect or misleading.

3. When requiring to supply information under paragraph 1 by decision, ESMA shall:

(a) refer to this Article as the legal basis of that request;

(b) state the purpose of the request;

(c) specify the information required;

(d) set a time limit within which the information is to be provided;

(e) indicate the periodic penalty payments provided for in Article 38g where the production of the required information is incomplete;

(f) indicate the fine provided for in Article 38f, where the answers to questions asked are incorrect or misleading;

(g) indicate the right to appeal the decision before ESMA's Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union ('Court of Justice') in accordance with Articles 60 and 61 of Regulation (EU) No 1095/2010.

4. The persons referred to in paragraph 1 or their representatives and, in the case of legal persons or associations having no legal personality, the persons authorised to represent them by law or by their constitution shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.

5. ESMA shall, without delay, send a copy of the simple request or of its decision to the competent authority of the Member State where the persons referred to in paragraph 1 concerned by the request for information are domiciled or established.

Article 38c

General investigations

1. In order to carry out its duties under this Regulation, ESMA may conduct necessary investigations of persons referred to in Article 38b(1). To that end, the officials and other persons authorised by ESMA shall be empowered to:

(a) examine any records, data, procedures and any other material relevant to the execution of its tasks irrespective of the medium on which they are stored;

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(b) take or obtain certified copies of or extracts from such records, data, procedures and other material;

(c) summon and ask any person referred to in Article 38b(1) or their representatives or staff for oral or written explanations on facts or documents relating to the subject matter and purpose of the inspection and to record the answers;

(d) interview any other natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;

(e) request records of telephone and data traffic.

2. The officials and other persons authorised by ESMA for the purposes of the investigations referred to in paragraph 1 shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the investigation. That authorisation shall also indicate the periodic penalty payments provided for in Article 38i where the production of the required records, data, procedures or any other material, or the answers to questions asked to persons referred to in Article 38b(1) are not provided or are incomplete, and the fines provided for in Article 38h, where the answers to questions asked to persons referred to in Article 38b(1) are incorrect or misleading.

3. The persons referred to in Article 38b(1) are required to submit to investigations launched on the basis of a decision of ESMA. The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 38i, the legal remedies available under Regulation (EU) No 1095/2010 and the right to have the decision reviewed by the Court of Justice.

4. In good time before an investigation referred to in paragraph 1, ESMA shall inform the competent authority of the Member State where the investigation is to be carried out of the investigation and of the identity of the authorised persons. Officials of the competent authority concerned shall, upon the request of ESMA, assist those authorised persons in carrying out their duties. Officials of the competent authority concerned may also attend the investigations upon request.

5. If a request for records of telephone or data traffic referred to in point (e) of paragraph 1 requires authorisation from a judicial authority according to applicable national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

6. Where a national judicial authority receives an application for the authorisation of a request for records of telephone or data traffic referred to in point (e) of paragraph 1, that authority shall verify the following:

(a) the decision adopted by ESMA referred to in paragraph 3 is authentic;

(b) any measures to be taken are proportionate and not arbitrary or excessive.

For the purposes of point (b), the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting

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that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice following the procedure set out in Regulation (EU) No 1095/2010.

Article 38d

On-site inspections

1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary on-site inspections at any business premises of the persons referred to in Article 38b(1).

2. The officials and other persons authorised by ESMA to conduct an on-site inspection may enter any business premises of the persons subject to an investigation decision adopted by ESMA and shall have all the powers stipulated in Article 38b(1). They shall also have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.

3. In sufficient time before the inspection, ESMA shall give notice of the inspection to the competent authority of the Member State where the inspection is to be conducted. Where the proper conduct and efficiency of the inspection so require, ESMA, after informing the relevant competent authority, may carry out the on-site inspection without prior notice. Inspections in accordance with this Article shall be conducted provided that the relevant authority has confirmed that it does not object to those inspections.

4. The officials and other persons authorised by ESMA to conduct an on-site inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection and the periodic penalty payments provided for in Article 38g where the persons concerned do not submit to the inspection.

5. The persons referred to in Article 38b(1) shall submit to on-site inspections ordered by decision of ESMA. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the periodic penalty payments provided for in Article 38i, the legal remedies available under Regulation (EU) No 1095/2010 as well as the right to have the decision reviewed by the Court of Justice

6. Officials of, as well as those authorised or appointed by, the competent authority of the Member State where the inspection is to be conducted shall, at the request of ESMA, actively assist the officials and other persons authorised by ESMA. Officials of the competent authority of the Member State concerned may also attend the on-site inspections.

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7. ESMA may also require competent authorities to carry out specific investigatory tasks and on-site inspections as provided for in this Article and in Article 38b(1) on its behalf.

8. Where the officials and other accompanying persons authorised by ESMA find that a person opposes an inspection ordered pursuant to this Article, the competent authority of the Member State concerned shall afford them the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, so as to enable them to conduct their on-site inspection.

9. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7 requires authorisation by a judicial authority according to national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

10. Where a national judicial authority receives an application for the authorisation of an on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7, that authority shall verify the following:

(a) the decision adopted by ESMA referred to in paragraph 4 is authentic;

(b) any measures to be taken are proportionate and not arbitrary or excessive.

For the purposes of point (b), the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice following the procedure set out in Regulation (EU) No 1095/2010.

Article 38e

Exchange of information

ESMA and the competent authorities shall, without undue delay, provide each other with the information required for the purposes of carrying out their duties under this Regulation.

Article 38f

Professional secrecy

The obligation of professional secrecy referred to in Article 76 of Directive 2014/65/EU shall apply to ESMA and all persons who work or who have worked for

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ESMA or for any other person to whom ESMA has delegated tasks, including auditors and experts contracted by ESMA.

Article 38g

Supervisory measures by ESMA

1. Where ESMA finds that a person listed in point (a) of Article 38a(1) has committed one of the infringements listed in Title IVa, it shall take one or more of the following actions:

(a) adopt a decision requiring the person to bring the infringement to an end;

(b) adopt a decision imposing fines pursuant to Articles 38h and 38i;

(c) issue public notices.

2. When taking the actions referred to in paragraph 1, ESMA shall take into account the nature and seriousness of the infringement, having regard to the following criteria:

(a) the duration and frequency of the infringement;

(b) whether financial crime has been occasioned, facilitated or otherwise attributable to the infringement;

(c) whether the infringement has been committed intentionally or negligently.

(d) the degree of responsibility of the person responsible for the infringement;

(e) the financial strength of the person responsible for the infringement, as indicated by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;

(f) the impact of the infringement on investors' interests;

(g) the importance of the profits gained, losses avoided by the person responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;

(h) the level of cooperation of the person responsible for the infringement with ESMA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(i) previous infringements by the person responsible for the infringement;

(j) measures taken after the infringement by the person responsible for the infringement to prevent its repetition.

3. Without undue delay, ESMA shall notify any action taken pursuant to paragraph 1 to the person responsible for the infringement, and shall communicate it to the

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competent authorities of the Member States and to the Commission. It shall publicly disclose any such decision on its website within 10 working days from the date when it was adopted.

The disclosure to the public referred to in the first subparagraph shall include the following:

(a) a statement affirming the right of the person responsible for the infringement to appeal the decision;

(b) where relevant, a statement affirming that an appeal has been lodged and specifying that such an appeal does not have suspensive effect;

(c) a statement asserting that it is possible for ESMA's Board of Appeal to suspend the application of the contested decision in accordance with Article 60(3) of Regulation (EU) No 1095/2010.

CHAPTER 2

ADMINISTRATIVE SANCTIONS AND OTHER MEASURES

Article 38h

Fines

1. Where in accordance with Article 38k(5), ESMA finds that any person has, intentionally or negligently, committed one of the infringements listed in Title IVa, it shall adopt a decision imposing a fine in accordance with paragraph 2 of this Article..

An infringement shall be considered to have been committed intentionally if ESMA finds objective factors which demonstrate that a person acted deliberately to commit the infringement.

2. The maximum amount of the fine referred to in paragraph 1 shall be EUR 200 000 or, in the Member States whose currency is not the euro, the corresponding value in the national currency. .

3. When determining the level of a fine pursuant to paragraph 1, ESMA shall take into account the criteria set out in Article 38g(2).

Article 38i

Periodic penalty payments

1. ESMA shall, by decision, impose periodic penalty payments in order to compel:

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(a) a person to put an end to an infringement in accordance with a decision taken pursuant to Article 38b(1)(a);

(b) a person referred to in Article 38b(1):

to supply complete information which has been requested by a decision pursuant to Article 38b;

to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by a decision pursuant to Article 38c;

to submit to an on-site inspection ordered by a decision taken pursuant to Article 38d.

2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed for each day of delay.

3. Notwithstanding paragraph 2, the amount of the periodic penalty payments shall be 3 % of the average daily turnover in the preceding business year, or, in the case of natural persons, 2 % of the average daily income in the preceding calendar year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.

4. A periodic penalty payment shall be imposed for a maximum period of six months following the notification of ESMA's decision. Following the end of the period, ESMA shall review the measure.

Article 38j

Disclosure, nature, enforcement and allocation of fines and periodic penalty payments

1. ESMA shall disclose to the public every fine and periodic penalty payment that has been imposed pursuant to Articles 38h and 38i unless such disclosure to the public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved. Such disclosure shall not contain personal data within the meaning of Regulation (EC) No 45/2001.

2. Fines and periodic penalty payments imposed pursuant to Articles 38h and 38i shall be of an administrative nature.

3. Where ESMA decides to impose no fines or penalty payments, it shall inform the European Parliament, the Council, the Commission, and the competent authorities of the Member State concerned accordingly and shall set out the reasons for its decision.

4. Fines and periodic penalty payments imposed pursuant to Articles 38h and 38i shall be enforceable.

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5. Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out.

6. The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the European Union.

Article 38k

Procedural rules for taking supervisory measures and imposing fines

1. Where, in carrying out its duties under this Regulation, ESMA finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in Title IVa, ESMA shall appoint an independent investigation officer within ESMA to investigate the matter. The appointed officer shall not be involved or have been directly or indirectly involved in the supervision or the authorisation process of the data reporting service provider concerned and shall perform its functions independently from ESMA.

2. The investigation officer referred to in paragraph 1 shall investigate the alleged infringements, taking into account any comments submitted by the persons who are subject to the investigations, and shall submit a complete file with his findings to ESMA.

3. In order to carry out its tasks, the investigation officer may exercise the power to request information in accordance with Article 38b and to conduct investigations and on-site inspections in accordance with Articles 38c and 38d.

4. Where carrying out his tasks, the investigation officer shall have access to all documents and information gathered by ESMA in its supervisory activities.

5. Upon completion of his investigation and before submitting the file with his findings to ESMA, the investigation officer shall give the persons subject to the investigations the opportunity to be heard on the matters being investigated. The investigation officer shall base his findings only on facts on which the persons concerned have had the opportunity to comment.

6. The rights of the defence of the persons concerned shall be fully respected during investigations under this Article.

7. When submitting the file with his findings to ESMA, the investigation officer shall notify the persons who are subject to the investigations. The persons subject to the investigations shall be entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information affecting third parties.

8. On the basis of the file containing the investigation officer's findings and, when requested by the persons subject to the investigations, after having heard the those persons in accordance with Article 38l, ESMA shall decide if one or more of the infringements listed in Title IVa have been committed by the persons subject to the

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investigations and, in such a case, shall take a supervisory measure in accordance with Article 38m.

9. The investigation officer shall not participate in ESMA's deliberations or in any other way intervene in ESMA's decision-making process.

10. The Commission shall adopt delegated acts in accordance with Article 50 [PO: Please insert date 24 months after entry into force] by to specifying further the rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on the rights of the defence, temporal provisions, and the collection of fines or periodic penalty payments, and the limitation periods for the imposition and enforcement of fines and periodic penalty payments.

11. ESMA shall refer matters for criminal prosecution to the relevant national authorities where, in carrying out its duties under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. In addition, ESMA shall refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from identical fact or facts which are substantially the same has already acquired the force of *res judicata* as the result of criminal proceedings under national law.

Article 38l

Hearing of the persons concerned

1. Before taking any decision pursuant to Articles 38g, 38h and 38i, ESMA shall give the persons subject to the proceedings the opportunity to be heard on its findings. ESMA shall base its decisions only on findings on which the persons subject to the proceedings have had an opportunity to comment.

The first subparagraph shall not apply if urgent action is needed in order to prevent significant and imminent damage to the financial system. In such a case ESMA may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.

2. The rights of the defence of the persons subject to investigations shall be fully respected in the proceedings. They shall be entitled to have access to ESMA's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or ESMA's internal preparatory documents.

Article 38m

Review by the Court of Justice

The Court of Justice shall have unlimited jurisdiction to review decisions whereby ESMA has imposed a fine or a periodic penalty payment. It may annul, reduce or increase the fine or periodic penalty payment imposed.

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Article 38n

Authorisation and supervisory fees

1. ESMA shall charge fees to the data reporting service providers in accordance with this Regulation and in accordance with the delegated acts adopted pursuant to paragraph 3. Those fees shall fully cover ESMA's necessary expenditure relating to the authorisation and supervision of data reporting service providers and the reimbursement of any costs that the competent authorities may incur carrying out work pursuant to this Regulation, in particular as a result of any delegation of tasks in accordance with Article 38o.

2. The amount of an individual fee charged to a particular data reporting service providers shall cover all administrative costs incurred by ESMA for its activities in relation to the prospectus, including supplements thereto, drawn up by such issuer, offeror or person asking for admission to trading on a regulated market. It shall be proportionate to the turnover of the issuer, offeror or person asking for admission to trading on a regulated market.

3. The Commission shall adopt a delegated act in accordance with Article 50 by [PO: Please insert date 24 months after entry into force] by to specifying further the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid.'

Article 38o

Delegation of tasks by ESMA to competent authorities

1. Where necessary for the proper performance of a supervisory task, ESMA may delegate specific supervisory tasks to the competent authority of a Member State in accordance with the guidelines issued by ESMA pursuant to Article 16 of Regulation (EU) No 1095/2010. Such specific supervisory tasks may, in particular, include the power to carry out requests for information in accordance with Article 38b and to conduct investigations and on-site inspections in accordance with Article 38c and Article 38d.

2. Prior to delegation of a task, ESMA shall consult the relevant competent authority about:

(a) the scope of the task to be delegated;

(b) the timetable for the performance of the task; and

(c) the transmission of necessary information by and to ESMA.

3. In accordance with the regulation on fees adopted by the Commission pursuant to Article 38n(3), ESMA shall reimburse a competent authority for costs incurred as a result of carrying out delegated tasks.

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4. ESMA shall review the decision referred to in paragraph 1 at appropriate intervals. A delegation may be revoked at any time.

5. A delegation of tasks shall not affect the responsibility of ESMA and shall not limit ESMA's ability to conduct and oversee the delegated activity."; Article 50 is amended as follows:

paragraph 2 is replaced by the following:

'2. The power to adopt delegated acts referred to in Article 1(9), Article 2(2), Article 13(2), Article 15(5), Article 17(3), Article 19(2) and (3), Article 27c, Article 31(4), Article 40(8), Article 41(8), Article 42(7), Article 45(10) and Article 52(10) and (12) shall be conferred for an indeterminate period of time from 2 July 2014.';

in paragraph 3, the first sentence is replaced by the following:

'The delegation of power referred to in Article 1(9), Article 2(2), Article 13(2), Article 15(5), Article 17(3), Article 19(2) and (3), Article 27c, Article 31(4), Article 40(8), Article 41(8), Article 42(7), Article 45(10) and Article 52(10) and (12) may be revoked at any time by the European Parliament or by the Council.';

in paragraph 5, the first sentence is replaced by the following:

'A delegated act adopted pursuant to Article 1(9), Article 2(2), Article 13(2), Article 15(5), Article 17(3), Article 19(2) and (3), Article 27c, Article 31(4), Article 40(8), Article 41(8), Article 42(7), Article 45(10) and Article 52(10) or (12) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object.';

in Article 52, the following paragraphs 13 and 14 are added:

'13. The Commission shall, after consulting ESMA, present reports to the European Parliament and the Council on the functioning of the consolidated tape established in accordance with Title IVa. The report relating to Article 27d(1) shall be presented by 3 September 2019. The report relating to Article 27d(2) shall be presented by 3 September 2021.

The reports referred to in the first subparagraph shall assess the functioning of the consolidated tape against the following criteria:

(a) the availability and timeliness of post trade information in a consolidated format capturing all transactions irrespective of whether they are carried out on trading venues or not;

(b) the availability and timeliness of full and partial post trade information that is of a high quality, in formats that are easily accessible and usable for market participants and available on a reasonable commercial basis.

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Where the Commission concludes that the CTPs have failed to provide information in a way that meets the criteria set out in the second subparagraph, the Commission shall attach a request to its report for ESMA to launch a negotiated procedure for the appointment though a public procurement process run by ESMA of a commercial entity operating a consolidated tape. ESMA shall launch the procedure after receiving the request from the Commission on the conditions specified in the Commission's request and in accordance with Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (**).

14. The Commission shall, where the procedure outlined in paragraph 13 is initiated, adopt delegated acts in accordance with Article 50, by specifying measures in order to:

(a) provide for the contract duration of the commercial entity operating a consolidated tape and the process and conditions for renewing the contract and the launching of new public procurement;

(b) provide that the commercial entity operating a consolidated tape shall do so on an exclusive basis and that no other entity shall be authorised as a CTP in accordance with Article 27a;

(c) empower ESMA to ensure adherence with tender conditions by the commercial entity operating a consolidated tape appointed through a public procurement;

(d) ensure that the post-trade information provided by the commercial entity operating a consolidated tape is of a high quality, in formats that are easily accessible and usable for market participants and in a consolidated format capturing the entire market;

(e) ensure that the post trade information is provided on a reasonable commercial basis, on both a consolidated and unconsolidated basis, and meets the needs of the users of that information across the Union;

(f) ensure that trading venues and APAs shall make their trade data available to the commercial entity operating a consolidated tape appointed through a public procurement process run by ESMA at a reasonable cost;

(g) specify arrangements applicable where the commercial entity operating a consolidated tape appointed through a public procurement fails to fulfil the tender conditions;

(h) specify arrangements under which CTPs authorised under Article 27a may continue to operate a consolidated tape where the empowerment provided for in point (b) of this paragraph is not used or, where no entity is appointed through the public procurement, until such time as a new public procurement is completed and a commercial entity is appointed to operate a consolidated tape.

* Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of

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the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

** Regulation (EU, Euroatom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euroatom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).';

the following Articles 54a and 54b are inserted:

'Article 54a
Transitional measures related to ESMA

1. All competences and duties related to the supervisory and enforcement activity in the field of data reporting services providers that are conferred on competent authorities pursuant to Article 67 of Directive 2014/65/EU shall be terminated on [PO: Please insert date 36 months after entry into force]. Those competences and duties shall be taken-up by ESMA on the same date.

2. Any files and working documents related to the supervisory and enforcement activity in the field of data reporting services providers, including any ongoing examinations and enforcement actions, or certified copies thereof, shall be taken over by ESMA on the date referred to in paragraph 1.

However, an application for authorisation that has been received by competent authorities before [PO: Please insert date 30 months after entry into force] shall not be transferred to ESMA, and the decision to register or refuse registration shall be taken by the relevant authority.

3. The competent authorities referred to in paragraph 1 shall ensure that any existing records and working papers, or certified copies thereof, shall be transferred to ESMA as soon as possible and in any event by data reporting services providers. Those competent authorities shall also render all necessary assistance and advice to ESMA to facilitate effective and efficient transfer and taking-up of supervisory and enforcement activity in the field of data reporting services providers.

4. ESMA shall act as the legal successor to the competent authorities referred to in paragraph 1 in any administrative or judicial proceedings that result from supervisory and enforcement activity pursued by those competent authorities in relation to matters that fall under this Regulation.

5. Any authorisation of a data reporting services provider granted by a competent authority referred to in paragraph 1 shall remain valid after the transfer of competences to ESMA

Article 54b
Relations with auditors

1. Any person authorised within the meaning of Directive 2006/43/EC of the European Parliament and of the Council (*), performing in a data reporting services

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provider the task described in Article 34 of Directive 2013/34/EU or Article 73 of Directive 2009/65/EC or any other task prescribed by law, shall have a duty to report promptly to ESMA any fact or decision concerning that undertaking of which that person has become aware while carrying out that task and which is liable to:

(a) constitute a material infringement of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of data reporting services provider;

(b) affect the continuous functioning of the data reporting services provider;

(c) lead to refusal to certify the accounts or to the expression of reservations.

That person shall also have a duty to report any facts and decisions of which the person becomes aware in the course of carrying out one of the tasks referred to in the first subparagraph in an undertaking having close links with the data reporting services provider within which he is carrying out that task.

2. The disclosure in good faith to the competent authorities, by persons authorised within the meaning of Directive 2006/43/EC, of any fact or decision referred to in paragraph 1 shall not constitute a breach of any contractual or legal restriction on disclosure of information and shall not involve such persons in liability of any kind.

* Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).'.

Article 7

Amendments to Regulation (EU) No 2015/760 on European long-term investment funds

Regulation (EU) 2015/760 is amended as follows:

(1) Article 2 is amended as follows:

point (10) is replaced by the following:

"(10) 'competent authority' means any competent authority referred to in points (f) and (h) of Article 4(1) of Directive 2011/61/EU;";

point (11) is deleted;

in Article 3, paragraph 3 is replaced by the following:

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"3. ESMA shall keep a central public register identifying each ELTIF authorised under this Regulation and the manager of the ELTIF. The register shall be made available in electronic format.";

Article 5 is amended as follows:

paragraph 1 is amended as follows:

(i) the first subparagraph is replaced by the following:

"An application for authorisation as an ELTIF shall be made to ESMA.";

(ii) in the second subparagraph, the following point (e) is added:

"(e) a list of Member States where the ELTIF is intended to be marketed.";

(iii) the third subparagraph is replaced by the following:

"ESMA may request clarification and information as regards the documentation and information provided under the second subparagraph.";

paragraph 2 is amended as follows:

(i) the first subparagraph is replaced by the following:

"Only an EU AIFM authorised in accordance with Directive 2011/61/EU may apply to ESMA for approval to manage an ELTIF for which authorisation is requested in accordance with paragraph 1.";

(ii) the last subparagraph is replaced by the following:

"ESMA may ask the competent authority of the EU AIFM for clarification and information as regards the documentation referred to in the second subparagraph or an attestation as to whether ELTIFs fall within the scope of the EU AIFM's authorisation to manage AIFs. The competent authority of the EU AIFM shall provide an answer within 10 working days from the date on which it received the request submitted by ESMA.";

paragraph 4 is replaced by the following:

"4. Any subsequent modifications to the documentation referred to in paragraphs 1 and 2 shall be immediately notified to ESMA.";

paragraph 5 is replaced by the following:

"5. By way of derogation from paragraphs 1 to 3, an EU AIF the legal form of which permits internal management and the governing body of which chooses not to appoint an external AIFM shall apply to ESMA simultaneously for authorisation as an ELTIF in accordance with this Regulation and as an AIFM in accordance with Directive 2011/61/EU.

The application for authorisation as an internally managed ELTIF shall include the following:

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(a) the fund rules or instruments of incorporation;

(b) information on the identity of the depositary;

(c) a description of the information to be made available to investors, including a description of the arrangements for dealing with complaints submitted by retail investors;

(e) a list of Member States where the ELTIF is intended to be marketed;

(f) the information referred to in points (a) to (e) of Article 7(2) of Directive 2011/61/EU.

ESMA shall inform the EU AIF about whether the authorisations referred to in the first subparagraph have been granted within three months from the date of submission of a complete application.";

the following paragraphs 6 and 7 are added:

"6. ESMA shall notify without delay the competent authorities of the Member States in which the ELTIF is intended to be marketed of the authorisations granted pursuant to Article 6 in accordance with Article 31(2).

7. The notification referred to in paragraph 6 shall comprise the following information :

(a) the identification of the manager of the ELTIF, of the ELTIF and of the Member State in which the ELTIF has its registered office or head office;

(b) the ELTIF rules or instruments of incorporation;

(c) the identification of the depositary of the ELTIF;

(d) a description of the information to be made available to investors;

(e) a description of the arrangements for dealing with complaints submitted by retail investors;

(f) the prospectus and, where relevant, the key information document referred to in Regulation (EU) No 1286/2014;

(g) information on the facilities referred to in Article 26.";

Article 6 is amended as follows:

paragraphs 1 to 3 are replaced by the following:

"1. An EU AIF shall be authorised as an ELTIF only where ESMA:

(a) is satisfied that the EU AIF is able to meet all the requirements of this Regulation;

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(b) has approved the application of an EU AIFM authorised in accordance with Directive 2011/61/EU to manage the ELTIF, the fund rules or instruments of incorporation, and the choice of the depositary.

2. In the event that an EU AIF makes an application pursuant to Article 5(5) of this Regulation, ESMA shall authorise the EU AIF as an ELTIF only where it:

(a) is satisfied that the EU AIF complies with this Regulation;

(b) is satisfied that the EU AIF complies with the requirements of Directive 2011/61/EU;

(c) has approved the fund rules or instruments of incorporation, and the choice of the depositary.

3. ESMA may refuse to approve the application of an EU AIFM to manage an ELTIF only where the EU AIFM:

(a) does not comply with this Regulation;

(b) does not comply with Directive 2011/61/EU in respect of the ELTIF it intends to manage;

(c) is not authorised by the competent authority of the manager of the EU AIFM to manage AIFs that follow investment strategies of the type covered by this Regulation;

(d) has not provided the documentation referred to in Article 5(2), or any clarification or information requested thereunder.

ESMA shall consult the competent authority of the EU AIFM before refusing to approve an application.";

paragraph 4 is deleted;

paragraph 5 is replaced by the following:

"5. ESMA shall communicate to the EU AIF the reason for its refusal to grant authorisation as an ELTIF.";

paragraphs 6 and 7 are deleted;

the following Article 6a is inserted:

"Article 6a

Withdrawal of authorisation

1. Without prejudice to Article 35, ESMA shall withdraw the authorisation for an ELTIF where the manager of that ELTIF meets any of the following conditions:

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(a) the manager has expressly renounced the authorisation or has not made use of the authorisation within six months after the authorisation has been granted;

(b) the manager has obtained the authorisation by making false statements or by any other irregular means;

(c) the ELTIF no longer meets the conditions under which it was authorised.

2. The withdrawal of the authorisation shall have immediate effect throughout the Union.";

in Article 7, paragraph 3 is replaced by the following:

"3. The manager of the ELTIF shall be responsible for ensuring compliance with this Regulation and with the relevant requirements of Directive 2011/61/EU in respect of the ELTIF. The manager of the ELTIF shall also be liable for losses or damages resulting from non-compliance with this Regulation.";

in paragraph 1 of Article 17 the second subparagraph is replaced by the following:

"The date referred to in point (a) of the first subparagraph shall take account of the particular features and characteristics of the assets to be invested by the ELTIF, and shall be no later than either five years after the date of the authorisation as an ELTIF, or half the life of the ELTIF as determined in accordance with Article 18(3), whichever is the earlier. In exceptional circumstances, ESMA, upon submission of a duly justified investment plan, may approve an extension of that time limit by no more than one additional year.";

in paragraph 2 of Article 18, point (b) is replaced by the following:

"(b) at the time of authorisation and throughout the life of the ELTIF, the manager of the ELTIF is able to demonstrate to ESMA that an appropriate liquidity management system and effective procedures for monitoring the liquidity risk of the ELTIF are in place, which are compatible with the long-term investment strategy of the ELTIF and the proposed redemption policy;";

in Article 21, paragraph 1 is replaced by the following:

"1. An ELTIF shall adopt an itemised schedule for the orderly disposal of its assets in order to redeem investors' units or shares after the end of the life of the ELTIF, and shall disclose this to ESMA at the latest one year before the date of the end of the life of the ELTIF.";

in paragraph 3 of Article 23, point (f) is replaced by the following:

"(f) any other information considered by ESMA to be relevant for the purposes of paragraph 2.";

in Article 24, paragraph 1 is replaced by the following:

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"1. An ELTIF shall send its prospectus and any amendments thereto, as well as its annual report, to ESMA. Upon request, an ELTIF shall provide that documentation to the competent authority of the manager of the ELTIF. That documentation shall be provided by the ELTIF within the time period specified by ESMA and the competent authority of the manager of the ELTIF.";

in Article 28, paragraph 3 is added:

"3. The Commission shall adopt delegated acts in accordance with Article 36a by [PO: Please insert date 24 months after date of entry into force] to specify the internal process for the assessment whether the ELTIF is suitable for marketing to retail investors referred to in paragraph 1, ensuring consistency with provisions regarding the assessment of suitability and appropriateness provided for in Article 25 of Directive 2014/65/EU*.

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* Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).";

Articles 31 32, 33 and 34 are replaced by the following:

"Article 31

Marketing of units or shares of ELTIFs

The manager of an ELTIF shall be allowed to market the units or shares of that ELTIF immediately after the manager has been informed by ESMA of the notification referred to in Article 5(6).

Article 32

Supervision by ESMA

1. ESMA shall ensure that this Regulation is applied on an ongoing basis.

2. ESMA shall supervise compliance with the rules or instruments of incorporation of the ELTIF and with the obligations set out in the prospectus, which shall comply with this Regulation.

3. For the purposes of carrying out the tasks conferred on it by this Regulation, and with the objective of ensuring high standards of supervision, ESMA shall apply all relevant Union law, and where that Union law is composed of directives, the national legislation transposing those directives.

4. Competent authorities shall monitor that collective investment undertakings established or marketed in their territories do not use the designation 'ELTIF' or do

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not suggest that they are an ELTIF unless they are authorised in accordance with this Regulation.

Where a competent authority believes that a collective investment undertaking uses the designation 'ELTIF', or suggests that it is an ELTIF without having been authorised in accordance with this Regulation, it shall promptly inform ESMA thereof.

Article 33

Exercise of the powers referred to in Articles 34, 34a and 34b

The powers conferred on ESMA, any of its officials or any other person authorised by ESMA by Articles 34, 34a and 34b shall not be used to require the disclosure of information or documents that are subject to legal privilege.

Article 34

Requests for information

1. ESMA may by simple request or by decision require the following persons to provide all information that is necessary to carry out its duties under this Regulation:

(a) managers of ELTIFs;

(b) persons involved in the management of ELTIFs;

(c) third parties to whom a manager of an ELTIF has delegated functions;

(d) persons otherwise closely and substantially related or connected to the management of ELTIFs.

2. Any simple request for information referred to in paragraph 1 shall:

(a) refer to this Article as the legal basis of that request;

(b) state the purpose of the request;

(c) specify the information required;

(d) include a time-limit within which the information is to be provided;

(e) include a statement that there is no obligation on the person from whom the information is requested to provide that information but that in case of a voluntary reply to the request, the information provided must not be incorrect or misleading;

(f) indicate the amount of the fine to be issued in accordance Article 35a, where the information provided is incorrect or misleading.

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3. When requiring to supply of information under paragraph 1 by decision, ESMA shall:

(a) refer to this Article as the legal basis of that request;

(b) state the purpose of the request;

(c) specify the information required;

(d) set a time-limit within which the information is to be provided;

(e) indicate the periodic penalty payments provided for in Article 35b where the production of the required information is incomplete;

(f) indicate the fine provided for in Article 35a(3), in conjunction with point (n) of Article 35a(2), where the answers to questions asked are incorrect or misleading;

(g) indicate the right to appeal the decision before the Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union in accordance with Articles 60 and 61 of Regulation (EU) No 1095/2010.

4. The persons referred to in paragraph 1 or their representatives and, in the case of legal persons or associations having no legal personality, the persons authorised to represent them by law or by their constitution, shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.

5. ESMA shall, without delay, send a copy of the simple request or of its decision to the competent authority of the Member State where the persons referred to in paragraph 1 who are concerned by the request for information are domiciled or established.";

the following Articles 34a, 34b, 34c and 34d are inserted:

"Article 34a

General investigations

1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary investigations of persons referred to in Article 34(1). To that end, the officials of and other persons authorised by ESMA shall be empowered to:

(a) examine any records, data, procedures and any other material relevant to the execution of its tasks irrespective of the medium on which they are stored;

(b) take or obtain certified copies of or extracts from such records, data, procedures and other material;

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(c) summon and ask any person referred to in Article 34(1) or their representatives or staff for oral or written explanations on facts or documents related to the subject matter and purpose of the inspection and to record the answers;

(d) interview any other natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;

(e) request records of telephone and data traffic.

2. The officials of and other persons authorised by ESMA for the purposes of the investigations referred to in paragraph 1 shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the investigation. That authorisation shall also indicate the periodic penalty payments provided for in Article 35b where the production of the required records, data, procedures or any other material, or the answers to questions asked of the persons referred to in Article 34(1) are not provided or are incomplete, and the fines provided for in Article 35a(3), in conjunction with point (o) of Article 35a(2), where the answers to questions asked of the persons referred to in Article 34(1) are incorrect or misleading.

3. The persons referred to in Article 34(1) shall submit to investigations launched on the basis of a decision of ESMA. The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 35b, the legal remedies available under Regulation (EU) No 1095/2010 and the right to have the decision reviewed by the Court of Justice of the European Union.

4. In good time before the investigation, ESMA shall inform the competent authority of the Member State where the investigation is to be carried out of the investigation and of the identity of the authorised persons. Officials of the competent authority concerned shall, upon the request of ESMA, assist those authorised persons in carrying out their duties. Officials of the competent authority concerned may also attend the investigations upon request.

5. If a request for records of telephone or data traffic referred to in point (e) of paragraph 1 requires authorisation from a judicial authority according to national rules, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

6. Where a national judicial authority receives an application for the authorisation of a request for records of telephone or data traffic referred to in point (e) of paragraph 1, that authority shall verify the following:

(a) the decision adopted by ESMA referred to in paragraph 3 is authentic;

(b) any measures to be taken are proportionate and not arbitrary or excessive.

For the purposes of point (b), the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the

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coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice following the procedure set out in Article 61 of Regulation (EU) No 1095/2010.

Article 34b

On-site inspections

1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary on-site inspections at the business premises of the legal persons referred to in Article 34(1).

2. The officials of and other persons authorised by ESMA to conduct an on-site inspection may enter any business premises and land of the legal persons subject to an investigation decision adopted by ESMA and shall have all the powers stipulated in Article 34a(1). They shall also have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.

3. In sufficient time before the inspection, ESMA shall give notice of the inspection to the competent authority of the Member State where the inspection is to be conducted. Where the proper conduct and efficiency of the inspection so require, ESMA, after informing the relevant competent authority, may carry out the on-site inspection without prior notice. Inspections in accordance with this Article shall be conducted provided that the relevant authority has confirmed that it does not object to those inspections.

4. The officials of and other persons authorised by ESMA to conduct an on-site inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection, and the periodic penalty payments provided for in Article 35b where the persons concerned do not submit to the inspection.

5. The persons referred to in Article 34(1) shall submit to on-site inspections ordered by decision of ESMA. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the periodic penalty payments provided for in Article 35b, the legal remedies available under Regulation (EU) No 1095/2010 as well as the right to have the decision reviewed by the Court of Justice of the European Union.

6. Officials of, as well as those authorised or appointed by, the competent authority of the Member State where the inspection is to be conducted shall, at the request of ESMA, actively assist the officials of and other persons authorised by ESMA. Officials of that competent authority may also attend the on-site inspections upon request.

7. ESMA may also require competent authorities to carry out specific investigatory tasks and on-site inspections as provided for in this Article and in

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Article 34a(1) on its behalf. To that end, competent authorities shall enjoy the same powers as ESMA as set out in this Article and in Article 34a(1).

8. Where the officials of and other accompanying persons authorised by ESMA find that a person opposes an inspection ordered pursuant to this Article, the competent authority of the Member State concerned shall afford them the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, to enable them to conduct their on-site inspection.

9. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7 requires authorisation by a judicial authority according to the applicable national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

10. Where a national judicial authority receives an application for the authorisation of an on-site inspection provided for in paragraph 1 or the assistance provided in paragraph 7, that authority shall verify the following:

(a) the decision adopted by ESMA referred to in paragraph 4 is authentic;

(b) any measures to be taken are proportionate and not arbitrary or excessive.

For the purposes of point (b), the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice following the procedure set out in Article 61 of Regulation (EU) No 1095/2010.

Article 34c

Exchange of information

ESMA and the competent authorities shall, without undue delay, supply each other with the information required for the purposes of carrying out their duties under this Regulation.

Article 34d

Professional secrecy

1. The obligation of professional secrecy shall apply to ESMA, the competent authorities, and all persons who work or who have worked for ESMA, for the competent authorities or for any other person to whom ESMA has delegated tasks, including auditors and experts contracted by ESMA. Information covered by

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professional secrecy shall not be disclosed to another person or authority except where such disclosure is necessary for legal proceedings.

2. All the information that, under this Regulation, is acquired by, or exchanged between, ESMA and the competent authorities shall be considered confidential, except where ESMA or the competent authority states at the time of communication that such information may be disclosed or where such disclosure is necessary for legal proceedings.";

the following Chapter VIa is inserted:

"CHAPTER VIa

ADMINISTRATIVE SANCTIONS AND OTHER MEASURES"

Article 35 is replaced by the following;

"Article 35

Supervisory measures by ESMA

1. Where, in accordance with Article 35d(8), ESMA finds that a person has committed one of the infringements listed in Article 35a(2), it shall take one or more of the following actions:

(a) withdraw the authorisation as an ELTIF;

(b) temporarily prohibit the manager of the ELTIF from marketing the ELTIF throughout the Union, until the infringement has been brought to an end;

(c) adopt a decision requiring the person to bring the infringement to an end;

(d) adopt a decision imposing fines pursuant to Article 35a;

(e) issue public notices.

2. When taking the decisions referred to in paragraph 1, ESMA shall take into account the nature and seriousness of the infringement, having regard to the following criteria:

(a) the duration and frequency of the infringement;

(b) whether financial crime has been occasioned, facilitated or otherwise attributable to the infringement;

(c) whether the infringement has been committed intentionally or negligently;

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(d) the degree of responsibility of the person responsible for the infringement;

(e) the financial strength of the person responsible for the infringement, as indicated by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;

(f) the impact of the infringement on retail investors' interests;

(g) the importance of the profits gained, losses avoided by the person responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;

(h) the level of cooperation of the person responsible for the infringement with ESMA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(i) previous infringements by the person responsible for the infringement;

(j) measures taken after the infringement by the person responsible for the infringement to prevent its repetition.

3. Without undue delay, ESMA shall notify any action taken pursuant to paragraph 1 to the person responsible for the infringement, and shall communicate it to the competent authorities of the Member States and to the Commission. It shall publicly disclose any such action on its website within 10 working days from the date when it was adopted.

The disclosure to the public referred to in the first subparagraph shall include the following:

(a) a statement affirming the right of the person responsible for the infringement to appeal the decision;

(b) where relevant, a statement affirming that an appeal has been lodged and specifying that such an appeal does not have suspensive effect;

(c) a statement asserting that it is possible for ESMA's Board of Appeal to suspend the application of the contested decision in accordance with Article 60(3) of Regulation (EU) No 1095/2010.";

the following Articles 35a, 35b, 35c, 35d, 35e, 35f, 35g and 35h are added:

"Article 35a

Fines

1. Where, in accordance with Article 35d(8), ESMA finds that a manager of an ELTIF, persons referred to in Article 34(1) or a collective investment undertaking have, intentionally or negligently, committed one or more of the infringements listed

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in paragraph 2, it shall adopt a decision imposing a fine in accordance with paragraph 3 of this Article.

An infringement shall be considered to have been committed intentionally if ESMA finds objective factors which demonstrate that a person acted deliberately to commit the infringement.

2. The list of infringements referred to in paragraph 1 shall be the following:

(a) failure to comply with the requirements set out in Article 8;

(b) investing, in breach of Articles 9 to 12, in non-eligible investments;

(c) composing and diversifying the portfolio in breach of Articles 13 and 17 or composing and diversifying the portfolio in breach of Articles 13 and 17 and taking no measures pursuant to Article 14;

(e) failure to comply with the concentration requirements set out in Article 15;

(f) failure to comply with the requirements on borrowing the cash set out in Article 16;

(g) failure to comply with the requirements on redemptions and life of the ELTIF set out in Article 18;

(h) failure to disclose information in accordance with Article 19(3) and (4);

(i) failure to offer new units or shares to existing investors in ELTIF in accordance with Article 20(2);

(j) disposing, in breach of Article 21, of ELTIF assets or distributes, in breach of Article 22, proceeds and capital;

(k) failure to comply with the transparency requirements set out in Articles 23 to 25;

(l) failure to comply with the requirements on marketing of units or shares of ELTIFs set out in Articles 26 to 31;

(m) obtaining authorisation through false statements or any other irregular means;

(n) failure to provide information in response to a decision requiring information pursuant to Article 34(2) and (3), or providing incorrect or misleading information in response to a simple request for information or a decision;

(o) infringing point (c) of Article 34a(1) by failing to provide an explanation, or by providing an incorrect or misleading explanation, on facts or documents related to the subject matter and purpose of an inspection;

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(p) using the designation ‘ELTIF’ without having been authorised in accordance with this Regulation.

3. The amount of the fines referred to in paragraph 1 shall amount to at least EUR 500 000 and shall not exceed EUR 5 million for the infringements referred to in points (a) to (p) of paragraph 2.

4. When determining the level of a fine pursuant to paragraph 3, ESMA shall take into account the criteria set out in Article 35(2).

5. Notwithstanding paragraph 3, where a person has directly or indirectly benefited financially from the infringement, the amount of the fine shall be at least equal to that benefit.

6. Where an act or omission of a person constitutes more than one infringement listed in paragraph 2, only the higher fine calculated in accordance with paragraph 4 and relating to one of those infringements shall apply.

Article 35b

Periodic penalty payments

1. ESMA shall, by decision, impose a periodic penalty payment in order to compel:

(a) a person to put an end to an infringement, in accordance with a decision taken pursuant to point (c) of Article 35(1);

(b) a person referred to in Article 34(1):

(i) to supply complete information which has been requested by a decision pursuant to Article 34;

(ii) to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by a decision pursuant to Article 34a;

(iii) to submit to an on-site inspection ordered by a decision taken pursuant to Article 34b.

2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed for each day of delay.

3. Notwithstanding paragraph 2, the amount of the periodic penalty payments shall be 3% of the average daily turnover in the preceding business year, or, in the case of natural persons, 2% of the average daily income in the preceding calendar year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.

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4. A periodic penalty payment shall be imposed for a maximum period of six months following the notification of ESMA's decision. Following the end of the period, ESMA shall review the measure.

Article 35c

Disclosure, nature, enforcement and allocation of fines and periodic penalty payments

1. ESMA shall disclose to the public every fine and periodic penalty payment that has been imposed pursuant to Articles 35a and 35b, unless such disclosure to the public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

2. Fines and periodic penalty payments imposed pursuant to Articles 35a and 35b shall be of an administrative nature.

3. Where ESMA decides to impose no fines or penalty payments, it shall inform the European Parliament, the Council, the Commission, and the competent authorities of the Member State concerned accordingly and shall set out the reasons for its decision.

4. Fines and periodic penalty payments imposed pursuant to Articles 35a and 35b shall be enforceable.

Enforcement shall be governed by the rules of civil procedure in force in the Member State or third-country in which it is carried out.

4. The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the European Union.

Article 35d

Procedural rules for taking supervisory measures and imposing fines

1. Where, in carrying out its duties under this Regulation, ESMA finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in Article 35a(2), ESMA shall appoint an independent investigating officer within ESMA to investigate the matter. The investigating officer shall not be involved or have been involved in the direct or indirect supervision or registration process of the credit rating agency concerned and shall perform his functions independently from ESMA's Board of Supervisors.

2. The investigating officer shall investigate the alleged infringements, taking into account any comments submitted by the persons subject to investigation, and shall submit a complete file with his findings to ESMA's Board of Supervisors.

3. In order to carry out his tasks, the investigating officer may exercise the power to require information in accordance with Article 34 and to conduct investigations

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and on-site inspections in accordance with Articles 34a and 34b. When using those powers, the investigating officer shall comply with Article 33.

4. Where carrying out his tasks, the investigating officer shall have access to all documents and information gathered by ESMA in its supervisory activities.

5. Upon completion of his investigation and before submitting the file with his findings to ESMA's Board of Supervisors, the investigating officer shall give the persons subject to investigation the opportunity to be heard on the matters being investigated. The investigating officer shall base his findings only on facts on which the persons subject to investigation have had the opportunity to comment.

6. The rights of defence of the persons concerned shall be fully respected during investigations under this Article.

7. Upon submission of the file with his findings to ESMA's Board of Supervisors, the investigating officer shall notify that fact to the persons who are subject to investigations. The persons subject to investigations shall be entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information affecting third parties.

8. On the basis of the file containing the investigating officer's findings and, when requested by the persons concerned, after having heard those persons in accordance with Article 35e, ESMA shall decide if one or more of the infringements listed in Article 35a(2) has been committed by the persons subject to investigation, and in such case, shall take a supervisory measure in accordance with Article 35 and impose a fine in accordance with Article 35a.

9. The investigating officer shall not participate in the deliberations of ESMA's Board of Supervisors or in any other way intervene in the decision-making process of ESMA's Board of Supervisors.

10. The Commission shall adopt delegated acts in accordance with Article 36a by [PO: Please insert date 24 months after date of entry into force] to further specify the procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on rights of defence, temporal provisions, the collection of fines or periodic penalty payments, and detailed rules on the limitation periods for the imposition and enforcement of penalties.

11. ESMA shall refer matters for criminal prosecution to the relevant national authorities where, in carrying out its duties under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. In addition, ESMA shall refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from identical facts, or from facts which are substantially the same, has acquired the force of *res judicata* as the result of criminal proceedings under national law.

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Article 35e

Hearing of the persons subject to the proceedings

1. Before taking any decision pursuant to Articles 35, 35a or points (a) and (b) of Article 35b(1), ESMA shall give the persons subject to the proceedings the opportunity to be heard on ESMA's findings. ESMA shall base its decisions only on findings on which the persons subject to the proceedings have had the opportunity to comment.

The first subparagraph shall not apply if urgent action pursuant to Article 35 is needed in order to prevent significant and imminent damage to the financial system. In such a case ESMA may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.

2. The rights of defence of the persons subject to the proceedings shall be fully respected during the proceedings. They shall be entitled to have access to ESMA's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or internal preparatory documents of ESMA.

Article 35f

Review by the Court of Justice of the European Union

The Court of Justice of the European Union shall have unlimited jurisdiction to review decisions whereby ESMA has imposed a fine or a periodic penalty payment. It may annul, reduce or increase the fine or periodic penalty payment imposed.

Article 35g

Authorisation and supervisory fees

1. ESMA shall charge fees to managers of ELTIFs in accordance with this Regulation and in accordance with the delegated acts adopted pursuant to paragraph 3. Those fees shall fully cover ESMA’s necessary expenditure relating to the authorisation and supervision of ELTIFs and the reimbursement of any costs that the competent authorities may incur carrying out work pursuant to this Regulation, in particular as a result of any delegation of tasks in accordance with Article 35h.

2. The amount of an individual fee charged to a particular manager of ELTIF shall cover all administrative costs incurred by ESMA for its activities in relation to authorisation and supervision of a manager of ELTIF and ELTIF. It shall be proportionate to assets under management of the ELTIF concerned or, where relevant, own funds of the manager of ELTIF.

3. The Commission shall adopt delegated acts in accordance with Article 36a by [PO: Please insert date 24 months after date of entry into force] to specify the type of

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fees, the matters for which fees are due, the amount of the fees, and the manner in which they are to be paid.

Article 35h

Delegation of tasks by ESMA to competent authorities

1. Where necessary for the proper performance of a supervisory task, ESMA may delegate specific supervisory tasks to the competent authority of a Member State in accordance with the guidelines issued by ESMA pursuant to Article 16 of Regulation (EU) No 1095/2010. Such specific supervisory tasks may, in particular, include the power to request information in accordance with Article 34 and to conduct investigations and on-site inspections in accordance with Article 34a and Article 34b.

2. Prior to the delegation of a task in accordance with paragraph 1, ESMA shall consult the relevant competent authority about:

(a) the scope of the task to be delegated;

(b) the timetable for the performance of the task to be delegated;

(c) the transmission of necessary information by and to ESMA.

3. In accordance with the delegated act referred to in Article 35g(3), ESMA shall reimburse a competent authority for the costs incurred as a result of carrying out delegated tasks.

4. ESMA shall review the delegation referred to in paragraph 1 at appropriate intervals. A delegation of tasks may be revoked at any time.

A delegation of tasks shall not affect the responsibility of ESMA and shall not limit ESMA's ability to conduct and oversee the delegated activity. Supervisory responsibilities under this Regulation, including registration decisions, final assessments and follow-up decisions concerning infringements, shall not be delegated.";

the following Articles 36a and 36b are inserted:

"Article 36a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in referred to in Articles 28(3), 35d(10) and 35g(3) shall be conferred on the Commission for an indeterminate period of time from [PO: Please insert date of entry into force].

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3. The delegation of power referred to in Articles 28(3), 35d(10) and 35g(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles 28(3), 35d(10) and 35g(3) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of [two months] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.

Article 36b

Transitional measures related to ESMA

1. All competences and duties related to the supervisory and enforcement activity in the field of ELTIFs that are conferred on competent authorities shall be terminated on [PO: Please insert date 36 months after entry into force]. Those competences and duties shall be taken-up by ESMA on the same date.

2. Any files and working documents related to the supervisory and enforcement activity in the field of ELTIFs, including any ongoing examinations and enforcement actions, or certified copies thereof, shall be taken over by ESMA on the date referred to in paragraph 1.

However, an application for authorisation as an ELTIF that has been received by competent authorities before [PO: Please insert date 30 months after entry into force] shall not be transferred to ESMA, and the decision to register or refuse authorsation shall be taken by the relevant authority.

3. Competent authorities shall ensure that any existing records and working papers, or certified copies thereof, shall be transferred to ESMA as soon as possible and in any event by [PO: Please insert date 36 months after entry into force]. Those competent authorities shall also render all necessary assistance and advice to ESMA to facilitate effective and efficient transfer and taking-up of supervisory and enforcement activity in the field of ELTIFs.

4. ESMA shall act as the legal successor to the competent authorities referred to in paragraph 1 in any administrative or judicial proceedings that result from supervisory

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and enforcement activity pursued by those competent authorities in relation to matters that fall under this Regulation.

5. Any authorisation of an ELTIF granted by a competent authority referred to in paragraph 1 shall remain valid after the transfer of competences to ESMA.";";

Article 37 is amended as follows:

the following paragraph 1a is inserted:

"1a. By [[PO: Please insert date 84 months after entry into force], the Commission shall start a review of the application of this Regulation. The review shall analyse, in particular:

(a) the effectiveness, proportionality and application of fines and periodic penalty payments provided for in accordance with this Regulation;

(b) the role of ESMA, its investigatory powers, the delegation of tasks to competent authorities, and the effectiveness of supervisory measures taken.";

in paragraph 2, the introductory words: "Following the review referred to in paragraph 1 of this Article" are replaced by the following: "Following the reviews referred to in paragraphs 1 or 1a of this Article".

Article 8

Amendments to Regulation (EU) No 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds

Regulation (EU) 2016/1011 is amended as follows:

(1) in Article 4, the following paragraph is added:

"9. The Commission shall adopt delegated acts in accordance with Article 49 to specify the requirements to ensure that the governance arrangements referred to in paragraph 1 are sufficiently robust.";

in Article 12, the following paragraph is added:

"4. The Commission shall adopt delegated acts in accordance with Article 49 to specify the conditions to ensure that the methodology referred to in paragraph 1 complies with points (a) to (e) of that paragraph.";

in Article 14, the following paragraph is added:

"4. The Commission shall adopt delegated acts in accordance with Article 49 to specify the characteristics of the systems and controls referred to in paragraph 1.";

Article 20 is replaced by the following:

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"Article 20

Critical benchmarks

1. The Commission shall designate as critical benchmark any benchmark provided by an administrator located within the Union and used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investment funds having a total value of at least EUR 500 billion on the basis of all the range of maturities or tenors of the benchmark, where applicable.

Where a competent authority of a Member State or ESMA is of the opinion that a benchmark should be designated as a critical benchmark in accordance with the first sub-paragraph, that competent authority or ESMA, as appropriate, shall notify the Commission thereof and substantiate its opinion in writing.

The Commission shall review its assessment of the criticality of the benchmarks at least every two years.

2. ESMA shall designate as critical any benchmarks referenced by financial instruments or financial contracts or for measuring the performance of investment funds having a total value of less than EUR 500 billion as set out in paragraph (1) that fulfil criterion (a) and either criterion (b) or (c) below:

(a) the benchmark has no, or very few, appropriate market-led substitutes;

(b) there would be significant and adverse impacts on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in more than one Member State in the event that the benchmark ceased to be provided, was provided on the basis of input data no longer fully representative of the underlying market or economic reality, or was provided on the basis of unreliable input data;

(c)(i) the benchmark is based on submissions by contributors the majority of which are located in that Member State, and

(c)(ii) there would be significant and adverse impacts on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in one Member State, in the event that the benchmark ceased to be provided, was provided on the basis of input data no longer fully representative of the underlying market or economic reality, or was provided on the basis of unreliable input data.

3. When assessing whether the criteria laid down in points (a) and (b) are fulfilled, ESMA shall take into account all of the consideration:

(i) the value of financial instruments and financial contracts that reference the benchmark and the value of investment funds referencing the benchmark for measuring their performance and their relevance in terms of the total value of financial instruments

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and of financial contracts outstanding, and of the total value of investment funds, in the Member States concerned;

(ii) the value of financial instruments and financial contracts that reference the benchmark and the value of investment funds referencing the benchmark for measuring their performance within the Member States concerned and their relevance in terms of the gross national product of those Member States;

(iii) any other figure to assess on objective grounds the potential impact of the discontinuity or unreliability of the benchmark on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in the Member States concerned.

4. Before designating a benchmark as a critical benchmark, ESMA shall consult the competent authority of the administrator of that benchmark and take into account the assessment made by that competent authority.

ESMA shall review its assessment of the criticality of the benchmark at least every two years.

ESMA shall notify the Commission without undue delay of any designation of a benchmark as a critical benchmark and of any decision to revise a designation of a benchmark as a critical benchmark in case the review referred to in the fourth subparagraph of this paragraph leads to the conclusion that a benchmark ESMA had designated as critical is no longer assessed as critical.

Where a competent authority of a Member State is of the opinion that a benchmark should be designated as a critical benchmark in accordance with this paragraph, that competent authority shall notify ESMA thereof and substantiate its opinion in writing. ESMA shall provide that competent authority with a reasoned opinion if it decides not to designate that benchmark as critical benchmark.

3. The Commission shall adopt implementing acts in accordance with the examination procedure referred to in Article 50(2) to establish a list of benchmarks which have been designated as critical benchmarks in accordance with paragraphs 1 and 2. The Commission shall adopt implementing acts in accordance with the examination procedure referred to in Article 50(2) to update that list without undue delay in the following situations:

(a) the Commission designates a benchmark as a critical benchmark or reviews that designation in accordance with paragraph 1;

(b) the Commission receives notifications from ESMA as referred to in the fifth subparagraph of paragraph 2.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 49 in order to:

(a) specify how the nominal amount of financial instruments other than derivatives, the notional amount of derivatives and the net asset value of

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investment funds are to be assessed, including in the event of an indirect reference to a benchmark within a combination of benchmarks, in order to be compared with the thresholds referred to in paragraph 1 of this Article and in point (a) of Article 24(1);

(b) review the calculation method used to determine the thresholds referred to in paragraph 1 of this Article in the light of market, price and regulatory developments as well as the appropriateness of the classification of benchmarks with a total value of financial instruments, financial contracts, or investment funds referencing them that is close to the thresholds; such review shall take place at least every two years as from ... [18 months after the date of entry into force of this Regulation];

(c) specify how the criteria laid down in points (i) to (iii) in the second subparagraph paragraph 2 of this Article are to be applied, taking into consideration any data which help assess on objective grounds the potential impact of the discontinuity or unreliability of the benchmark concerned on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in one or more Member States.

The Commission shall take into account relevant market or technological developments..";

Article 21 is amended as follows:

paragraph 2 is replaced by the following:

"2. Upon receipt of the assessment by the administrator referred to in paragraph 1, the competent authority shall:

(a) inform ESMA thereof;

(b) within four weeks following the receipt of that assessment, make its own assessment of how the benchmark is to be transitioned to a new administrator or be ceased to be provided, taking into account the procedure established in accordance with Article 28(1).

During the period of time referred to in point (b) of the first subparagraph, the administrator shall not cease the provision of the benchmark without the written consent of ESMA."

a new paragraph 5 is added:

"5. The Commission shall be empowered to adopt delegated acts in accordance with Article 49 to specify the criteria on which the assessment referred to in point (b) of paragraph 2 is to be based.";

in Article 23, paragraphs 3 and 4 are replaced by the following :

"3. A supervised contributor to a critical benchmark that intends to cease contributing input data shall promptly notify the administrator thereof in writing. The administrator shall thereupon inform ESMA thereof without delay.

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ESMA shall inform the competent authority of that supervised contributor thereof without delay. The administrator shall submit to ESMA an assessment of the implications on the capability of the critical benchmark to measure the underlying market or economic reality, as soon as possible but no later than 14 days after the notification made by the supervised contributor.

4. Upon receipt of the assessment referred to in paragraphs 2 and 3, ESMA shall on the basis of that assessment make its own assessment on the capability of the benchmark to measure the underlying market and economic reality, taking into account the administrator's procedure for cessation of the benchmark established in accordance with Article 28(1).";

in Article 26, the following paragraph is added:

"6. The Commission shall be empowered to adopt delegated acts in accordance with Article 49 to specify the criteria under which competent authorities may require changes to the compliance statement as referred to in paragraph 4.";

Article 30 is amended as follows:

paragraph 2 is replaced by the following:

"2. The Commission may adopt an implementing decision stating that the legal framework and supervisory practice of a third country ensures the following:

(a) administrators authorised or registered in that third country comply with binding requirements which are equivalent to the requirements under this Regulation. When assessing the equivalence the Commission may take into account whether the legal framework and supervisory practice of that third country ensures compliance with the IOSCO principles for financial benchmarks or with the IOSCO principles for PRAs;

(b) those binding requirements are subject to effective supervision and enforcement on an on-going basis in that third country.

The Commission may subject the application of the implementing decision referred to in the first subparagraph to the effective fulfilment by that third country of any condition set out in that implementing decision on an ongoing basis and to the ability of ESMA to effectively exercise the monitoring responsibilities referred to in Article 33 of Regulation (EU) No 1095/2010.

That implementing decision shall be adopted in accordance with the examination procedure referred to in Article 50(2) of this Regulation.";

the following paragraph 2a is inserted:

"2a. The Commission may adopt a delegated act in accordance with Article 49 to specify the conditions referred to in points (a) and (b) of the first subparagraph of paragraph 2.";

paragraph 3 is replaced by the following:

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“3. Where no implementing decision has been adopted pursuant to paragraph 2, the Commission may adopt an implementing decision stating all of the following:

(a) binding requirements in a third country with respect to specific administrators, benchmarks or families of benchmarks, are equivalent to the requirements under this Regulation taking into account, in particular, whether the legal framework and supervisory practice of that third country ensures compliance with the IOSCO principles for financial benchmarks or with the IOSCO principles for PRAs;

(b) those specific administrators, benchmarks or families of benchmarks are subject to effective supervision and enforcement on an on-going basis in that third country.

The Commission may subject the application of the implementing decision referred to in the first subparagraph to the effective fulfilment by that third country of any condition set out in that implementing decision on an ongoing basis and to the ability of ESMA to effectively exercise the monitoring responsibilities referred to in Article 33 of Regulation (EU) No 1095/2010.

That implementing decision shall be adopted in accordance with the examination procedure referred to in Article 50(2) of this Regulation.”;

the following paragraph 3a is inserted:

“3a. The Commission may adopt a delegated act in accordance with Article 49 to specify the conditions referred to in points (a) and (b) of paragraph 3.”;

the introductory subparagraph of paragraph 4 is replaced by the following:

"4. ESMA shall establish cooperation arrangements with the competent authorities of third countries whose legal framework and supervisory practices have been recognised as equivalent in accordance with paragraph 2 or 3 unless that third country, in accordance with a delegated act in force adopted by the Commission pursuant to Article 9 of Directive (EU) 2015/849 of the European Parliament and of the Council, is on the list of jurisdictions which have strategic deficiencies in their national anti-money laundering and countering the financing of terrorism regimes that pose significant threats to the financial system of the Union. Such arrangements shall specify at least:";

in paragraph 4, the following point (d) is added:

“(d) the procedures for the exchange of information on a regular basis, and at least quarterly, about benchmarks provided in that third country that fulfil any of the conditions set out in points (a) or (c) of Article 20(1).”;

the second subparagraph of paragraph 5 is replaced by the following:

“ESMA shall submit those draft regulatory technical standards to the Commission by [PO: please insert date 24 months after the date of entry into force of this Regulation].”;

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Article 32 is amended as follows:

paragraph 1 is replaced by the following:

"1. Until such time as an equivalence decision is adopted in accordance with paragraphs 2 and 3 of Article 30, a benchmark provided by an administrator located in a third country may be used by supervised entities in the Union, provided that that administrator acquires prior recognition by ESMA in accordance with this Article.";

the second subparagraph of paragraph 2 is replaced by the following:

"To determine whether the condition referred to in the first subparagraph is fulfilled and to assess compliance with the IOSCO principles for financial benchmarks or the IOSCO principles for PRAs, as applicable, ESMA may take into account an assessment by an independent external auditor or, a certification provided by the competent authority of the administrator in the third country where the administrator is located.";

paragraph 3 is replaced by the following:

"3. An administrator located in a third country intending to obtain prior recognition as referred to in paragraph 1 shall have a legal representative. The legal representative shall be a natural or legal person located in the Union and expressly appointed by that administrator to act on behalf of that administrator with regard to the administrator's obligations under this Regulation. The legal representative shall, together with the administrator, perform the oversight function relating to the provision of benchmarks performed by the administrator under this Regulation and, in that respect, be accountable to ESMA.";

paragraph 4 is deleted;

paragraph 5 is replaced by the following:

"5. An administrator located in a third country intending to obtain prior recognition as referred to in paragraph 1 shall apply for recognition with ESMA. The applicant administrator shall provide all information necessary to satisfy ESMA that it has established, at the time of recognition, all the necessary arrangements to meet the requirements referred to in paragraph 2 and shall provide the list of its actual or prospective benchmarks which are intended for use in the Union and shall, where applicable, indicate the competent authority in the third country responsible for its supervision.

Within 90 working days of receipt of the application referred to in the first subparagraph of this paragraph, ESMA shall verify that the conditions laid down in paragraphs 2 and 3 are fulfilled.

Where ESMA considers that the conditions laid down in paragraphs 2 and 3 are not fulfilled, it shall refuse the recognition request and set out the reasons for that refusal. In addition, no recognition shall be granted unless the following additional conditions are fulfilled:

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(a) where an administrator located in a third country is subject to supervision, an appropriate cooperation arrangement is in place between ESMA and the competent authority of the third country where the administrator is located, in compliance with the regulatory technical standards adopted pursuant to Article 30(5), to ensure an efficient exchange of information that enables the competent authority of that third country to carry out its duties in accordance with this Regulation;

(b) the effective exercise by ESMA of its supervisory functions under this Regulation is neither prevented by the laws, regulations or administrative provisions of the third country where the administrator is located, nor, where applicable, by limitations in the supervisory and investigatory powers of that third country's competent authority.";

paragraphs 6 and 7 are deleted;

paragraph 8 is replaced by the following:

"8. ESMA shall suspend or, where appropriate, withdraw the recognition granted in accordance with paragraph 5 where it has well-founded reasons, based on documented evidence, to consider that the administrator:

(a) is acting in a manner which is clearly prejudicial to the interests of users of its benchmarks or to the orderly functioning of markets;

(b) has seriously infringed the relevant requirements set out in this Regulation;

(c) made false statements or used any other irregular means to obtain the recognition.";";

Article 33 is replaced by the following :

Article 33
Endorsement of benchmarks provided in a third country

1. An administrator located in the Union and authorised or registered in accordance with Article 34, or any other supervised entity located in the Union with a clear and well-defined role within the control or accountability framework of a third country administrator, which is able to monitor effectively the provision of a benchmark, may apply to ESMA to endorse a benchmark or a family of benchmarks provided in a third country for their use in the Union, provided that all of the following conditions are fulfilled:

(a) the endorsing administrator or other supervised entity has verified and is able to demonstrate on an on-going basis to ESMA that the provision of the benchmark or family of benchmarks to be endorsed fulfils, on a mandatory or on a voluntary basis, requirements which are at least as stringent as the requirements of this Regulation;

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(b) the endorsing administrator or other supervised entity has the necessary expertise to monitor effectively the activity of the provision of a benchmark in a third country and to manage the associated risks;

(c) there is an objective reason to provide the benchmark or family of benchmarks in a third country and for said benchmark or family of benchmarks to be endorsed for their use in the Union.

For the purpose of point (a), when assessing whether the provision of the benchmark or family of benchmarks to be endorsed fulfils requirements which are at least as stringent as the requirements of this Regulation, ESMA may take into account whether the compliance of the provision of the benchmark or family of benchmarks with the IOSCO principles for financial benchmarks or the IOSCO principles for PRAs, as applicable, would be equivalent to compliance with the requirements of this Regulation.

2. An administrator or other supervised entity that makes an application for endorsement as referred to in paragraph 1 shall provide all information necessary to satisfy ESMA that, at the time of application, all the conditions referred to in that paragraph are fulfilled.

3. Within 90 working days of receipt of the application for endorsement referred to in paragraph 1, ESMA shall examine the application and adopt a decision either to authorise the endorsement or to refuse it and inform the applicant accordingly.

4. An endorsed benchmark or an endorsed family of benchmarks shall be considered to be a benchmark or family of benchmarks provided by the endorsing administrator or other supervised entity. The endorsing administrator or other supervised entity shall not use the endorsement with the intention of avoiding the requirements of this Regulation.

5. An administrator or other supervised entity that has endorsed a benchmark or a family of benchmarks provided in a third country shall remain fully responsible for such a benchmark or family of benchmarks and for compliance with the obligations under this Regulation.

6. Where ESMA has well-founded reasons to consider that the conditions laid down under paragraph 1 are no longer fulfilled, it shall have the power to require the endorsing administrator or other supervised entity to cease the endorsement. Article 28 shall apply in case of cessation of the endorsement.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 49 concerning measures to determine the conditions under which ESMA may assess whether there is an objective reason for the provision of a benchmark or family of benchmarks in a third country and their endorsement for their use in the Union. The Commission shall take into account elements such as the specificities of the underlying market or economic reality the benchmark intends to measure, the need for proximity of the provision of the benchmark to such market or economic reality, the need for proximity of the provision of the benchmark to contributors, the material availability of input data due to different time zones, and specific skills required in the provision of the benchmark.";

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in Article 34, the following paragraph 1a is inserted:

"1a. Where one or more of the indices provided by the person referred to in paragraph 1 would qualify as critical benchmarks, the application shall be addressed to ESMA.";

Article 40 is replaced by the following:

"1. For the purposes of this Regulation, ESMA shall be the competent authority for:

(a) administrators of critical benchmarks as referred to in paragraphs (1) and (2) of Article 20;

(b) administrators of the benchmarks referred to in Articles 30 and 32;

(c) administrators or other supervised entities that apply for the endorsement or have endorsed a benchmark provided in a third country in accordance with Article 33;

(d) supervised contributors to critical benchmarks as referred to in Article 20(1);

(e) supervised contributors to the benchmarks referred to in Articles 30, 32 and 33.

2. Each Member State shall designate the relevant competent authority responsible for carrying out the duties under this Regulation concerning administrators and supervised entities and shall inform the Commission and ESMA thereof.

3. A Member State that designates more than one competent authority in accordance with paragraph 2 shall clearly determine the respective roles of those competent authorities and shall designate a single authority to be responsible for coordinating the cooperation and the exchange of information with the Commission, ESMA and other Member States' competent authorities.

4. ESMA shall publish on its website a list of the competent authorities designated in accordance with paragraphs 1 to 3.";

Article 41 is amended as follows:

in paragraph 1, the introductory part is replaced by the following:

"1. In order to fulfil their duties under this Regulation, competent authorities referred to in Article 40(2) shall have, in conformity with national law, at least the following supervisory and investigatory powers:";

in paragraph 2, the introductory part is replaced by the following:

"1. The competent authorities referred to in Article 40(2) shall exercise their functions and powers referred to in paragraph 1 and the powers to impose sanctions

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referred to in Article 42 in accordance with their national legal frameworks, in any of the following ways:";

in Article 43(1), the introductory part is replaced by the following:

"1. Member States shall ensure that, when determining the type and level of administrative sanctions and other administrative measures, competent authorities they have designated in accordance with Article 40(2) take into account all relevant circumstances, including where appropriate:";

Article 44 is replaced by the following:

"Article 44

Obligation to cooperate

1. Member States that have chosen, in accordance with Article 42, to lay down criminal sanctions for infringements of the provisions referred to in that Article shall ensure that appropriate measures are in place so that the competent authorities designated in accordance with Article 40(2) have all the necessary powers to liaise with judicial authorities within their jurisdiction to receive specific information relating to criminal investigations or proceedings commenced for possible infringements of this Regulation. Those competent authorities shall provide that information to other competent authorities and to ESMA.

2. Competent authorities shall assist other competent authorities and ESMA. In particular, they shall exchange information and cooperate in any investigation or supervisory activities. Competent authorities may also cooperate with other competent authorities to facilitate the recovery of pecuniary sanctions.";

in Article 45(5), the first subparagraph is replaced by the following:

"5. Member States shall provide ESMA with aggregated information regarding all administrative sanctions and other administrative measures imposed pursuant to Article 42 on an annual basis. That obligation shall not apply to measures of an investigatory nature. ESMA shall publish that information in an annual report, together with aggregated information on all administrative sanctions and other administrative measures it has imposed itself pursuant to Article 48f.";

Article 46 is deleted;

in Article 47, paragraphs 1 and 2 are replaced by the following:

"1. The competent authorities referred to in Article 40(2) shall cooperate with ESMA for the purposes of this Regulation, in accordance with Regulation (EU) No 1095/2010.

2. The competent authorities referred to in Article 40(2) shall, without delay, provide ESMA with all information necessary to carry out its duties, in accordance

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with Article 35 of Regulation (EU) No 1095/2010 [To be checked against the amendments to ESMA's Regulation].";

in Title VI, the following Chapter 4 is inserted:

CHAPTER 4

ESMA powers and competences

Section 1

Competences and procedures

Article 48a

Exercise of the powers by ESMA

The powers conferred on ESMA, on any official of ESMA or on any other person authorised by ESMA by Articles 48b to 48d shall not be used to require the disclosure of information or documents that are subject to legal privilege.

Article 48b

Request for information

1. ESMA may by simple request or by decision require the following persons to provide all necessary information to enable ESMA to carry out its duties under this Regulation:

(a) persons involved in the provision of, or the contribution of input data to, the benchmarks referred to in Article 40;

(b) entities using the benchmarks referred to under (a) and related third parties;

(c) third parties to whom the persons referred to under (a) have outsourced functions or activities;

(d) persons otherwise closely and substantially related or connected to the persons referred to under (a).

2. Any simple request for information as referred to paragraph 1 shall:

(a) refer to this Article as the legal basis of that request;

(b) state the purpose of that request;

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(c) specify what information is required;

(d) include a time limit within which the information is to be provided;

(e) include a statement that there is no obligation on the person from whom the information is requested to provide that information but that in case of a voluntary reply to the request, the information provided must not be incorrect or misleading;

(f) indicate the amount of the fine to be issued in accordance with Article [48f] where information provided is incorrect or misleading.

3. When requiring to supply information under paragraph 1 by decision, ESMA shall:

(a) refer to this Article as the legal basis of that request;

(b) state the purpose of that request;

(c) specify what information is required;

(d) set a time limit within which the information is to be provided;

(e) indicate the periodic penalty payments provided for in Article [48g] where the required information is incomplete;

(f) indicate the fine provided for in Article [48f], where the answers to the questions asked are incorrect or misleading;

(g) indicate the right to appeal the decision before ESMA's Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union ('Court of Justice') in accordance with Articles [ex60 Appeals] and [ex61 Action before the Court…] of Regulation (EU) No 1095/2010.

4. The persons referred to in paragraph 1 or their representatives and, in the case of legal persons or associations having no legal personality, the persons authorised to represent them by law or by their constitution, shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.

5. ESMA shall, without delay, send a copy of the simple request or of its decision to the competent authority of the Member State where the administrator or supervised contributor referred to in paragraph 1 concerned by the request for information is domiciled or established.

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Article 48c

General investigations

1. In order to carry out its duties under this Regulation, ESMA may conduct necessary investigations of the persons referred to in Article 48b(1). To that end, the officials and other persons authorised by ESMA shall be empowered to:

(a) examine any records, data, procedures and any other material relevant to the execution of its tasks, irrespective of the medium on which they are stored;

(b) take or obtain certified copies of or extracts from such records, data, procedures and other material;

(c) summon and ask any of those persons or their representatives or staff for oral or written explanations on facts or documents relating to the subject matter and purpose of the inspection and to record the answers;

(d) interview any other natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;

(e) request records of telephone and data traffic.

2. The officials and other persons authorised by ESMA for the purposes of the investigations referred to in paragraph 1 shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the investigation. That authorisation shall indicate the periodic penalty payments provided for in Article [48g] where the production of the required records, data, procedures or any other material, or the answers to questions asked to the persons referred to in Article 48b(1) or are incomplete, and the fines provided for in Article [48f], where the answers to questions asked to those persons are incorrect or misleading.

3. The persons referred to in Article 48b(1) are required to submit to investigations launched on the basis of a decision of ESMA. The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article [48g], the legal remedies available under Regulation (EU) No 1095/2010 and the right to have the decision reviewed by the Court of Justice.

4. In good time before an investigation referred to in paragraph 1, ESMA shall inform the competent authority of the Member State where the investigation is to be carried out of the investigation and of the identity of the authorised persons. Officials of the competent authority concerned shall, at the request of ESMA, assist those authorised persons in carrying out their duties. Officials of the competent authority concerned may attend the investigations upon request.

5. If a request for records of telephone or data traffic referred to in point (e) of paragraph 1 requires authorisation from a national judicial authority according to

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applicable national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

6. Where a national judicial authority receives an application for the authorisation of a request for records of telephone or data traffic referred to in point (e) of paragraph 5 that authority shall verify the following:

(a) the decision referred to in paragraph 3 is authentic;

(b) any measures to be taken are proportionate and not arbitrary or excessive.

For the purposes of point (b), the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice following the procedure set out in Article [61] of Regulation (EU) No 1095/2010.

Article 48d

On-site inspections

1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary on-site inspections at any business premises of the persons referred to in Article 48b(1).

2. The officials and other persons authorised by ESMA to conduct an on-site inspection may enter any business premises of the persons subject to an investigation decision adopted by ESMA and shall have all the powers stipulated in Article 48c(1). They shall have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.

3. In sufficient time before the inspection, ESMA shall give notice of the inspection to the competent authority of the Member State where the inspection is to be conducted. Where the proper conduct and efficiency of the inspection so require, ESMA, after informing the relevant competent authority, may carry out the on-site inspection without prior notice. Inspections in accordance with this Article shall be conducted provided that the relevant authority has confirmed that it does not object to those inspections.

4. The officials and other persons authorised by ESMA to conduct an on-site inspection shall exercise their powers upon production of a written authorisation, specifying the subject matter and purpose of the inspection and the periodic penalty payments provided for in Article [48g] where the persons concerned do not submit to the inspection.

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5. The persons referred to in Article 48b(1)shall submit to on-site inspections ordered by a decision of ESMA. That decision shall specify the subject matter and purpose of the inspection, the date on which it is to begin and indicate the periodic penalty payments provided for in Article [48g], the legal remedies available under Regulation (EU) No 1095/2010 as well as the right to have the decision reviewed by the Court of Justice.

6. Officials of, as well as those authorised or appointed by, the competent authority of the Member State where the inspection is to be conducted, shall, at the request of ESMA, actively assist the officials and other persons authorised by ESMA. Officials of that competent authority may also attend the on-site inspections upon request.

7. ESMA may also require competent authorities to carry out specific investigatory tasks and on-site inspections as provided for in this Article and in Article 48c(1) on its behalf. To that end, competent authorities shall enjoy the same powers as ESMA as set out in this Article and in Article 48c(1).

8. Where the officials and other accompanying persons authorised by ESMA find that a person opposes an inspection ordered pursuant to this Article, the competent authority of the Member State concerned shall afford them the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, to enable them to conduct their on-site inspection.

9. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7 requires authorisation by a national judicial authority according to the applicable national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

10. Where a national judicial authority receives an application for the authorisation of an on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7, that authority shall verify the following:

(a) the decision adopted by ESMA referred to in paragraph 4 is authentic;

(b) any measures to be taken are proportionate and not arbitrary or excessive.

For the purposes of point (b), the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity of the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice following the procedure set out in Article 61 Regulation (EU) No 1095/2010.

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SECTION 2

ADMINISTRATIVE SANCTIONS AND OTHER MEASURES

Article 48e

Supervisory measures by ESMA

1. Where, in accordance with Article 48i(5), ESMA finds that a person has committed one of the infringements listed in Article 48f(2), it shall take one or more of the following actions:

(a) adopt a decision requiring the person to bring the infringement to an end;

(b) adopt a decision imposing fines pursuant to Article 48f;

(c) issue public notices.

2. When taking the actions referred to in paragraph 1, ESMA shall take into account the nature and seriousness of the infringement, having regard to the following criteria:

(a) the duration and frequency of the infringement;

(b) whether financial crime has been occasioned, facilitated or otherwise attributable to the infringement;

(c) whether the infringement has been committed intentionally or negligently.

(d) the degree of responsibility of the person responsible for the infringement;

(e) the financial strength of the person responsible for the infringement, as indicated by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;

(f) the impact of the infringement on retail investors' interests;

(g) the importance of the profits gained, losses avoided by the person responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;

(h) the level of cooperation of the person responsible for the infringement with ESMA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(i) previous infringements by the person responsible for the infringement;

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(j) measures taken after the infringement by the person responsible for the infringement to prevent its repetition.

3. Without undue delay, ESMA shall notify any action taken pursuant to paragraph 1 to the person responsible for the infringement, and shall communicate it to the competent authorities of the Member States and to the Commission. It shall publicly disclose any such action on its website within 10 working days from the date when it was adopted.

The disclosure to the public referred to in the first subparagraph shall include the following:

(a) a statement affirming the right of the person responsible for the infringement to appeal the decision;

(b) where relevant, a statement affirming that an appeal has been lodged and specifying that such an appeal does not have suspensive effect;

(c) a statement asserting that it is possible for ESMA's Board of Appeal to suspend the application of the contested decision in accordance with Article 60(3) of Regulation (EU) No 1095/2010.

Article 48f

Fines

1. Where, in accordance with Article 48i(5), ESMA finds that any person has, intentionally or negligently, committed one or more of the infringements listed in paragraph 2, it shall adopt a decision imposing a fine in accordance with paragraph 3 of this Article.

An infringement shall be considered to have been committed intentionally if ESMA finds objective factors which demonstrate that a person acted deliberately to commit the infringement

2. The list of infringements referred to in paragraph 1 shall be the following: Infringements of Articles 4 - 16, 21, 23 - 29 and 34 of Regulation (EU) 2016/1011.

3. The maximum amount of the fine referred to in paragraph 1 shall be:

(67) (i) in the case of a legal person, EUR 1 000 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 30 June 2016, or 10 % of the total annual turnover of that legal person according to the last available financial statements approved by the management body, whichever is the higher;

(68) (ii) in the case of a natural person, EUR 500 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 30 June 2016.

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Notwithstanding the first subparagraph, The maximum amount of the fine for infringements of point (d) of Article 11(1) or of Article 11(4) of Regulation (EU) 2016/1011 shall be EUR 250 000 or, in the Member States whose official currency is not the euro, the corresponding value in the national currency on 30 June 2016 or 2 % of the total annual turnover of that legal person according to the last available financial statements approved by the management body, whichever is the higher for legal persons, and EUR 100 000 or, in the Member States whose official currency is not the euro, the corresponding value in the national currency on 30 June 2016 for natural persons.

For the purposes of point (i), where the legal person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial accounts in accordance with Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

4. When determining the level of a fine pursuant to paragraph 1, ESMA shall take into account the criteria set out in Article 48e(2).

5. Notwithstanding paragraph 4, where the legal person has directly or indirectly benefited financially from the infringement, the amount of the fine shall be at least equal to that benefit.

6. Where an act or omission of an person constitutes more than one infringement listed in Article 48f(2), only the higher fine calculated in accordance with paragraph 3 and relating to one of those infringements shall apply.

Article 48g

Periodic penalty payments

1. ESMA shall, by decision, impose periodic penalty payments to compel:

(a) a person to put an end to an infringement in accordance with a decision taken pursuant to Article [48e(1)(a)];

(b) persons referred to in Article 48b(1):

(i) to supply complete information which has been requested by a decision pursuant to Article [48b];

(ii) to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by a decision pursuant to Article [48c];

(iii) to submit to an on-site inspection ordered by a decision taken pursuant to Article [48d].

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2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed for each day of delay.

3. Notwithstanding paragraph 2, the amount of the periodic penalty payments shall be 3 % of the average daily turnover in the preceding business year, or, in the case of natural persons, 2 % of the average daily income in the preceding calendar year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.

4. A periodic penalty payment shall be imposed for a maximum period of six months following the notification of ESMA's decision. Following the end of the period, ESMA shall review the measure.

Article 48h

Disclosure, nature, enforcement and allocation of fines and periodic penalty payments

1. ESMA shall disclose to the public every fine and every periodic penalty payment that has been imposed pursuant to Articles 48f and 48g, unless such disclosure to the public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved. Such disclosure shall not contain personal data within the meaning of Regulation (EC) No 45/2001.

2. Fines and periodic penalty payments imposed pursuant to Articles [48f] and [48g] shall be of an administrative nature.

3. Where ESMA decides not to impose any fines or penalty payments, it shall inform the European Parliament, the Council, the Commission and the competent authorities of the Member State concerned thereof and shall set out the reasons for its decision.

4. Fines and periodic penalty payments imposed pursuant to Articles [48f] and [48g] shall be enforceable.

Enforcement shall be governed by the rules of civil procedure in force in the Member State or third country in which it is carried out.

5. The amounts of the fines and the periodic penalty payments shall be allocated to the general budget of the European Union.

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SECTION 3

PROCEDURES AND REVIEW

Article 48i

Procedural rules for taking supervisory measures and imposing fines

1. Where, in carrying out its duties under this Regulation, ESMA finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in Article 48f(2), ESMA shall appoint an independent investigation officer within ESMA to investigate the matter. The appointed officer shall not be involved or have been directly or indirectly involved in the supervision of the benchmarks to which the infringement relates and shall perform his functions independently from ESMA's Board of Supervisors.

2. The investigation officer referred to in paragraph 1 shall investigate the alleged infringements, take into account any comments submitted by the persons who are subject to the investigations, and shall submit a complete file with his findings to ESMA's Board of Supervisors.

3. In order to carry out his tasks, the investigation officer shall have the power to request information in accordance with Article 48b and to conduct investigations and on-site inspections in accordance with Articles 48c and 48d.

4. Where carrying out those tasks, the investigation officer shall have access to all documents and information that have been gathered by ESMA in its supervisory activities.

5. Upon completion of his investigation and before submitting the file with his findings to ESMA's Board of Supervisors, the investigation officer shall give the persons subject to the investigations the opportunity to be heard on the matters being investigated. The investigation officer shall base his findings only on facts on which the persons concerned have had the opportunity to comment.

6. The rights of the defence of the persons subject to the investigations shall be fully respected during investigations under this Article.

7. Upon submission of the file with his findings to ESMA's Board of Supervisors, the investigation officer shall notify the persons who are subject to the investigations. The persons subject to the investigations shall be entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information affecting third parties.

8. On the basis of the file containing the investigation officer’s findings and, when requested by the persons concerned, after having heard those persons in accordance with Article [48j], ESMA shall decide if one or more of the infringements listed in Article 48f(1) has been committed by the persons subject to

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the investigations and, in such case, shall take a supervisory measure in accordance with Article 48e and impose a fine in accordance with Article [48f].

9. The investigation officer shall not participate in the deliberations of ESMA's Board of Supervisors or in any other way intervene in the decision-making process of ESMA's Board of Supervisors.

10. The Commission shall adopt delegated acts in accordance with Article 49 to specify the rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on rights of defence, temporal provisions, and the collection of fines or periodic penalty payments, and the limitation periods for the imposition and enforcement of fines and periodic penalty payments.

11. ESMA shall refer matters for criminal prosecution to the relevant national authorities where, in carrying out its tasks under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. In addition, ESMA shall refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from an identical fact or facts which are substantially the same has already acquired the force of res judicata as the result of criminal proceedings under national law.

Article 48j

Hearing of the persons subject to investigations

1. Before taking any decision pursuant to Articles 48f, 48g and 48e, ESMA shall give the persons subject to the proceedings the opportunity to be heard on its findings. ESMA shall base its decisions only on findings on which the persons subject to the proceedings have had an opportunity to comment.

2. The first subparagraph shall not apply if urgent action pursuant to Article 48e is needed in order to prevent significant and imminent damage to the financial system. In such a case ESMA may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.

3. The rights of the defence of the persons subject to the proceedings shall be fully respected in the investigations. They shall be entitled to have access to ESMA's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or ESMA's internal preparatory documents.

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Article 48k

Review by the Court of Justice

The Court of Justice shall have unlimited jurisdiction to review decisions whereby ESMA has imposed a fine or a periodic penalty payment. It may annul, reduce or increase the fine or periodic penalty payment imposed.

SECTION 4

FEES AND DELEGATION

Article 48l

Supervisory fees

1. ESMA shall charge fees to administrators in accordance with this Regulation and in accordance with the delegated acts adopted pursuant to paragraph 3. Those fees shall fully cover ESMA's necessary expenditure relating to the supervision of administrators and the reimbursement of any costs that the competent authorities may incur carrying out work pursuant to this Regulation in particular as a result of any delegation of tasks in accordance with Article 48m.

2. The amount of an individual fee charged to an administrator shall cover all administrative costs incurred by ESMA for its activities in relation to the supervision. It shall be proportionate to the turnover of the administrator.

3. The Commission shall adopt delegated acts in accordance with Article 49 to specify the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid.

Article 48m

Delegation of tasks by ESMA to competent authorities

1. Where necessary for the proper performance of a supervisory task, ESMA may delegate specific supervisory tasks to the competent authority of a Member State in accordance with the guidelines issued by ESMA pursuant to Article 16 of Regulation (EU) No 1095/2010. Such specific supervisory tasks may, in particular, include the power to carry out requests for information in accordance with Article 48b and to conduct investigations and on-site inspections in accordance with Article 48c and Article 48d.

By way of derogation from the first subparagraph, the authorisation of critical benchmarks shall not be delegated.

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2. Prior to the delegation of a task in accordance with paragraph 1, ESMA shall consult the relevant competent authority about:

(a) the scope of the task to be delegated;

(b) the timetable for the performance of the task; and

(c) the transmission of necessary information by and to ESMA.

3. ESMA shall reimburse a competent authority for costs incurred as a result of carrying out delegated tasks in accordance with the regulation on fees adopted by the Commission pursuant to Article 48l(3).

4. ESMA shall review any delegation made in accordance with paragraph 1 at appropriate intervals. A delegation may be revoked at any time.

5. A delegation of tasks shall not affect the responsibility of ESMA and shall not limit ESMA's ability to conduct and oversee the delegated activity."

Article 48o

Transition measures related to ESMA

1. All competences and duties related to the supervisory and enforcement activity regarding administrators referred to in Article 40(1) that are conferred on competent authorities shall be terminated on [PO: Please insert date 36 months after entry into force]. Those competences and duties shall be taken-up by ESMA on the same date.

2. Any files and working documents related to the supervisory and enforcement activity regarding administrators referred to in Article 40(1), including any ongoing examinations and enforcement actions, or certified copies thereof, shall be taken over by ESMA on the date referred to in paragraph 1.

However, applications for authorisation by administrators of a critical benchmark, applications for recognition in accordance with Article 32 and applications for approval of endorsement in accordance with Article 33 that have been received by competent authorities before [PO: Please insert date 34 months after entry into force] shall not be transferred to ESMA, and the decision to authorise or refuse authorisation, recognition or approval of endorsement shall be taken by the relevant competent authority.

3. Competent authorities shall ensure that any existing records and working papers, or certified copies thereof, shall be transferred to ESMA as soon as possible and in any event by [PO: Please insert date 36 months after entry into force]. Those competent authorities shall also render all necessary assistance and advice to ESMA to facilitate effective and efficient transfer and taking-up of supervisory and enforcement activity regarding administrators referred to in Article 40(1).

4. ESMA shall act as the legal successor to the competent authorities referred to in paragraph 1 in any administrative or judicial proceedings that result from supervisory

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and enforcement activity pursued by those competent authorities in relation to matters that fall under this Regulation.

5. Any authorisation of administrators of a critical benchmark, recognition in accordance with Article 32 and approval of endorsement in accordance with Article 33 granted by a competent authority referred to in paragraph 1 shall remain valid after the transfer of competences to ESMA.";

Article 53 is replaced by the following:

"Article 53

ESMA reviews

ESMA shall have the power to require the documented evidence from a competent authority for any of the decisions adopted in accordance with the first subparagraph of Article 51(2) and Article 25(3), as well as for actions taken with regard to the enforcement of Article 24(1).".

Article 9

Amendments to Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market

Regulation (EU) 2017/1129 is amended as follows:

(1) Article 2 is amended as follows:

point (iii) of the definition of 'home Member State' under letter (m) is deleted.

the following definitions are inserted:

"(za) 'property companies' means an undertaking whose principal activities concern the economic activities listed in Section L of Annex I to Regulation (EC) No 1893/2006 of the European Parliament and of the Council*.

(zb) 'mineral companies' means an undertaking whose principal activities concern the economic activities listed in Section B, Divisions 05 to 08 of Annex I to Regulation (EC) No 1893/2006.

(zc) 'scientific research based companies' means an undertaking whose principal activities concern the economic activities listed in Section M, Division 72, group 72.1 of Annex I to Regulation (EC) No 1893/2006.

(zd) 'shipping companies' means an undertaking whose principal activity concerns the economic activities listed in Section H, Division 50 of Annex I to Regulation (EC) No 1893/2006.

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* Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains, OJ L 393, 30.12.2006, p.1.";

in Article 4, paragraph 2 is replaced by the following:

"2. Such voluntarily drawn up prospectus approved by the competent authority of the home Member State, as determined in accordance with point (m) of Article 2, or by ESMA in accordance with Article 31a, shall entail all the rights and obligations provided for a prospectus required under this Regulation and shall be subject to all provisions of this Regulation, under the supervision of that competent authority." ;

in Article 20, paragraph 8 is replaced by the following:

"8. On request of the issuer, the offeror or the person asking for admission to trading on a regulated market, 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 and, unless ESMA assumes the role of competent authority of the home Member State in accordance with Article 31a, the prior notification to ESMA. The competent authority of the home Member State shall transfer the documentation filed, together with its decision to grant the transfer, in electronic format, to the competent authority of the other Member State on the date of its decision. 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 limits set out in the first subparagraph of paragraph 2 and paragraph 3 shall apply from the date the decision was taken by the competent authority of the home Member State. 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. Upon completion of the transfer of the approval, the competent authority to whom the approval of the prospectus has been transferred shall be deemed to be the competent authority of the home Member State for that prospectus for the purposes of this Regulation.";

Article 22 is amended as follows:

the following paragraph 6a is inserted:

"6a. By derogation from paragraph 6, ESMA shall have the power to exercise control over compliance of advertising activity with the requirements set out in paragraphs 2 to 4 in each host Member State where advertisements are disseminated, in any of the following cases:.

(a) where ESMA is the competent authority in accordance with Article 31a;

(b) for any prospectus drawn up in accordance with the laws of a third country and used in the Union in accordance with Article 29.

Without prejudice to Article 32(1), scrutiny of the advertisements by ESMA shall not constitute a precondition for the offer of securities to the public or the admission to trading to a regulated market to take place in any host Member State.

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The use of any of the supervisory and investigatory powers set out in Article 32 in relation to the enforcement of this Article by ESMA shall be communicated without undue delay to the competent authority of the relevant host Member State.

At the request of the competent authority of a Member State, ESMA shall exercise the control referred to in the first subparagraph for all advertisements disseminated in its jurisdiction in relation to all, or some, categories of prospectuses approved by ESMA in accordance with Article 31a. ESMA shall publish and regularly update a list of the Member States for which it exercises such control and the categories of prospectuses concerned. .";

paragraph 7 is replaced by the following:

"7. Competent authorities of host Member States and ESMA may only charge fees that are linked to the performance of their supervisory tasks pursuant to this Article. The level of fees shall be disclosed on the websites of the competent authorities and ESMA. Fees shall be non-discriminatory, reasonable and proportionate to the supervisory task. Competent authorities of host Member States and ESMA shall not impose any requirements or administrative procedures in addition to those required for the exercise of their supervisory tasks pursuant to this Article."

paragraph 8 is replaced by the following:

"8. By way of derogation from paragraphs 6 and 6a, any two competent authorities, including ESMA where applicable, may conclude an agreement whereby, for the purposes of exercising control over compliance of advertising activity in cross-border situations or in situations where paragraph 6a applies, the competent authority of the home Member State, or, where paragraph 6a applies, the competent authority of the host Member State, is to retain control over that compliance. Any such agreement shall be notified to ESMA, unless ESMA is a signatory to the agreement in its capacity of competent authority of the Home Member State in accordance with Article 31a. ESMA shall publish and regularly update a list of such agreements.";

Article 25 is amended as follows:

paragraph 4 is replaced by the following:

"4. Where the final terms of a base prospectus are neither included in the base prospectus, nor in a supplement, the competent authority of the home Member State shall communicate them electronically, as soon as practicable after they are filed, to ESMA and, where the base prospectus has been previously notified, to the competent authority of the host Member State(s)."

the following paragraph 6a is inserted:

"6a. For all prospectuses drawn up by a third country issuer in accordance with Article 29, the certificate of approval referred to in this article shall be replaced by a certificate of filing.";

in Article 27, the following paragraph 3a is inserted:

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"3a. By way of derogation from paragraphs 1, 2 and 3, where ESMA is the competent authority in accordance with Article 31a, the prospectus shall be drawn up either in a language accepted by the competent authorities of each host Member State or in a language customary in the sphere of international finance, at the choice of the issuer, the offeror, or the person asking for admission to trading on a regulated market.

The competent authority of each host Member State shall require that the summary referred to in Article 7 be available in its official language, or at least one of its official languages, or in another language accepted by the competent authority of that Member State, but it shall not require the translation of any other part of the prospectus.";

Article 28 is replaced by the following:

"Article 28

Offer of securities to the public or admission to trading on a regulated market made under a prospectus drawn up in accordance with this Regulation

Where a third country issuer intends to offer securities to the public in the Union or to seek admission to trading of securities on a regulated market established in the Union under a prospectus drawn up in accordance with this Regulation, it shall obtain approval of its prospectus from ESMA in accordance with Article 20.

Once a prospectus is approved in accordance with the first subparagraph, it shall entail all the rights and obligations provided for a prospectus under this Regulation and the prospectus and the third country issuer shall be subject to all of the provisions of this Regulation under the supervision of ESMA.";

Article 29 is replaced by the following:

"Article 29

Offer of securities to the public or admission to trading on a regulated market made under a prospectus drawn up in accordance with the laws of a third country

1. A third country issuer may offer securities to the public in the Union or seek admission to trading of securities on a regulated market in the Union after prior publication of a prospectus drawn up and approved in accordance with, and which is subject to, the national laws of the third country issuer, provided that:

(a) the Commission has adopted an implementing decision in accordance with paragraph 3;

(b) the third country issuer has filed the prospectus with ESMA;

(c) the third country issuer has provided a written confirmation that the prospectus has been approved by a third country supervisory authority and has provided the contact details of that authority;

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(d) the prospectus fulfils the language requirements set out in Article 27;

(e) all advertisements disseminated in the Union by the third country issuer in relation to the offer or admission to trading comply with the requirements set out in paragraphs 2 to 5 of Article 22;

(f) ESMA has concluded cooperation arrangements with the relevant supervisory authorities of the third country issuer in accordance with Article 30.

References to 'the competent authority of the home Member State' in this Regulation shall be understood as referring to ESMA with regard to any provision applied to prospectuses referred to in this paragraph.

2. The requirements set out in Articles 24 and 25 shall apply to the prospectus drawn up in accordance with the laws of a third country where the conditions set out in paragraph 1 are fulfilled.

3. The Commission is empowered to adopt delegated acts in accordance with Article 44 to supplement this Regulation by establishing general equivalence criteria, based on the requirements laid down in Articles 6, 7, 11, 12, 13 and in Chapter IV of this Regulation.

On the basis of the criteria set out in these delegated acts, the Commission may adopt an implementing decision stating that the legal and supervisory arrangements of a third country ensure that prospectuses drawn up in accordance with the national law of that third country comply with legally binding requirements which have an equivalent regulatory effect to the requirements set out in this Regulation. Such implementing decision shall be adopted in accordance with the examination procedure referred to in Article 45(2).

The Commission may make the application of the implementing decision subject to the effective fulfilment by a third country, on a continuous basis, of any requirements set out within that implementing decision and to ESMA's ability to effectively exercise its responsibilities in relation to monitoring referred to in paragraph 2a of Article 33 of Regulation (EU) No 1095/2010.";

Article 30 is amended as follows:

paragraph 1 is replaced by the following:

"1. For the purposes of Article 29, and, where deemed necessary, for the purposes of Article 28, ESMA shall conclude cooperation arrangements with supervisory authorities of third countries on the exchange of information with those third country authorities and the enforcement of obligations in third countries pursuant to this Regulation. Those cooperation arrangements shall ensure, at a minimum, the efficient exchange of information allowing ESMA to carry out their duties under this Regulation.

By way of derogation from the first subparagraph, where a third country is included in the list of jurisdictions which are considered to have national anti-money laundering policies and policies countering the financing of terrorism regimes with

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strategic deficiencies that pose significant threats to the financial system of the Union, as referred to in a delegated act in force adopted by the Commission pursuant to Article 9 of Directive (EU) 2015/849 of the European Parliament and of the Council*, ESMA shall not conclude cooperation arrangements with supervisory authorities of that third country.

ESMA shall inform all the competent authorities designated in accordance with Article 31(1) of any cooperation arrangement concluded in accordance with the first subparagraph.

* Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).";

paragraph 2 is deleted;

paragraph 3 is renumbered as paragraph 2 and is replaced by the following:

"2. ESMA shall conclude cooperation arrangements on exchange of information with the supervisory authorities of third countries only where the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 35.";

paragraph 4 is deleted;

in Chapter VII, the following Articles 31a and 31b are inserted:

"Article 31a

Supervision by ESMA of certain types of prospectuses

For the following prospectuses, including any supplement thereto, ESMA shall be the competent authority with regard to scrutiny and approval of those prospectuses as laid out in Article 20 and notifications to competent authorities of host Member States as laid out in Article 25:

(a) prospectuses drawn up by any legal entity or person established in the Union and relating to the admission to trading on a regulated market of non-equity securities which are to be traded only on a regulated market, or a specific segment thereof, to which only qualified investors can have access for the purposes of trading such securities;;

(b) prospectuses drawn up by any legal entity or person established in the Union and relating to asset backed securities;

(c) prospectuses drawn up by the following types of companies established in the Union:

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(i) property companies;

(ii) mineral companies;

(iii) scientific research based companies;

(iv) shipping companies.

(d) prospectuses drawn up by third country issuers in accordance with Article 28 of this Regulation.

References to 'the competent authority of the home Member State' in this Regulation shall be understood as referring to ESMA with regard to any provision applied to prospectuses listed in the first subparagraph.";

a new Article 34 b is inserted:

"Article 31b

Transitional measures related to ESMA

1. Prospectuses listed in Article 31a which have been submitted to a competent authority for approval prior to [PO: Please insert date 36 months after entry into force] shall continue to be supervised by that competent authority, including where applicable as regards any supplements and final terms thereto, until the end of their validity.

The approval granted by a competent authority for those prospectuses prior to [PO: Please insert date 36 months after entry into force] shall remain valid after the transfer of competences to ESMA referred to in paragraph 2.

The supervision of those prospectuses, including where applicable as regards any supplements and final terms thereto, shall remain subject to the rules applicable at the time of submission to the competent authority.

2. All competences and duties related to the supervisory and enforcement activity of the prospectuses listed in Article 31a and submitted for approval from [PO: Please insert date 36 months after entry into force] shall be taken-up by ESMA

."

Article 32 is amended as follows:

the introductory sentence of the first subparagraph of paragraph 1 is replaced by the following:

"1. In order to fulfil their duties under this Regulation, competent authorities and ESMA shall have, in accordance with national law, at least the following supervisory and investigatory powers:";

point (j) of the first subparagraph of paragraph 1 is replaced by the following:

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"(j) to suspend the scrutiny of a prospectus submitted for approval or suspend or restrict an offer of securities to the public or admission to trading on a regulated market where ESMA or the competent authority is making use of the power to impose a prohibition or restriction pursuant to Article 40 or 42 of Regulation (EU) No 600/2014 of the European Parliament and of the Council, until such prohibition or restriction has ceased;";

the second subparagraph of paragraph 1 is replaced by the following:

"Where necessary under national law, the competent authority or ESMA may ask the relevant judicial authority to decide on the use of the powers referred to in the first subparagraph.";

paragraph 2 is replaced by the following:

"2. Competent authorities and ESMA shall exercise their functions and powers referred to in paragraph 1 in any of the following ways:

(a) directly;

(b) in collaboration with other authorities or ESMA;

(c) under their responsibility by delegation to such authorities or ESMA;

(d) by application to the competent judicial authorities."

paragraph 5 is replaced by the following:

"5. A person making information available to the competent authority or ESMA in accordance with this Regulation shall not be considered to be infringing any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not be subject to liability of any kind related to such notification.";

the second paragraph of Article 35 is replaced by the following:

"2. The obligation of professional secrecy shall apply to all persons who work or who have worked for the competent authority, for ESMA or for any third party to whom the competent authority or ESMA has delegated its powers. Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of provisions laid down by Union or national law.";

the last subparagraph of paragraph 1 of Article 38 is replaced by the following:

"By 21 July 2019, Member States shall notify, in detail, the rules referred to in the first and second subparagraph to the Commission and to ESMA. They shall notify the Commission and ESMA of any subsequent amendment thereto without delay.";

the following chapter is inserted:

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"CHAPTER VIIIA

ESMA POWERS AND COMPETENCES

SECTION 1

COMPETENCES AND PROCEDURES

Article 43a

Exercise of the powers by ESMA

The powers conferred on ESMA or any official of or other person authorised by ESMA by Articles 43b to 43d shall not be used to require the disclosure of information or documents which are subject to legal privilege.

Article 43b

Request for information

1. ESMA may by simple request or by decision require the following persons to provide all necessary information to enable ESMA to carry out its duties under this Regulation:

(a) issuers, offerors or persons asking for admission to trading on a regulated market, and the persons that control them or are controlled by them;

(b) the managers of the persons referred to under (a);

(c) the auditors and advisors of the persons referred to under (a);

(d) the financial intermediaries commissioned by the persons referred to under (a) to carry out the offer of securities to the public or ask for admission to trading on a regulated market.

(e) the guarantor of the securities offered to the public or admitted to trading on a regulated market.

2. Any simple request for information referred to paragraph 1 shall:

(a) refer to this Article as the legal basis of that request;

(b) state the purpose of the request;

(c) specify the information required;

(d) include a time limit within which the information is to be provided;

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(e) include a statement that there is no obligation on the person from whom the information is requested to provide that information but that in case of a voluntary reply to the request, the information provided must not be incorrect or misleading;

(f) indicate the amount of the fine to be issued in accordance with Article 43f where the information provided is incorrect or misleading.

3. When requiring to supply information under paragraph 1 by decision, ESMA shall:

(a) refer to this Article as the legal basis of that request;

(b) state the purpose of the request;

(c) specify the information required;

(d) set a time limit within which the information is to be provided;

(e) indicate the periodic penalty payments provided for in Article 43g where the production of the required information is incomplete;

(f) indicate the fine provided for in Article 43f, where the answers to questions asked are incorrect or misleading;

(g) indicate the right to appeal the decision before ESMA's Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union ('Court of Justice') in accordance with Articles 60 and 61 of Regulation (EU) No 1095/2010.

4. The persons referred to in paragraph 1 or their representatives and, in the case of legal persons or associations having no legal personality, the persons authorised to represent them by law or by their constitution shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.

5. ESMA shall, without delay, send a copy of the simple request or of its decision to the competent authority of the Member State where the persons referred to in paragraph 1 concerned by the request for information are domiciled or established.

Article 43c

General investigations

1. In order to carry out its duties under this Regulation, ESMA may conduct necessary investigations of persons referred to in Article 43b(1). To that end, the officials and other persons authorised by ESMA shall be empowered to:

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(a) examine any records, data, procedures and any other material relevant to the execution of its tasks irrespective of the medium on which they are stored;

(b) take or obtain certified copies of or extracts from such records, data, procedures and other material;

(c) summon and ask any person referred to in Article 43b(1) or their representatives or staff for oral or written explanations on facts or documents relating to the subject matter and purpose of the inspection and to record the answers;

(d) interview any other natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;

(e) request records of telephone and data traffic.

2. The officials and other persons authorised by ESMA for the purposes of the investigations referred to in paragraph 1 shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the investigation. That authorisation shall also indicate the periodic penalty payments provided for in Article 43g where the production of the required records, data, procedures or any other material, or the answers to questions asked to persons referred to in Article 43b(1) are not provided or are incomplete, and the fines provided for in Article 43f, where the answers to questions asked to persons referred to in Article 43b(1) are incorrect or misleading.

3. The persons referred to in Article 43b(1) are required to submit to investigations launched on the basis of a decision of ESMA. The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 43g, the legal remedies available under Regulation (EU) No 1095/2010 and the right to have the decision reviewed by the Court of Justice.

3. In good time before an investigation referred to in paragraph 1, ESMA shall inform the competent authority of the Member State where the investigation is to be carried out of the investigation and of the identity of the authorised persons. Officials of the competent authority concerned shall, upon the request of ESMA, assist those authorised persons in carrying out their duties. Officials of the competent authority concerned may also attend the investigations upon request.

5. If a request for records of telephone or data traffic referred to in point (e) of paragraph 1 requires authorisation from a national judicial authority according to applicable national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

6. Where a national judicial authority receives an application for the authorisation of a request for records of telephone or data traffic referred to in point (e) of paragraph 1, that authority shall verify the following:

(a) the decision adopted by ESMA referred to in paragraph 3 is authentic;

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(b) any measures to be taken are proportionate and not arbitrary or excessive.

For the purposes of point (b), the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice following the procedure set out in Article 61 of Regulation (EU) No 1095/2010.

Article 43d

On-site inspections

1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary on-site inspections at any business premises of the persons referred to in Article 43b(1).

2. The officials and other persons authorised by ESMA to conduct an on-site inspection may enter any business premises of the persons subject to an investigation decision adopted by ESMA and shall have all the powers stipulated in Article 43c(1). They shall also have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.

3. In sufficient time before the inspection, ESMA shall give notice of the inspection to the competent authority of the Member State where the inspection is to be conducted. Where the proper conduct and efficiency of the inspection so require, ESMA, after informing the relevant competent authority, may carry out the on-site inspection without prior notice. Inspections in accordance with this Article shall be conducted provided that the relevant authority has confirmed that it does not object to those inspections.

4. The officials and other persons authorised by ESMA to conduct an on-site inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection and the periodic penalty payments provided for in Article 43g where the persons concerned do not submit to the inspection.

5. The persons referred to in Article 43b(1) shall submit to on-site inspections ordered by decision of ESMA. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the periodic penalty payments provided for in Article 43g, the legal remedies available under Regulation (EU) No 1095/2010 as well as the right to have the decision reviewed by the Court of Justice.

6. Officials of, as well as those authorised or appointed by, the competent authority of the Member State where the inspection is to be conducted shall, at the request of ESMA, actively assist the officials and other persons authorised by

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ESMA. Officials of that competent authority may also attend the on-site inspections upon request.

7. ESMA may also require competent authorities to carry out specific investigatory tasks and on-site inspections as provided for in this Article and in Article 43c(1) on its behalf. To that end, competent authorities shall enjoy the same powers as ESMA as set out in this Article and in Article 43c(1).

8. Where the officials and other accompanying persons authorised by ESMA find that a person opposes an inspection ordered pursuant to this Article, the competent authority of the Member State concerned shall afford them the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, to enable them to conduct their on-site inspection.

9. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7 requires authorisation by a national judicial authority according to the applicable national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

10. Where a national judicial authority receives an application for the authorisation of an on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7, that authority shall verify the following:

(a) the decision adopted by ESMA referred to in paragraph 4 is authentic;

(b) any measures to be taken are proportionate and not arbitrary or excessive.

For the purposes of point (b), the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice following the procedure set out in Article 61 of Regulation (EU) No 1095/2010.

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SECTION 2

ADMINISTRATIVE SANCTIONS AND OTHER MEASURES

Article 43e

Supervisory measures by ESMA

1. Where, in accordance with Article 43i(5), ESMA finds that a person has committed one of the infringements listed in point (a) of Article 38(1), it shall take one or more of the following actions:

(a) adopt a decision requiring the person to bring the infringement to an end;

(b) adopt a decision imposing fines pursuant to Article 43f;

(c) issue public notices.

2. When taking the actions referred to in paragraph 1, ESMA shall take into account the nature and seriousness of the infringement, having regard to the following criteria:

(a) the duration and frequency of the infringement;

(b) whether financial crime has been occasioned, facilitated or otherwise attributable to the infringement;

(c) whether the infringement has been committed intentionally or negligently.

(d) the degree of responsibility of the person responsible for the infringement;

(e) the financial strength of the person responsible for the infringement, as indicated by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;

(f) the impact of the infringement on retail investors' interests;

(g) the importance of the profits gained, losses avoided by the person responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;

(h) the level of cooperation of the person responsible for the infringement with ESMA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(i) previous infringements by the person responsible for the infringement;

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(j) measures taken after the infringement by the person responsible for the infringement to prevent its repetition.

3. Without undue delay, ESMA shall notify any action taken pursuant to paragraph 1 to the person responsible for the infringement, and shall communicate it to the competent authorities of the Member States and to the Commission. It shall publicly disclose any such action on its website within 10 working days from the date when it was adopted.

The disclosure to the public referred to in the first subparagraph shall include the following:

(a) a statement affirming the right of the person responsible for the infringement to appeal the decision;

(b) where relevant, a statement affirming that an appeal has been lodged and specifying that such an appeal does not have suspensive effect;

(c) a statement asserting that it is possible for ESMA's Board of Appeal to suspend the application of the contested decision in accordance with Article 60(3) of Regulation (EU) No 1095/2010.

Article 43f

Fines

1. Where, in accordance with Article 43i(5), ESMA finds that any person has, intentionally or negligently, committed one or more of the infringements listed in point (a) of Article 38(1), it shall adopt a decision imposing a fine in accordance with paragraph 2 of this Article.

An infringement shall be considered to have been committed intentionally if ESMA finds objective factors which demonstrate that a person acted deliberately to commit the infringement.

2. The maximum amount of the fine referred to in paragraph 1 shall be:

(i) in the case of a legal person, EUR 10 000 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 20 July 2017, or 6 % of the total annual turnover of that legal person according to the last available financial statements approved by the management body.

(ii) in the case of a natural person, EUR 1 400 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 20 July 2017.

For the purposes of point (i), where the legal person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial accounts in accordance with Directive 2013/34/EU, the relevant total annual turnover

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shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

3. When determining the level of a fine pursuant to paragraph 1, ESMA shall take into account the criteria set out in Article 43e(2).

4. Notwithstanding paragraph 3, where a person has directly or indirectly benefited financially from the infringement, the amount of the fine shall be at least equal to that benefit.

5. Where an act or omission of a person constitutes more than one infringement listed in point (a) of Article 38(1), only the higher fine calculated in accordance with paragraph 3 and relating to one of those infringements shall apply.

Article 43g

Periodic penalty payments

1. ESMA shall, by decision, impose periodic penalty payments in order to compel:

(a) a person to put an end to an infringement in accordance with a decision taken pursuant to Article 43e(1)(a);

(b) a person referred to in Article 43b(1):

(i) to supply complete information which has been requested by a decision pursuant to Article 43b;

(ii) to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by a decision pursuant to Article 43c;

(iii) to submit to an on-site inspection ordered by a decision taken pursuant to Article 43d.

2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed for each day of delay.

3. Notwithstanding paragraph 2, the amount of the periodic penalty payments shall be 3% of the average daily turnover in the preceding business year, or, in the case of natural persons, 2% of the average daily income in the preceding calendar year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.

4. A periodic penalty payment shall be imposed for a maximum period of six months following the notification of ESMA's decision. Following the end of the period, ESMA shall review the measure.

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Article 43h

Disclosure, nature, enforcement and allocation of fines and periodic penalty payments

1. ESMA shall disclose to the public every fine and periodic penalty payment that has been imposed pursuant to Articles 43f and 43g unless such disclosure to the public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

2. Fines and periodic penalty payments imposed pursuant to Articles 43f and 43g shall be of an administrative nature.

3. Where ESMA decides to impose no fines or penalty payments, it shall inform the European Parliament, the Council, the Commission, and the competent authorities of the Member State concerned accordingly and shall set out the reasons for its decision.

4. Fines and periodic penalty payments imposed pursuant to Articles 43f and 43g shall be enforceable.

Enforcement shall be governed by the rules of civil procedure in force in the Member State or third-country in which it is carried out.

5. The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the European Union.

SECTION 3

PROCEDURES AND REVIEW

Article 43i

Procedural rules for taking supervisory measures and imposing fines

1. Where, in carrying out its duties under this Regulation, ESMA finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in point (a) of Article 38(1), ESMA shall appoint an independent investigation officer within ESMA to investigate the matter. The appointed officer shall not be involved or have been directly or indirectly involved in the approval of the prospectus to which the infringement relates and shall perform his functions independently from ESMA's Board of Supervisors.

2. The investigation officer referred to in paragraph 1 shall investigate the alleged infringements, taking into account any comments submitted by the persons who are subject to the investigations, and shall submit a complete file with his findings to ESMA's Board of Supervisors.

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3. In order to carry out his tasks, the investigation officer shall have the power to request information in accordance with Article 43b and to conduct investigations and on-site inspections in accordance with Articles 43c and 43d.

4. Where carrying out his tasks, the investigation officer shall have access to all documents and information gathered by ESMA in its supervisory activities.

5. Upon completion of his investigation and before submitting the file with his findings to ESMA's Board of Supervisors, the investigation officer shall give the persons subject to the investigations the opportunity to be heard on the matters being investigated. The investigation officer shall base his findings only on facts on which the persons concerned have had the opportunity to comment.

6. The rights of the defence of the persons subject to the investigations shall be fully respected during investigations under this Article.

7. Upon submission of the file with his findings to ESMA's Board of Supervisors, the investigation officer shall notify the persons who are subject to the investigations. The persons subject to the investigations shall be entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information affecting third parties.

8. On the basis of the file containing the investigation officer’s findings and, when requested by the persons subject to the investigations, after having heard those persons in accordance with Article 43j, ESMA shall decide if one or more of the infringements listed in point (a) of Article 38(1) has been committed by the persons subject to the investigations and, in such a case, shall take a supervisory measure in accordance with Article 43e and impose a fine in accordance with Article 43f.

9. The investigation officer shall not participate in the deliberations of ESMA's Board of Supervisors or in any other way intervene in the decision-making process of ESMA’s Board of Supervisors.

10. The Commission shall adopt delegated acts in accordance with Article 44 to specify the rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on rights of defence, temporal provisions, and the collection of fines or periodic penalty payments, and the limitation periods for the imposition and enforcement of fines and periodic penalty payments.

11. ESMA shall refer matters for criminal prosecution to the relevant national authorities where, in carrying out its duties under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. In addition, ESMA shall refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from identical fact or facts which are substantially the same has already acquired the force of res judicata as the result of criminal proceedings under national law.

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Article 43j

Hearing of the persons subject to investigations

1. Before taking any decision pursuant to Articles 43e, 43f and 43g, ESMA shall give the persons subject to investigations the opportunity to be heard on its findings. ESMA shall base its decisions only on findings on which the persons subject to investigations have had an opportunity to comment.

The first subparagraph shall not apply if urgent action pursuant to Article 43e is needed in order to prevent significant and imminent damage to the financial system. In such a case ESMA may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.

2. The rights of defence of the persons subject to investigations shall be fully respected in the investigations. They shall be entitled to have access to ESMA's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or ESMA's internal preparatory documents.

Article 43k

Review by the Court of Justice

The Court of Justice shall have unlimited jurisdiction to review decisions whereby ESMA has imposed a fine or a periodic penalty payment. It may annul, reduce or increase the fine or periodic penalty payment imposed.

SECTION 4

FEES AND DELEGATION

Article 43l

Supervisory fees

1. ESMA shall charge fees to issuers, offerors or persons asking for admission to trading on a regulated market in accordance with this Regulation and in accordance with the delegated acts adopted pursuant to paragraph 3. Those fees shall fully cover ESMA's necessary expenditure relating to the scrutiny and approval of prospectuses, including supplements thereto, and to their notification to competent authorities of host Member States, and the reimbursement of any costs that the competent authorities may incur carrying out work pursuant to this Regulation in particular as a result of any delegation of tasks in accordance with Article 43m.

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2. The amount of an individual fee charged to a particular issuer, offeror or person asking for admission to trading on a regulated market shall cover all administrative costs incurred by ESMA for its activities in relation to the prospectus, including supplements thereto, drawn up by such issuer, offeror or person asking for admission to trading on a regulated market. It shall be proportionate to the turnover of the issuer, offeror or person asking for admission to trading on a regulated market.

3. The Commission shall adopt delegated acts in accordance with Article 44 to specify the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid.

Article 43m

Delegation of tasks by ESMA to competent authorities

1. Where necessary for the proper performance of a supervisory task, ESMA may delegate specific supervisory tasks to the competent authority of a Member State in accordance with the guidelines issued by ESMA pursuant to Article 16 of Regulation (EU) No 1095/2010. Such specific supervisory tasks may, in particular, include the power to carry out requests for information in accordance with Article 43b and to conduct investigations and on-site inspections in accordance with Article 43c and Article 43d.

By way of derogation from the first subparagraph, the scrutiny, approval and notification of prospectuses, including supplements thereto, the final assessments and follow-up decisions concerning infringements shall not be delegated.

2. Prior to the delegation of a task in accordance with paragraph 1, ESMA shall consult the relevant competent authority about:

(a) the scope of the task to be delegated;

(b) the timetable for the performance of the task; and

(c) the transmission of necessary information by and to ESMA.

3. ESMA shall reimburse a competent authority for costs incurred as a result of carrying out delegated tasks in accordance with the delegated act referred to in Article 43l(3).

4. ESMA shall review any delegation made in accordance with paragraph 1 at appropriate intervals. A delegation may be revoked at any time.

5. A delegation of tasks shall not affect the responsibility of ESMA and shall not limit ESMA's ability to conduct and oversee the delegated activity."

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Article 9bis
Amendments to Directive (EU) 2015/849

Directive (EU) 2015/849 is amended as follows:

(177) Article 6 is amended as follows:

(a) **paragraph 3 is replaced by the following:**

"3. The Commission shall make the report referred to in paragraph 1 available to Member States and obliged entities in order to assist them to identify, understand, manage and mitigate the risk of money-laundering and terrorist financing, and to allow other stakeholders, including national legislators, the European Parliament, the European Banking Authority ('EBA'), and representatives from Financial Intelligence Units, to better understand the risks. Reports shall be made public at the latest six months after having been made available to Member States, except for the elements of the reports which contain classified information.";

(b) **in paragraph 5 the second sentence is replaced by the following:**

"Thereafter, EBA shall issue an opinion every two years.";

(178) Article 7 is amended as follows:

(a) **in paragraph 2 the second sentence is replaced by the following:**

"The identity of that authority or the description of the mechanism shall be notified to the Commission, EBA, and other Member States.";

(b) **paragraph 5 the first sentence is replaced by the following:**

"5. Member States shall make the results of their risk assessments, including their updates, available to the Commission, EBA and the other Member States.";

(179) in Article 17 the first sentence is replaced by the following:

"By 26 June 2017, the ESAs, and thereafter EBA shall issue guidelines addressed to competent authorities and the credit institutions and financial institutions in accordance with Article 16 of Regulation (EU) No 1093/2010 on the risk factors to be taken into consideration and the measures to be taken in situations where simplified customer due diligence measures are appropriate.";

(180) in paragraph 4 of Article 18, the first sentence is replaced by the following:

"4. By 26 June 2017, the ESAs, and thereafter EBA shall issue guidelines addressed to competent authorities and the credit institutions and financial institutions, in accordance with Article 16 of Regulation (EU) No 1093/2010 on the risk factors to be taken into consideration and the measures to be taken in situations where enhanced customer due diligence measures are appropriate.";

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(181) **in Article 41, paragraph 1 is replaced by the following:**

"1. The processing of personal data under this Directive is subject to Directive 95/46/EC, as transposed into national law. Personal data that is processed pursuant to this Directive by the Commission or by EBA is subject to Regulation (EC) No 45/2001.";

(182) **Article 45 is amended as follows:**

(a) **paragraph 4 is replaced by the following:**

"4. The Member States and EBA shall inform each other of instances in which the law of a third country does not permit the implementation of the policies and procedures required under paragraph 1. In such cases, coordinated actions may be taken to pursue a solution. In the assessing which third countries do not permit the implementation of the policies and procedures required under paragraph 1, Member States and EBA shall take into account any legal constraints that may hinder proper implementation of those policies and procedures, including secrecy, data protection and other constraints limiting the exchange of information that may be relevant for that purpose.";

(b) **paragraph 6 is replaced by the following:**

"6. EBA shall develop draft regulatory technical standards specifying the type of additional measures referred to in paragraph 5 and the minimum action to be taken by credit institutions and financial institutions where a third country's law does not permit the implementation of the measures required under paragraphs 1 and 3.

EBA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 26 December 2016.";

(c) **paragraph 10 is replaced by the following:**

"10. EBA shall develop draft regulatory technical standards on the criteria for determining the circumstances in which the appointment of a central contact point pursuant to paragraph 9 is appropriate, and what the functions of the central contact points should be.

EBA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 26 June 2017."

(183) **Article 48 is amended as follows:**

(a) **in the second subparagraph of paragraph 1a the final sentence is replaced by the following:**

"Financial supervisory authorities of the Member States shall also serve as a contact point for EBA.";

(b) **in paragraph 10 the first sentence is replaced by the following:**

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"By 26 June 2017, the ESAs and thereafter EBA shall issue guidelines addressed to competent authorities in accordance with Article 16 of Regulation (EU) No 1093/2010, on the characteristics of a risk- based approach to supervision and the steps to be taken when conducting supervision on a risk-based basis.";

(184) in Section 3 the title of Subsection II is replaced by the following:

"Cooperation with EBA";

(185) Article 50 is replaced by the following:

"The competent authorities shall provide EBA with all the information necessary to allow it to carry out its duties under this Directive.";

(186) Article 62 is amended as follows:

(a) **paragraph 1 is replaced by the following:**

"1. Member States shall ensure that their competent authorities inform EBA of all administrative sanctions and measures imposed in accordance with Articles 58 and 59 on credit institutions and financial institutions, including of any appeal in relation thereto and the outcome thereof.";

(b) **paragraph 3 is replaced by the following:**

"3. EBA shall maintain a website with links to each competent authority's publication of administrative sanctions and measures imposed in accordance with Article 60 on credit institutions and financial institutions, and shall show the time period for which each Member State publishes administrative sanctions and measures.".

Article 10

Transitional provisions

4. Article 1. The procedure for the appointment of the members of the Executive Board shall be published following the entry into force of Articles 1, 2 and 3. Until such time as all members of the Executive Board take up their duties the Board of Supervisors and the Management Board shall continue carry out their tasks.

5. The Chairpersons appointed before the entry into force of Articles 1, 2 and 3 shall continue carrying out their tasks and duties until the end of their mandate. The Chairpersons to be appointed after entry into force of Articles 1, 2 and 3 shall be selected and appointed in accordance to the new appointment procedure.

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Article 11

Entry into force and entry into application

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

It shall apply from [24 months after entry into force]

Articles 1, 2 and 3 shall apply as from [PO: please insert date 3 months after the date of entry into force]. However, point [Article 62] of Article 1, point [Article 62] of Article 2 and point [Article 62] of Article 3 shall apply from 1 January [PO: please insert date of 1 January of the year following the expiry of a one-year period after date of entry into force].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

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Legislative financial statement 'Agencies'

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

1.2. Policy area(s) concerned

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1.7. Management mode(s) planned

2. MANAGEMENT MEASURES

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3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

3.2.2. Estimated impact on [body]'s appropriations

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3.2.4. Compatibility with the current multiannual financial framework

3.2.5. Third-party contributions

3.3. Estimated impact on revenue

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LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Proposal for a Regulation of the European Parliament and of the Council amending:

- 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),

- 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),

- 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),

and amending:

Regulation (EU) No 2015/760 on European long-term investment funds;

Regulation (EU) No 345/2013 on European venture capital funds;

Regulation (EU) No 346/2013 on European social entrepreneurship funds; amending Regulation (EU) No 600/2014 on markets in financial instruments;

Directive 2014/65/EU on Markets in Financial Instruments;

Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds

Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market;

Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)

1.2. Policy area(s) concerned

Policy area: Financial stability, financial services and Capital Markets Union

Activity: Financial stability

1.3. Nature of the proposal/initiative

☐ The proposal/initiative relates to **a new action**

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☐ The proposal/initiative relates to **a new action following a pilot project/preparatory action**[10]

☒ The proposal/initiative relates to **the extension of an existing action**

☐ The proposal/initiative relates to **an action redirected towards a new action**

1.4. Objective(s)

1.4.1. The Commission's multiannual strategic objective(s) targeted by the proposal/initiative

Contribute to a deeper and fairer internal market with a strengthened industrial base

1.4.2. Specific objective(s)

Specific objective No 2.5 The financial regulatory framework is evaluated, appropriately implemented and enforced across the EU

1.4.3. Expected result(s) and impact

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

The ESAs will ensure greater supervisory convergence with a strengthened EU dimension. Enhanced supervisory convergence has the potential to reduce administrative burdens for all supervised entities and additional synergies in reducing compliance costs for cross-border ones, while preserving the system from supervisory arbitrage by market participants. The ESAs will be in a position to better coordinate national authorities and to exercise, where appropriate, direct supervision. This enhanced role of the ESAs can further market integration by facilitating cross-border business. Enhancing supervisory convergence and establishing a level playing field across the Single market with a uniform fee setting mechanism would enable ESAs to raise funds (under a clear and transparent mechanism respecting the principle of equal treatment) in order to meet their current and future tasks and mandates in full. Such outcome would ultimately benefit all market participants.

1.4.4. Indicators of results and impact

Specify the indicators for monitoring implementation of the proposal/initiative.

Possible indicators: • Number of adopted technical standards relative to those required to be developed

[10] As referred to in Article 54(2)(a) or (b) of the Financial Regulation.

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- Number of draft technical standards submitted to the Commission for endorsement within the deadlines
- Number of technical standards proposed but rejected by the Commission
- Number of adopted non-binding recommendations relative to those required to be developed
- Number of requests for explanation by CAs
- Number of investigations of breach of EU law successfully closed
- Average duration of an investigation of breach of EU law
- Number of warnings on manifest breach of the EU law
- Number of successful mediations without binding settlement
- Number of colleges with EBA / EIOPA / ESMA participation
- Number of bilateral meetings with CAs
- Number of joint on-site inspections
- Number of hours training for supervisors
- Number of staff participating in exchanges / secondments
- Number of peer reviews conducted
- Number of obstacles to convergence identified and removed
- New practical tools and instruments to promote convergence
- Number of initiatives on financial literacy and education
- Number of analytical studies published
- Number of on-site inspections and dedicated investigations
- Number of meetings with supervised entities
- Number of complaints / appeals from supervised companies
- Number of formal decisions adopted addressing emergency situations
- Number of populated databases
- Number of stress tests or equivalent exercises carried out
- Ratio of proposed versus adopted final budget (per annum)

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1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term

This proposal should address the following challenges:

1) **Powers:** While harmonized regulation through the Single Rulebook is important for the Single Market, it is not sufficient. Having a coherent approach to the interpretation and application of EU legislation is equally important in order to improve the functioning of the single market and reduce risks of supervisory arbitrage and competition. For this purpose, the ESAs need to be equipped to promote the proper application of EU law and effective common supervisory standards across the EU via supervisory convergence measures and direct supervision in certain areas. This is particularly the case for ESMA within the context of the CMU. That's why the legislative proposal aims at granting new powers to enhance market integration (for ESMA) and strengthening or clarifying existing powers set out in the ESA Regulations.

2) Governance: The main problem with the current governance set-up is the composition of the Board of Supervisors and the Management Board which does not sufficiently lead to the promotion of EU interests in decision-making and impedes the ESAs from delivering on their mandates in full by disincentivising the use of certain existing tools. The problem lies in the fact that the ESAs' Management Boards and Boards of Supervisors are mainly composed of representatives of national competent authorities, which are also the only ones that have voting rights (except for the Commission when voting on the budget in each of the Management Boards). This creates conflicts of interest. Moreover, the role and the powers of the chairpersons are also very limited and they are appointed by the Boards of Supervisors, which reduces their authority and independence. Additionally, the Boards of Supervisors are overburdened while the Management Boards have morelimited tasks, which does not allow for swift decision making. Furthermore, the governance set-up impacts on the incentives of the ESAs to use certain tools such as binding mediation, the scope of peer reviews, the launch of breach of EU law procedures or the adoption of follow-up reports.

3) **Funding:** A revision of the current funding system would be necessary to ensure the effective operations of the ESAs and a fair sharing of the cost of their operations. As the legislative proposal aims at enhancing the ESAs role in supervision, funding will need to adjust (most likely upwards) in an environment in which both EU and national budgets are under strain. Moreover, full public funding for the ESAs implies that public money pays for a service targeted to a specific part of the private sector. A more efficient and fair allocation of the ESAs' costs to economic actors would be possible by applying the "allocation-by-cause" principle and ensuring at least partial funding by that industry. Finally, the current system is not totally fair for some national competent authorities which provide a disproportionate share of funding compared to the size of the sector in their respective Member States.

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1.5.2. *Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.*

Reasons for action at European level (ex-ante)

The 2017 evaluation demonstrates that EU action is justified and necessary to address identified problems in the area of powers available to the ESAs, their governance framework and their funding framework. Any actions in this respect will require amendments to the ESA Regulations. The ESAs are Union bodies whose powers and operation can only be amended by the Union legislator – in this case on the basis of Article 114 TFEU.

Expected generated Union added value (ex-post)

With the creation of the ESAs it was acknowledged that there was a need for an EU-level supervisory system to enhance consumer and investor protection and sustainably reinforce the stability and effectiveness of the financial system throughout the EU. These objectives are better achieved at Union level.

Stakeholders agree that the ESAs have significantly contributed to strengthening of coordination and cooperation among national supervisions and played a key role in ensuring that the financial markets across the EU are functioning in an orderly manner, are well regulated and supervised and consumers' protection is enhanced.

The need for the ESAs and their contribution to effective supervision across the EU will be even more important in light of the increasing interconnectedness of financial markets, EU and globally. The ESAs will be at the heart of efforts to build a Capital Markets Union ("CMU") given the central role that they play in promoting market integration and creating single market opportunities for financial entities and investors.

Going back to a nationally based supervisory framework based on the principle of home country control combined with minimum prudential standards and mutual recognition would simply not be able to deliver on the urgent needs to further integrate the EU financial markets and especially the capital markets framework. This would have a negative consequence on the EU's ability to strengthen long term investments and create funding sources for EU businesses which are necessary elements to strengthen the EU economy and stimulate investment to create jobs.

1.5.3. *Lessons learned from similar experiences in the past*

The three ESAs started operating as independent EU agencies in January 2011 under the 2010 ESA Regulations.

The Commission carried out an evaluation of the ESAs operations in 2014. At that time it concluded that the ESAs had performed well but nonetheless identified four areas where a number of issues could be considered for improvement: (1) funding framework (replacing the current framework); (2) powers (e.g., an increased focus on supervisory convergence, more effective use of existing powers, and clarifications of and possible extensions to current

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mandates); (3) governance (e.g., enhanced internal governance to ensure that decisions are taken in the interest of the EU as a whole); and (4) supervisory architecture (assessment of structural changes such as merging the authorities into a single body and seat or introducing a twin-peaks approach).

In October 2013 also the European Parliament carried out a review of the ESAs. Some of the conclusions were similar to those of the Commission in terms of the performance of the ESAs, including on the fact that the observation period was very short. The Parliament report contained a detailed list of items for improvement, some of which would require legislative changes. Additionally, in its March 2014 resolution on the ESFS review, the Parliament requested the Commission to submit new legislative proposals for the revision of the ESAs in areas including governance, representation, supervisory cooperation and convergence, and the enhancement of powers.

The Council concluded in November 2014 that targeted adaptations should be considered in order to improve the ESAs performance, governance and financing.

In this legislative proposal, consideration has been given to issues raised in previous evaluations and stakeholder claims (including those made in the context of the Commission's call for evidence and of the CMU). Particular consideration has however been given to the evaluation concluded during the spring of 2017 which concluded hat the ESAs have broadly delivered on their current objectives and that the current sectoral supervisory architecture of the ESAs is appropriate. Targeted improvement to face future challenges were however recommended, in particular in relation to enhancing the ESAs powers, governance framework and funding framework.

1.5.4. Compatibility and possible synergy with other appropriate instruments

The objectives of this proposal are consistent with a number of other EU policies and ongoing initiatives that are aimed at: (i) developing the Economic and Monetary Union ("EMU"); (ii) developing the CMU; (iii) enhancing the efficiency and effectiveness of EU-level supervision, both within and outside the EU.

First, this proposal is coherent with the EMU. The Five Presidents' Report on Completing Europe's EMU underlined that the closer integration of capital markets and gradual removal of remaining national barriers could create new risks to financial stability. According to this report, there will be a need to expand and strengthen the supervisory framework to ensure the solidity of all financial actors. The Five Presidents' Report concluded that this situation should lead ultimately to a Single European Capital Markets Supervisor. Furthermore, the recent Reflection Paper on the deepening of the EMU stressed that: 'A more integrated supervisory framework ensuring common implementation of the rules for the financial sector and more centralised supervisory enforcement is key'. While the legislative proposal does not commit to creating a single supervisor for capital markets, this proposal aims at strengthening the supervisory framework. It also foresees the transfer of some supervisory responsibilities (such as the approval of some EU prospectuses, benchmarks administrators, data reporting services providers, some EU funds) to the EU level and to ESMA in particular.

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Second, this proposal is coherent with the CMU project. By promoting more diverse funding channels, CMU will help to increase the resilience of the EU financial system. At the same time, there is a need to be alert to financial risks emerging in the capital markets. Therefore, the quality of the supervisory framework is a necessary element for well-functioning and integrated capital markets. The legislative proposal should ensure that the single rulebook is implemented in a uniform way across the Single Market. Therefore, financial entities with similar business size and risk profiles would be subject to the same standard of supervision regardless of where they are located in the EU and to avoid regulatory arbitrage.

Third, the proposal is coherent with the general objective of enhancing the efficiency and effectiveness of EU-level supervision, both within and outside the EU. In recent years the EU has put in place a range of reforms to make the banking, insurance and capital markets sectors more transparent, well regulated and robust. By clarifying some powers conferred to the ESAs (such as dispute settlements, independent reviews) and by modifying the governance structure of those agencies, the proposal will lead to improved supervision inside the EU. Furthermore, EU financial legislation has increasingly incorporated 'third country regimes' which allows non-EU firms to access the EU, usually on condition that they are authorised in a State which has a regulatory regime equivalent to that in the EU and which provides an effective reciprocal mechanism offering access to EU firms. The legislative proposal would more clearly state that the ESAs may assist the Commission with the monitoring of third-country developments (i.e., regulatory, supervisory and market developments in third country as well as the supervisory record of third country authorities) in jurisdictions subject to a positive equivalence decision by the Commission. The purpose of this monitoring is to ensure that the conditions upon which the equivalence decision is based continue to be fulfilled on an ongoing basis, with a particular emphasis on third-country developments that may impact the financial stability of the Union or of one and more of its Member States.

Fourth, this legislative proposal is also in line with the recent Commission's proposal on the procedures and authorities involved for the authorisation of Central Counterparties ("CCPs") and requirements for the recognition of third-country CCPs[11]. The CCP proposal introduces a more pan-European approach to the supervision of EU CCPs. A newly-created supervisory mechanism will be established within ESMA which will be responsible for ensuring a more coherent and consistent supervision of EU CCPs as well as more robust supervision of CCPs in non-EU countries, or 'third countries'.

1.6. Duration and financial impact

☐ Proposal/initiative of **limited duration**

☐ Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY

☐ Financial impact from YYYY to YYYY

☒ Proposal/initiative of **unlimited duration**

[11] Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority) and amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs.

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Implementation with a start-up period from 2019 to 2020,

followed by full-scale operation.

1.7. Management mode(s) planned[12]

☐ **Direct management** by the Commission through

☐ executive agencies

☐ **Shared management** with the Member States

☒ **Indirect management** by entrusting budget implementation tasks to:

☐ international organisations and their agencies (to be specified);

☐the EIB and the European Investment Fund;

☒ bodies referred to in Articles 208 and 209;

☐ public law bodies;

☐ bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;

☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;

☐ persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

Comments

N/A

[12] Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx.

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2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

In line with already existing arrangements, the ESAs prepare regular reports on their activity (including internal reporting to Senior Management, reporting to Boards and the production of the annual report), and are subject to audits by the Court of Auditors and the Commission's Internal Audit Service on their use of resources and performance. Monitoring and reporting of the actions included in the proposal will comply with the already existing requirements as well as with any new requirements resulting from this proposal.

2.2. Management and control system

2.2.1. Risk(s) identified

In relation to the legal, economic, efficient and effective use of appropriations resulting from the proposal, it is expected that the proposal would not bring about new significant risks that would not be currently covered by an existing internal control framework.

However, a new challenge might be related to the shift of funding, namely, ensuring timely collection of annual contributions from financial institutions and financial market participants concerned.

2.2.2. Control method(s) envisaged

Management and control systems as provided for in the ESAs Regulations are already implemented. ESAs work closely together with the Internal Audit Service of the Commission to ensure that the appropriate standards are met in all areas of internal control framework. These arrangements will apply also with regard to the role of ESA according to the present proposal.

In addition, every financial year, the European Parliament, following a recommendation from the Council, grants discharge to each ESA for the implementation of their budget.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures.

For the purposes of combating fraud, corruption and any other illegal activity, the provisions of Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) apply to the ESAs without any restriction.

The ESAs have a dedicated anti-fraud strategy and resulting action plan. The ESAs' strengthened actions in the area of anti-fraud will be compliant with the rules and guidance provided by the Financial Regulation (anti-fraud measures as part of sound financial management), OLAF's fraud prevention policies, the provisions provided by the Commission

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Anti-Fraud Strategy (COM(2011)376) as well as set out by the Common Approach on EU decentralised agencies (July 2012) and the related roadmap.

In addition, the Regulations establishing the ESAs as well as the ESAs Financial Regulations set out the provisions on implementation and control of the ESAs budget and applicable financial rules, including those aimed at preventing fraud and irregularities.

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3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Heading……...……]	Diff./Non-diff.[13]	from EFTA countries 14	from candidate countries[15]	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
1a	12 02 04 EBA 12 02 05 EIOPA 12 02 06 ESMA	Diff.		NO		NO

New budget lines requested: N/A

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Heading…… …]	Diff./non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
[…]	[XX.YY.YY.YY] […]	[…]	YES/NO	YES/NO	YES/NO	YES/NO

[13] Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.
[14] EFTA: European Free Trade Association.
[15] Candidate countries and, where applicable, potential candidates from the Western Balkans.

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3.2. Estimated impact on expenditure

This legislative initiative will have the following impact on expenditure:

1. The hiring of 210 new staff members in total at EBA, EIOPA and ESMA during 2019-2022.

2. The cost of these new staff members (and other expenditure related to the new tasks required from the ESAs) will be fully funded by annual contributions for indirect supervision and fees for direct supervision raised from the industry (no impact on EU Budget). With regard to ESMA it has to be noted that the additional staff and all additional costs of direct supervision will be fully covered by fees from the industry.

However, assuming that the adoption and entry into force would take place in the first quarter of 2019, the fact that the Commission would have to prepare a delegated act specifying the annual contributions, the matters to which the fees are due, the amount of the fees and the manner in which they are to be paid, the proposal envisages that annual contributions are collected as of the beginning of the year that starts one full year after the entry into force – which means in this scenario that from 1 January 2021 the additional expenditure for indirect supervision resulting from this proposal can be funded from the annual contributions. As the ESAs would however incur costs under the Regulation from the entry into force of the Regulation, there is however a need to obtain additional budget from the EU in 2019 and 2020 in order to cover on a transitional basis for early phase of operations until annual contributions will be collected and will actually from 2021 onwards be able to reimburse the EU budget for the before mentioned transitional cover that it has provided in 2019 and 2020.

Similarly, fees that will cover the expenditure for direct supervision (which, according to this proposal, would apply from 24 months after its entry into force, i.e., 2021 in this scenario) in full will also only be collected after entry into force of specific delegated acts . It has been assumed in this document that in 2021 there is an impact on the EU budget from advances before these fees can be collected and that the ESAs will return the advance made by the EU at the latest in 2022. In 2022 no additional expenditure for the EU budget is expected, accordingly; in principle, additional expenditure in the area of direct supervision will be funded by fees to be collected from the market participants to be supervised.

This additional budget should come from the EU general budget, as DG FISMA's budget cannot cover for such an amount.

The costs of already existing and ongoing ESAs tasks and activities in 2019 and 2020 will be funded according to the current funding framework in line with the MFF 2014-2020.

THE ESTIMATED IMPACT ON EXPENDTURE AND STAFFING FOR THE YEARS 2021 AND BEYOND IN THIS LEGISLATIVE STATEMENT IS ADDED FOR ILLUSTRATIVE PURPOSES AND DOES NOT PREJUDGE THE POST 2020 MULTIANNUAL FINANCIAL FRAMEWORK PROPOSAL TO BE PRESENTED BY MAY 2018. IT SHOULD ALSO BE NOTED IN THIS CONTEXT THAT WHILE THE HEADCOUNT NECESSARY FOR DIRECT SUPERVISION WILL DEPEND OVER TIME ON THE DEVELOPMENT OF THE NUMBER AND SIZE OF CAPITAL MARKETS PARTICIPANTS TO BE SUPERVISED, THE RESPECTIVE

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EXPENDITURE WILL IN PRINCIPLE BE FUNDED BY FEES TO BE COLLECTED FROM THOSE MARKET PARTICIPANTS.

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3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial framework	Number	Heading 1a Competitiveness for growth and jobs

DG: FISMA			**2019**	**2020**	**2021**	**2022**	**TOTAL**
12.0204 EBA	Commitments	(1)	2 493,0	4 096,3	0		**6 589,3**
	Payments	(2)	2 493,0	4 096,3	0		**6 589,3**
12.0205 EIOPA	Commitments	(1a)	3 759,7	5 356,0	0		**9 115,7**
	Payments	(2a)	3 759,7	5 356,0	0		**9 115,7**
12.0206 ESMA	Commitments	(3a)	17 728,6	20 589,6	10 142,8		**48 461,0**
	Payments	(3b)	17 728,6	20 589,6	10 142,8		**48 461,0**
TOTAL appropriations for DG FISMA	Commitments	=1+1a +3a	23 981,3	30 041,9	10 142,8		**64 166,0**
	Payments	=2+2a+3b	23 981,3	30 041,9	10 142,8		**64 166,0**

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Heading of multiannual financial framework	5	'Administrative expenditure'

EUR million (to three decimal places)

		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
DG: <…….>									
• Human Resources									
• Other administrative expenditure									
TOTAL DG <…….>	Appropriations								

TOTAL appropriations under HEADING 5 of the multiannual financial framework	(Total commitments = Total payments)								

EUR million (to three decimal places)

		2019	2020	2021	2022	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework	Commitments	23 981,3	30 041,9	10 142,8					**64 166,0**
	Payments	23 981,3	30 041,9	10 142,8					**64 166,0**

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3.2.2. Estimated impact on [body]'s appropriations

☐ The proposal/initiative does not require the use of operational appropriations

☐ The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs ⇩			Year **N**		Year **N+1**		Year **N+2**		Year **N+3**		Enter as many years as necessary to show the duration of the impact (see point 1.6)						**TOTAL**	
	OUTPUTS																	
	Type 16	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1[17]…																		
- Output																		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE No 2 ...																		
- Output																		
Subtotal for specific objective No 2																		
TOTAL COST																		

16 Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

17 As described in point 1.4.2. 'Specific objective(s)…'

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3.2.3. Estimated impact on [body]'s human resources – Please see Annex to the legislative financial statement

1. Summary

☐ The proposal/initiative does not require the use of appropriations of an administrative nature

☐ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year **N** [18]	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
Officials (AD Grades)								
Officials (AST grades)								
Contract staff								
Temporary staff								
Seconded National Experts								
TOTAL								

Estimated impact on the staff (additional FTE) – establishment plan

Function group and grade	Year N	Year N+1	Year N+2	Enter as many years as necessary to show the duration of the impact (see point 1.6)
AD16				
AD15				
AD14				
AD13				
AD12				

[18] Year N is the year in which implementation of the proposal/initiative starts.

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AD11 AD10 AD9 AD8 AD7 AD6 AD5				
AD Total				
AST11 AST10 AST9 AST8 AST7 AST6 AST5 AST4 AST3 AST2 AST1				
AST Total				
AST/SC 6 AST/SC 5 AST/SC 4 AST/SC 3 AST/SC 2 AST/SC 1				

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AST/SC Total				
GRAND TOTAL				

Estimated impact on the staff (additional) – external personnel

Contract agents	Year N	Year N+1	Year N+2	Enter as many years as necessary to show the duration of the impact (see point 1.6)
Function group IV Function group III Function group II Function group I				
Total				

Seconded National Experts	Year N	Year N+1	Year N+2	Enter as many years as necessary to show the duration of the impact (see point 1.6)
Total				

Please indicate the planned recruitment date and adapt the amount accordingly (if recruitment occurs in July, only 50 % of the average cost is taken into account) and provide further explanations in an annex.

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2. Estimated requirements of human resources for the parent DG

☒ The proposal/initiative does not require the use of human resources.

☐ The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full amounts (or at most to one decimal place)

	Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
• **Establishment plan posts (officials and temporary staff)**							
XX 01 01 01 (Headquarters and Commission's Representation Offices)							
XX 01 01 02 (Delegations)							
XX 01 05 01 (Indirect research)							
10 01 05 01 (Direct research)							
• **External staff (in Full Time Equivalent unit: FTE)**[19]							
XX 01 02 01 (AC, END, INT from the 'global envelope')							
XX 01 02 02 (AC, AL, END, INT and JED in the Delegations)							
XX 01 04 ***yy***[20] - at Headquarters[21]							
XX 01 04 ***yy***[20] - in Delegations							
XX 01 05 02 (AC, END, INT – Indirect research)							
10 01 05 02 (AC, END, INT – Direct research)							
Other budget lines (specify)							
TOTAL							

XX is the policy area or budget title concerned.

[19] AC = Contract Staff; AL = Local Staff; END = Seconded National Expert; INT = agency staff; JED = Junior Experts in Delegations.

[20] Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

[21] Mainly for the Structural Funds, the European Agricultural Fund for Rural Development (EAFRD) and the European Fisheries Fund (EFF).

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The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	
External staff	

Description of the calculation of cost for FTE units should be included in the Annex V, section 3.

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3.2.4. Compatibility with the current multiannual financial framework

☐ The proposal/initiative is compatible with the current multiannual financial framework.

☒ The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.
A reprogramming of the ESAs budget lines (12.0204, 12.0205 and 12.0206) is required. Although the full amounts envisaged will be ultimately covered by fees, an advance will be required from the EU budget to cover the costs incurred during at least the first 18 months of operation. After adoption of the proposal, the Commission will be required to adopt a delegated act specifying in detail the methodology for calculating and collecting the fees. This will then require non-objection from the European Parliament and the Council and publication in the Official Journal before fees can start being collected. Nevertheless, these costs should be recuperated over time, at the latest in 2021.

☐ The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework[22].

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.
[…]

3.2.5. Third-party contributions

The proposal/initiative does not provide for co-financing by third parties.

The proposal/initiative provides for the co-financing estimated below:

EUR million (to three decimal places)

	Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

[22] See Articles 11 and 17 of Council Regulation (EU, Euratom) No 1311/2013 laying down the multiannual financial framework for the years 2014-2020.

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3.3. Estimated impact on revenue

☒ The proposal/initiative has no financial impact on revenue.

☐ The proposal/initiative has the following financial impact:

☐ on own resources

☐ on miscellaneous revenue

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative[23]						
		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article …….								

For miscellaneous 'assigned' revenue, specify the budget expenditure line(s) affected.

[…]

Specify the method for calculating the impact on revenue.

[…]

[23] As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % for collection costs.

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ANNEX

The costs related to the tasks to be carried out by the ESAs have been estimated for staff expenditure in conformity with the cost classification in the ESAs' draft budget for 2018. This legislative initiative will have an impact on costs incurred by the ESAs because of the changes brought to: (I.) the governance, (II.) the indirect supervisory powers of the ESAs (III.) the funding system to finance those agencies and (IV) the direct supervisory powers granted to ESMA. The extra-staff will also need to be supported by overheads resources and legal experts (V.). Given the increase in staff members, this legislative proposal may also imply some changes in ESAs premises (VI.).

I. Governance of the ESAs:

As a consequence of this legislative proposal, the current Management Board (composed of the Chairperson, the Executive Director and members of the Board of Supervisors) would be replaced by an Executive Board, a newly set-up body of four full-time independent members (including the Chairperson) for EBA and EIOPA and 6 full-time independent members (including the Chairperson) for ESMA with an exclusive focus on the ESAs' mandates. The current Executive Director could become part of the Executive Board. Those changes may require two additional staff members for EBA and EIOPA and four additional staff members[24] for ESMA (provided that those employees are recruited outside the organisation). They will be paid from the ESAs' budget. Those 2 new employees for EBA and EIOPA and 4 for ESMA should be experienced and should be recruited as AD temporary agents of at least a grade of AD 13. Recruitment-related costs (travel, hotel, medical examinations and other allowances, removal costs, and so on) estimated at EUR 12 700 per person will inevitably be incurred for these additional staff.

Under the legislative proposal, this Executive Board would be granted decision-making powers for certain non-regulatory tasks, where the incentive misalignments implied by the current governance model are most problematic (e.g., breach of Union law procedures and dispute settlements). As one of the objectives of this proposal is to increase the use of those powers, the permanent members of the Executive Board should be adequately supported in their tasks by additional human resources. For instance, the modifications brought to those powers should imply an increased number of requests for information (sent to competent authorities or market participants) and an increased use of dispute settlement powers. Most of those new tasks can be carried out by existing ESAs staff that can be redeployed from quasi-legislative work to supervisory convergence tasks. Indeed, in the future, it is expected that the regulatory work may slightly decrease or stagnate and more ESAs FTEs could work on supervisory convergence. As a consequence, in order to support the new Executive

[24] 6 permanent members of the Executive Boards – 1 Executive Director – 1 Chairperson = 4 new permanent members.

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Board in its new tasks, only 2 additional FTEs for EBA and EIOPA and 3 additional FTEs for ESMA should be necessary.

To summarise, this legislative financial statement assumes that changes in the governance of the ESAs may imply for each of those agencies:

The recruitment of 4 new ADs temporary agent for ESMA and 2 new ADs temporary agent for EBA and EIOPA of at least a grade of AD 13 with a high level of professional experience;

2 FTEs (all TAs) for EBA and EIOPA and 3 FTEs for ESMA to help the New Executive Board members in their new tasks and that will compensate the expected increase workload related to supervisory convergence works;

- Recruitment-related costs for these additional staff (travel, hotel, medical examinations and other allowances, removal costs, and so on).

II. Indirect Supervision by the ESAs:

i. Common tasks requiring the same resources for the 3 ESAs

In order to foster consistency within the network of financial supervisors, the peer reviews conducted by the ESAs would be replaced by independent reviews. While peer reviews are currently conducted by peer review panels mainly comprised of staff from the EU-28 national competent authorities, the independent reviews will be carried out under the supervision of the newly-established Executive Board. In order to fulfil this task, the legislative proposal provides that the Executive Board could set up a review committee. This committee would be composed of ESAs staff only, in order to ensure the independence of the reviews. The creation of such an] committee would thus require additional staff, even if some ESAs staff already participate in the current peer reviews. This increase in ESAs staff can be estimated at five additional staff members for each ESA, to compensate the absence of human resources provided by competent authorities for such exercises..

The ESAs will be also charged with a new mission aimed at coordinating the competent authorities, with a view to ensuring convergence in supervisory practices and consistent application of Union law. In this context, the ESAs would set common goals and objectives for supervision in the form of a multiannual EU Strategic Plan. The ESAs already prepares an annual work programme. However, the current ESAs' annual work programme is meant to cover regulatory and supervisory activities to be undertaken by the ESAs themselves, whereas the new EU Strategic Plan would be meant to cover supervisory activities to be carried out by competent authorities. In addition, the new coordination powers also imply that the competent authorities

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(including the Single Supervision Mechanism and the Single Resolution Mechanism/Board) would be required to draw up annual work programs (in line with the EU Strategic Plan) and submit them to the ESAs that would assess them against the EU Strategic Plan. The ESAs would then issue a recommendation or an individual approval decision addressed to each competent authority for its respective annual program and would review the implementation as it progresses. This interaction with the competent authorities and the coordination work with the relevant teams within each ESA would require additional human resources. Three additional staff members would be needed per ESA.

The ESAs would also be tasked with new missions related to Financial Technologies (FinTech). Under the legislative proposal, the ESAs would be required to: (i) pursue convergence on licensing requirements for Fintech companies, (ii) clarify and update the supervisory outsourcing frameworks, in particular as regards outsourcing to cloud services; (iii) coordinate national technological innovation hubs, and possibly issue guidelines about technological innovation hubs/regulatory sandboxes set up by Member States; and (iv) on cybersecurity, pursue convergence of IT risk management and contribute to develop, together with the Commission and the European Central Bank, cyber stress testing modalities. Dedicated resources on FinTech would be necessary to cover these additional tasks, estimated at 3 additional staff members.

ii. Tasks requiring different resources for the three ESAs

The ESAs would also have more clearly defined responsibilities in terms of monitoring the Commission's equivalence decision applicable to a third country's regulatory and supervisory framework. In the past, absent a clear legal basis for ESAs to assist the Commission with post-equivalence monitoring, some ESAs were unable to assist because of resource constraints. At present, the ESA provides an initial analysis feeding into the equivalence assessment of the Commission in one of two scenarios: the Commission has specifically requested EBA to provide technical advice, or EBA is specifically tasked to do so under some primary legislation. The ESA legislative proposal would more clearly state that the ESAs may assist the Commission with the monitoring of third-country developments (i.e., regulatory, supervisory and market developments in third country as well as the supervisory record of third country authorities) in jurisdictions subject to a positive equivalence decision by the Commission. The purpose of this monitoring is to ensure that the conditions upon which the equivalence decision is based continue to be fulfilled on an ongoing basis, with a particular emphasis on third-country developments that may impact the financial stability of the Union or of one and more of its Member States. The ESAs would notably submit an annual report on its findings to the Commission. This clarified role would require the analysis of third country developments on an ongoing basis and to coordinate the work with interlocutors within or outside the organisation.

However, the three ESAs do not have the same workload in terms of equivalence decisions. ESMA is in charge of 11 legislative texts out of 13 regulations of the three ESAs that allow for third country equivalence decisions. EIOPA and EBA are in charge of one text each providing for third country equivalence (i.e., Solvency II and CRDIV/CRR respectively). As a consequence, the additional resources needed by ESMA should be more important than those needed by EIOPA and EBA.

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The additional resources for ESMA can be estimated at 9 FTEs and related transaction costs can be estimated at EUR 1 million per year. For EIOPA and EBA, the additional human resources can be estimated at 2 FTEs and related transactions costs can be estimated at EUR 200 000 per year.

iii. Specific task for ESMA

The proposal would confer a stronger mandate on ESMA to foster cooperation among national competent authorities in relation to potential cross-border cases of market abuse, while the investigation, enforcement and prosecution would remain at national level. Under this legislative proposal, ESMA would play a role of "information hub" to collect and disseminate upon the request of regulators trading data involving multiple EU jurisdictions. In addition, if and when a competent authority identifies a suspicious cross-border transaction in the course of the oversight process, it would be required to report it to ESMA which would in turn be tasked with actively coordinating the investigatory activities at EU level. Such structure would go beyond the existing Market Abuse Regulation and Market in Financial Instruments Regulation mandates as it would give ESMA enhanced coordination powers and facilitate the work of regulators engaged in cross-border investigations. Those new tasks would require 2 additional FTEs (one for coordination, one for IT services) in addition to IT costs necessary to establish a 'drop box' where competent authorities can download and upload documents provided by their peers and related to market abuse surveillance and investigations. Those recurrent IT costs are estimated at EUR 100 000 per year and the one-off IT costs are estimated at EUR 500 000.

Among the reporting requirements set out in MiFID II/MiFIR, there is an obligation for the national competent authorities to collect data from trading venues on a high number of financial instruments and transaction reports submitted (about 15 million EU-wide) by investment firms. Under the proposal, ESMA will be charged with centralising the collection of reference data according to MiFID II/MiFIR and to collect it directly from trading venues. The existence of common IT infrastructure within ESMA is a way of enhancing supervisory convergence concerning MiFID2/MiFIR implementation. Given the increase of data to be reported, ESMA will need additional resources, including IT resources. Centralisation of reporting transactions would require 8 FTEs as well as IT costs (EUR 3 million in the first year and EUR 2 million in maintenance for the following years).

iv. Specific task for EIOPA

Under this legislative proposal, EIOPA would also be conferred with new powers in respect of internal models of insurance undertakings. EIOPA would notably be empowered to undertake an independent assessment of the applications to use or change an internal model and to issue an opinion to the competent authorities concerned. In case of disputes among competent authorities over an internal model, the possibility for EIOPA to assist in the settlement of disputes, by conducting a binding mediation, will be enhanced. EIOPA currently has an 'internal model team' that comprises 4 full-time employees (and in the near future, 5 employees). This new task conferred on EIOPA would considerably increase the workload of such a team and require additional staff specialised in internal models. Those needs in terms of human resources can be estimated at 5 additional FTEs, given the technical nature of the work.

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To summarise, this legislative financial statement assumes that the attribution of new and stronger indirect supervisory powers to the ESAs may imply:

- For EIOPA: 18 FTEs (15 TAs and 3 SNEs) would be needed; EUR 200 000 per year for translation costs
- For ESMA: 30 FTEs (24 TAs and 6 SNEs) would be needed; EUR 3.5 million one-off IT costs; EUR 2.1 million per year for IT maintenance costs; EUR 1 million per year for translation costs.
- For EBA: 13 FTEs (11 TAs and 2 SNEs) would be needed; EUR 200,000 per year for translation costs

III. Funding

i. Resources for calculation of the annual contributions

This legislative proposal aims to change the financing of the ESAs. This finance will mainly rely on a subsidy from the general budget of the EU as well as annual contributions from the entities within the remit of the authority. The legislative proposal indicates that the annual contributions from the private sector should be collected indirectly by the ESAs through authorities designated by each member States. Even in that scenario, the ESAs would have to: (i) request information from national competent authorities; (ii) calculate the annual contributions; and (iii) send this information to the Member States/national competent authoritiess. Then, the national competent authorities or the Member States would: (i) prepare the invoices; and (ii) collect the annual contributions from the private sector. Finally, the ESAs would verify the amounts of annual contributions received from the Member States/NCAs. The Member States/national competent authorities would be in charge of taking enforcement measures in case of non payment. The number of entities within the remit of the ESAs is very important. There are more than 11,600 credit institutions and investment firms within 's remit, 20,000 entities within ESMA's remit and 20,000 insurance and pension undertakings within EIOPA's remit. As a consequence, the extra-staff needed for this new task can be estimated at 4 additional FTEs (including 3 for data collection and fee calculation and 1 for running the IT system).

In addition, this new funding system will require building a new IT system. Instead of developing their own IT system, the three ESAs could develop a common IT infrastructure, which would create synergies. A common IT interface would also be more practical for financial market participants that can be subject to the payment of a fee to more than one ESA (e.g. investment firms).

Such an IT system could be evaluated at EUR 1.5 million (one off-costs, i.e. EUR 500,000 for each ESA) and then EUR 300 000 of maintenance costs per year (i.e. EUR 100,000 for each ESA. This new IT system would need to interface with the activity-based accounting system of the ESAs.

ii. Resources for calculation, invoicing and collection of supervisory fees (ESMA)

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This legislative proposal would grant ESMA new direct supervisory powers (see next section). Therefore, ESMA would levy fees on the entities that it will supervise directly or will receive fees for the services that they would provide. ESMA needs new resources to invoice those entities and collect fees from them.

Four new sectors will be transferred to ESMA (funds, prospectuses, benchmarks, data reporting services providers). It can be estimated that one FTE per sector would be needed, i.e., 3 additional FTEs.

To summarise, this legislative financial statement assumes that the changes in the funding of the ESAs may imply:

- For EBA and EIOPA: 4 additional FTEs (1 TA and 3 CAs) and IT systems estimated at EUR0.5 million (one-off costs) and EUR 100 000 per year (maintenance costs)
- For ESMA: 7 additional FTEs (1 TA and 6 CAs) and IT systems estimated at EUR 0.5 million (one-off costs) and EUR 100 000 per year (maintenance costs)

IV. Direct Supervisory powers -ESMA

As a way of introduction, it should be recalled that entities subject to direct supervision by ESMA should pay fees to ESMA (one-off costs for registration and recurrent costs for ongoing supervision) . This is the case for credit rating agencies (see COM delegated regulation 272/2012) and trade repositories (COM delegated regulation 1003/2013).

Under this legislative proposal, ESMA will be in charge of the direct supervision of European Venture Capital Funds (EuVECA), European Social Entrepreneurships Funds (EuSEF) and European Long Term Investment Funds (ELTIFs). The supervisory duties would consist of authorisation/notification (passporting) of those funds and day-to-day supervision. ESMA will also have direct investigative powers vis-a-vis those funds. Currently, there are 117 EuVECA funds (managed by 97 EuVECA managers), 7 EuSEF funds (managed by 3 EuSEF managers) and less than 10 ELTIFs authorised in the EU. As those funds are relatively new structures, the number of registrations is high (e.g., 22 new EuVECA in 2016). Because of the new legal framework applying to EuVECA or EuSEF and the changes in the capital charges for insurance companies' investments in ELTIFs, the number of requests for authorisation is expected to increase. Additional staff specialised in asset management shall therefore be hired by ESMA. Those needs in term of human resources can be estimated at 7 FTEs (including one FTE specialised in IT and one data analyst). One IT system is also needed to manage the authorisation and the supervision process as well as for the collection of data from the funds. Those costs are estimated at EUR 500 000 (one-off costs) as well as EUR 100 000 per year for maintenance.

It should be noted of this transfer of powers from the NCAs to ESMA as regards the authorisation and the day-to-day monitoring of those funds (ELTIFs, EuVECA and EuSEF funds) could also imply a reduction of the NCAs staff currently dealing with their supervision. The NCAs with the largest asset management industry employs a large number of FTEs dealing with funds, mainly UCITs and Alternative Investment Funds (AIFs) (i.e. LU 197 FTEs, FR 102, DE 120, NL 25, IT 65/70 plus regional branches, UK 100). It can be estimated that the creation of 7 FTEs at EU level to

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supervise ELTIFs, EuVECA and EuSEF should also lead to a global decrease in NCAs staff of 7 FTEs. If the number of funds increases in later years more resources will be needed but these will then be funded by fees from the industry.

Under the legislative proposal, ESMA will also be in charge of the approval of some prospectuses (wholesale non-equity prospectuses , prospectuses drawn up by specialist issuers, prospectuses of asset-backed securities, and prospectuses by third country issuers), including their supplements. It can be estimated that ESMA will approve 1600 prospectuses per year (1100 prospectuses, 400 ABS prospectuses, 60 prospectuses from specialist issuers). Furthermore, this proposal is also transferring to ESMA the supervision of advertisements related to those prospectuses that would be approved by ESMA. To carry out the above task, ESMA should have adequate staff resources with the right language skills and sufficient knowledge of the relevant national rules on consumer protection, notably for the control of marketing materials. It is estimated that ESMA would need to employ 35 FTEs (including 33 specialised in prospectuses, 1 FTE specialised in IT system and 1 data analyst). Those new powers would also imply IT costs to manage the approval process of prospectuses. Those costs are estimated at EUR 500 000 (one-off costs) as well as EUR 100 000 per year for maintenance. As the draft prospectuses can be submitted for approval in the 23 official languages of the EU, these new powers granted to ESMA would also imply translation costs estimated at EUR 1,2 million per year.

ESMA would approve 1,600 prospectuses out of the 3,500 prospectuses approved by all the NCAs across the EU, i.e. 45% of all the EU prospectuses. As a consequence, this transfer of powers should be accompanied by a decrease in the NCAs staff dealing with the approval of prospectuses that would be approved by ESMA.

This legislative proposal also foresees that ESMA will authorise and supervise administrators of critical benchmarks, approve the endorsement of third country benchmarks, and recognise the administrators located in third countries. ESMA will also be conferred with investigative powers as regards those benchmark administrators. Given the synergies that a direct supervision at EU level would provide, it can be estimated that 10 additional FTEs should be hired. This transfer of powers to ESMA would allow avoiding the recruitment of extra staff by the national competent authorities to deal with the supervision of critical benchmark administrators[25].

ESMA will be in charge of registering data reporting services providers (i.e., approved reporting mechanisms, approved publication arrangements and consolidated tape providers) that are new types of entities, created by the Market in Financial Instruments Directive. ESMA will also ensure their ongoing supervision and it will be empowered to conduct investigations. This will also necessitate additional specialised staff estimated at 20 FTEs, including 3 FTEs specialised in IT systems and 2 data analysts. Given the large number of data managed by those entities, a large IT system is needed to assess their quality, the way they are processed and published. Those IT costs are estimated at EUR 2 million (one-off costs) as well as EUR 400 000 per year

[25] For instance, the UK FCA estimated that the supervision of a critical benchmark of the LIBOR for instance would amount to one-off costs of £0.2m and ongoing costs of £0.9m, including both salaries and overheads.

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(maintenance costs). This transfer of powers to ESMA would allow avoiding the recruitment of extra staff by the national competent authorities to deal with the supervision of data reporting services providers.

To summarise, this legislative financial statement assumes that the new direct supervisory powers of ESMA over the above-mentioned entities would imply:

- The recruitment of 65 additional FTEs until 2022.
- One-off IT costs are estimated at EUR 3 million;
- Recurrent IT costs estimated at EUR 600 000 per year.
- Translation costs are estimated at EUR 1,2 million per year.

V. Overheads and legal support

The overheads in terms of resources support at the agencies level cover Human Resources, Finance, Facility Management, Coordination and IT basic support (excluding IT pan European projects). Given their extensive regulatory work, the ESAs have also important needs in terms of legal support. Based on ESMA's Activity Based Management system, the Resources overheads and legal support stand respectively account for 22% and 13% of the total staff. In other words, it means that for 7 FTEs executing a core activity, roughly 2 additional staff are allocated to resources overheads and 1 staff to legal support. Taking into account that the ESAs, while growing, can further develop economies of scale, we assumed in this Legislative Financial Statement that the overheads in terms of resources and the legal support would stand for 18% and 8% of the total staff respectively.

As a consequence, until 2022 the increase in terms of human resources (FTEs) can be summarised as follows:

EBA:

	Core Activity	**Resources Overheads**	**Legal support**	**Total**
Governance	**4**	1	1	6
Indirect Supervisory powers	**13**	3	2	18
Funding	**4**	1	0	5
Total	**21**	5	3	**29**

EIOPA:

	Core Activity	**Resources Overheads**	**Legal support**	**Total**
Governance	**4**	1	1	6
Indirect Supervisory powers	**18**	4	2	24

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Funding	**4**	1	0	5
Total	**26**	6	3	**35**

ESMA:

	Core Activity	Resources Overheads	Legal support	Total
Governance	**7**	2	1	10
Indirect Supervisory powers	**30**	7	3	40
Funding	**7**	2	0	9
Direct Supervisory powers	**65**	16	6	87
Total	**109**	27	10	**146**

In order to further reduce the costs incurred by the ESAs, a large number of new FTEs could be employed as Contract Agents (CAs) or Seconded National Experts (SNEs). However, the number of SNEs should not be overestimated. The ESAs might face difficulty recruiting such experts because of the costs this would represent for Member States and national competent authorities. In addition to these difficulties with their availability, in the area of direct supervision it should be expected that they will provide essential experience when ESMA takes up those tasks, but in the long run beyond the start-up phase it will be more important for ESMA to maintain expertise in house and rely relatively more on Temporary Agent staff. The following table provides for an indicative split of staff into those categories.

	2019	2020	2021	2022
Temporary Agents	63	104	121	147
Seconded National Experts	5	11	15	15
Contractual Agents	29	37	41	48
Total	**97**	**152**	**177**	**210**

(staff in 2021 and later years is indicative

VI. Premises

The modifications of tasks will also imply new resources in terms of premises for the ESAs. The estimated additional costs have been taken into account for both ESMA and EIOPA. Regarding EBA, no additional costs have been accounted for in this document as no information is available at this time regarding the new seat and the size of the building proposed by the Member States.

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SUPPLEMENTARY LEGISLATIVE FINANCIAL STATEMENT

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SUPPLEMENTARY LEGISLATIVE FINANCIAL STATEMENT 'AGENCIES'

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Amended proposal for a Regulation of the European Parliament and of the Council amending:

- 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),

- 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),

- 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),

- Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds,

- Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds,

- Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2015 on markets in financial instruments,

- Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds,

- Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and

- Directive 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

1.2. Policy area(s) concerned

Policy area: Financial stability, financial services and Capital Markets Union

Activity: Financial stability

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1.3. The proposal relates to

☐ **a new action**

☐ **a new action following a pilot project/preparatory action**[26]

☑ **the extension of an existing action**

☐ **a merger of one or more actions towards another/a new action**

1.4. Objective(s)

1.4.1. General objective(s)

Contribute to a deeper and fairer internal market with a strengthened industrial base

1.4.2. Specific objective(s)

Specific objective No **2.5 The financial regulatory framework is evaluated, appropriately implemented and enforced across the EU.**

[26] As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

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1.4.3. Expected result(s) and impact

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

The proposal will ensure that ML/TF risks are systematically, effectively and consistently incorporated into supervisory strategies and practices of all relevant authorities and the EBA will play a key role in achieving this. It will ensure that the supervision of financial instiutions and markets is effective and robust when it comes to addressing ML/TF challenges.

The reviews and the powers to collect and analyse data relating to weaknesses identified in the processes and procedures, governance arrangements, business models and activities of financial institutions from both AML as well as prudential authorities will enable the EBA to accelerate the pace of supervisory convergence. These tools would allow a comprehensive and up-to-date analysis of the strengths and weaknesses in supervision, as well as provide a view on emerging ML/TF threats and vulnerabilities that may have cross-border effects.

The creation of a internal permanent Anti-Money Laundering Committee within the EBA composed of the heads of all national AML supervisory authorities will ensure an adequate involvement and level of representation of all national AML/CFT supervisors responsible for all financial sector entities concerned The resources and expertise currently scattered across the three ESAs and the Joint Committee's AML sub-committee are going to be centralised and given a more robust governance structure.

1.4.4. Indicators of performance

Specify the indicators for monitoring progress and achievements.

Possible indicators:

- **Number of adopted technical standards relative to those required to be developed**
- **Number of draft technical standards submitted to the Commission for endorsement within the deadlines**
- **Number of technical standards proposed but rejected by the Commission**
- **Number of adopted non-binding recommendations relative to those required to be developed**
- **Number of requests for explanation by CAs**
- **Number of investigations of breach of EU law successfully closed**
- **Average duration of an investigation of breach of EU law**
- **Number of meetings of the Anti-Money Laundering Committee**

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- **Number of bilateral meetings with competent authorithies**
- **Number of joint on-site inspections**
- **Number of hours training for competent authorithies**
- **Number of twinning programmes for competent authorithies**
- **Number of staff participating in exchanges / secondments**
- **Number of peer reviews conducted**
- **Number of reviews pertaining to AML/CFT issues conducted**
- **Number of obstacles to convergence identified and removed**
- **New practical tools and instruments to promote convergence**
- **Number of analytical studies published**
- **Number of fit and porper assessments**
- **Number of on-site inspections and dedicated investigations**
- **Number of guidelines and recommendations issued**
- **Number of meetings with supervised entities**
- **Number of complaints / appeals from supervised companies**
- **Number of formal decisions adopted addressing emergency situations**
- **Number of opinion on approriate preventative or remedial actions issued**
- **Number of populated databases**
- **Number of stress tests or equivalent exercises carried out**
- **Number of risk assessment exercises carried out**
- **Ratio of proposed versus adopted final budget (per annum)**

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

The Commission amends its existing proposal to amend the ESAs founding regulations with the objective of reinforcing the AML/CTF mandate therein.

The goals of the proposed amendments are as follows:

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• to optimise the use of expertise and resources dedicated to the execution of AML/CFT related tasks

• to clarify the scope and content of the AML/CFT related tasks;

• to reinforce the tools for carrying out the AML/CFT related tasks;

• to strengthen the coordination role of the EBA for international AML/CFT related issues.

1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.

Reasons for action at European level (ex-ante)

Under the current EU framework, responsibilities for the supervision of financial institutions are regulated across a number of legislative instruments relevant to the banking, insurance, pensions and securities sectors with respect to prudential aspects, and through the AMLD with respect to AML/CFT aspects. Supervsiory powers in the prudential framework are extensively harmonised whereas the distribution of responsibilities is guided by the principle of home country control. This complex framework, involving different types of authorities located in different jurisdictions, with different supervisory tasks, powers and responsibilities, is not conducive to seamless cooperation with respect to AML/CTF aspects, especially where financial institutions operate across borders. That fact was in particular evidenced by the recent money laundering cases which exposed the insufficient cooperation between AML and prudential supervision of several European banks.

Expected generated Union added value (ex-post)

The objectives of this proposal amending the ESAs review proposal are as follows:

1) to clarify and give more explicit mandate and powers at EU level in order to ensure a consistent, systematic and effective monitoring and assessment of risks of money laundering and terrorist financing in the Union's financial system, and;

2) to optimise the use of expertise and resources dedicated to the execution of anti-money laundering and terrorist financing related tasks in the supervision of the Union's financial system.

For this purpose, it is proposed to give a leading and coordination role to the European Banking Authority (EBA) given that it is in the banking sector that money-laundering and terrorist financing risks are the most likely to have systemic impact. On the basis of existing tools and powers of the ESAs as amended by the ESAs review proposal, EBA should focus on ensuring that risks of money-laundering and terrorist financing in the Union's financial system are effectively and consistently incorporated into the supervisory strategies and practices of all relevant authorities.

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1.5.3. Lessons learned from similar experiences in the past

Notwithstanding the strengthened legislative framework for anti-money laundering and combating terrorist financing, several recent cases of money laundering in European banks have raised concerns that gaps remain in the EU's supervisory framework. In particular, a major gap relates to the absence of a clear articulation between the frameworks for the prudential supervision of banks and other financial institutions, on the one hand, and the supervisory framework for combating money laundering and terrorist financing, on the other hand. Further concerns are associated to delayed supervisory reactions and shortcomings with respect to cooperation and information sharing – both at domestic level, between prudential and AML authorities, and across borders, between authorities in various Member States or in third countries.

The EBA responsibilities in the AML/CFT area stem from their founding regulations, which specify that they are required to ensure the integrity, transparency and orderly functioning of financial markets, strengthen supervisory cooperation and prevent regulatory arbitrage. As part of this objective, the ESAs are specifically mandated to ensure that the Union's AML/CFT law is applied consistently, efficiently and effectively. Moreover, the AMLD and Fund Transfers Regulation empower the ESAs to promote convergence in AML/CFT supervision on specific aspects by issuing guidelines on risk-based supervision and preparing draft regulatory technical standards.

The ESAs should be enabled to step up their efforts into promoting further convergence and better coordination in relation to AML/CFT issues. Furthermore, the cumbersome and lengthy process underpinning decision-making in the ESA's Joint Committee, combined with the different degrees of prioritisation of AML/CFT issues by the three ESAs have until now rendered the ESAs' role rather limited. Also the absence of an explicit review mandate in this field, has so far prevented the ESAs from taking the initative of reviewing supervisory action in the AML/CFT area.

1.5.4. Possible synergies with other appropriate instruments

This amending proposal is consistent with the Commission's on-going efforts to strengthen the EU's framework for financial supervision and in particular to combat money laundering and terrorist financing. It is also consistent with the conclusions laid down in the Reflection Paper delivered on 31th August 2018 by the Joint Working Group composed of the chairpersons of the ESAs, the chairperson of the Supervisory Board of the Single Supervisory Mechanism, the chairperson of the Joint Committee's anti-money laundering sub-committee and the Commission established to initiate a collective reflection on how to improve the framework for cooperation between anti-money laundering/terrorist financing and prudential supervision.

between anti-money laundering/terrorist financing and prudential supervision.

1.6. **Duration and financial impact of the proposal/initiative**

☐ **limited duration**

– ☐ **Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY**

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– ☐ **Financial impact from YYYY to YYYY**

☑ **unlimited duration**

– **Implementation with a start-up period from 2019 to 2020,**

– **followed by full-scale operation.**

1.7. Management mode(s) planned[27]

☐ **Direct management by the Commission through**

– ☐ **executive agencies**

☐ **Shared management with the Member States**

☑ **Indirect management by entrusting budget implementation tasks to:**

☐ **international organisations and their agencies (to be specified);**

☐**the EIB and the European Investment Fund;**

☑ **bodies referred to in Articles 70 and 71;**

☐ **public law bodies;**

☐ **bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;**

☐ **bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;**

☐ **persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.**

Comments

N/A

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

[27] **Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx.**

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In line with already existing arrangements, the EBA prepares regular reports on its activities (including internal reporting to Senior Management, reporting to Boards and the production of the annual report), and is subject to audits by the Court of Auditors and the Commission's Internal Audit Service on its use of resources and performance. Monitoring and reporting of the actions included in the proposal will comply with the already existing requirements as well as with any new requirements resulting from this proposal.

2.2. Management and control system(s)

2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

In relation to the legal, economic, efficient and effective use of appropriations resulting from the proposal, it is expected that the proposal would not bring about new significant risks that would not be currently covered by an existing internal control framework.

2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

Management and control systems as provided for in the ESAs Regulations are already implemented. ESAs work closely together with the Internal Audit Service of the Commission to ensure that the appropriate standards are met in all areas of internal control framework. These arrangements will apply also with regard to the role of ESA according to the present proposal.

In addition, every financial year, the European Parliament, following a recommendation from the Council, grants discharge to the EBA for the implementation of their budget.

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2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.

For the purposes of combating fraud, corruption and any other illegal activity, the provisions of Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) apply to the EBA without any restriction.

The EBA has a dedicated anti-fraud strategy and resulting action plan. The EBA's strengthened actions in the area of anti-fraud will be compliant with the rules and guidance provided by the Financial Regulation (anti-fraud measures as part of sound financial management), OLAF's fraud prevention policies, the provisions provided by the Commission Anti-Fraud Strategy (COM(2011)376) as well as set out by the Common Approach on EU decentralised agencies (July 2012) and the related roadmap.

In addition, the Regulations establishing the EBA as well as the EBA Financial Regulations set out the provisions on implementation and control of the EBA budget and applicable financial rules, including those aimed at preventing fraud and irregularities

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- **Existing budget lines**

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff.[28]	from EFTA countries[29]	from candidate countries[30]	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	12.020400 - EBA	Diff	NO	NO	NO	NO

[28] Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

[29] EFTA: European Free Trade Association.

[30] Candidate countries and, where applicable, potential candidates from the Western Balkans.

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- **New budget lines requested – Not applicable**

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	[XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO

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3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial framework	**1a**	**Competitiveness for growth and jobs**

EBA			**2019**	**2020**			**Enter as many years as necessary to show the duration of the impact (see point 1.6)**			**TOTAL**
Title 1: Staff[31]	**Commitments**	**(1)**	**0.621**[32]	**1.132**						**1.753**
	Payments	**(2)**	**0.621**	**1.132**						**1.753**
Title 2: Administrative expense	**Commitments**	**(1a)**	**0.040**	**0.066**						**0.106**
	Payments	**(2a)**	**0.040**	**0.066**						**0.106**
Title 3:	**Commitments**	**(3a)**	**2.055**	**0.055**						**2.110**
	Payments	**(3b)**	**2.055**	**0.055**						**2.110**
TOTAL appropriations for EBA	**Commitments**	**=1+1a**	**2.716**	**1.253**						**3.969**

[31] The staff expenditure includes salary costs, pension costs and recruitment costs.

[32] In 2019 the salary costs are adjusted applying the correction coefficient for London for January-March and the correction coefficient for Paris for April-December. In 2020 solely the correction coefficient for Paris is applied.

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		+3 a								
	Payments	**=2 +2 a +3 b**	**2.716**	**1.253**						**3.969**

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Heading of multiannual financial framework	5	'Administrative expenditure'

EUR million (to three decimal places)

		2019	2020			Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
DG: <…….>									
• Human Resources									
• Other administrative expenditure									
TOTAL DG <…….>	Appropriations								

TOTAL appropriations under HEADING 5 of the multiannual financial framework	(Total commitments = Total payments)								

EUR million (to three decimal places)

		2019	2020			Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial	Commitments	2.716	1.253						3.969
	Payments	2.716	1.253						3.969

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framework									

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3.2.2. Estimated impact on EBA's appropriations

– ☐ **The proposal/initiative does not require the use of operational appropriations**

– ☑ **The proposal/initiative requires the use of operational appropriations, as explained below:**

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs			Year 2019		Year 2020		Year N+2		Year N+3		Enter as many years as necessary to show the duration of the impact (see point 1.6)						TOTAL	
	OUTPUTS																	
⇩	Type[33]	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1[34]…																		
Combating money laundering and terrorist financing				2.055		0.055												2.110
- Output																		
- Output																		

[33] Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

[34] As described in point 1.4.2. 'Specific objective(s)…'

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Subtotal for specific objective No 1																
SPECIFIC OBJECTIVE No 2 ...																
- Output																
Subtotal for specific objective No 2																
TOTAL COST		**2.055**		**0.055**												**2.110**

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3.2.3. Estimated impact on EBA's human resources

3.2.3.1. Summary

– ☐ **The proposal/initiative does not require the use of appropriations of an administrative nature**

– ☑ **The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:**

EUR million (to three decimal places)

	2019	2020			Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
Temporary agents (AD Grades)	0.401	0.750						1.151
Temporary agents (AST grades)								
Contract staff	0.220	0.382						0.602
Seconded National Experts								
TOTAL	0.621	1.132						1.753

Staff requirements (FTE):

	2019	2020	2021	2022	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
Temporary agents (AD Grades)	2	4	4	4	4	4	4	
Temporary agents (AST grades)								

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Contract staff	**2**	**3.8**	**3.8**	**3.8**	**3.8**	**3.8**	**3.8**	
Seconded National Experts								

TOTAL	**4**	**7.8**	**7.8**	**7.8**	**7.8**	**7.8**	**7.8**	

The planned recruitment dates are January 2019 and January 2020 and hence 100% costs have nebeen included.

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3.2.3.2. Estimated requirements of human resources for the parent DG

– ☑ **The proposal/initiative does not require the use of human resources.**

– ☐ **The proposal/initiative requires the use of human resources, as explained below:**

Estimate to be expressed in full amounts (or at most to one decimal place)

		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
• Establishment plan posts (officials and temporary staff)								
XX 01 01 01 (Headquarters and Commission's Representation Offices)								
XX 01 01 02 (Delegations)								
XX 01 05 01 (Indirect research)								
10 01 05 01 (Direct research)								
• External staff (in Full Time Equivalent unit: FTE)[35]								
XX 01 02 01 (AC, END, INT from the 'global envelope')								
XX 01 02 02 (AC, AL, END, INT and JPD in the Delegations)								
XX 01 04 yy[36]	- at Headquarters[37]							
	- in Delegations							

[35] AC = Contract Staff; AL = Local Staff; END = Seconded National Expert; INT = agency staff; JPD = Junior Professionals in Delegations .

[36] Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

[37] Mainly for the Structural Funds, the European Agricultural Fund for Rural Development (EAFRD) and the European Fisheries Fund (EFF).

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XX 01 05 02 (AC, END, INT – Indirect research)							
10 01 05 02 (AC, END, INT – Direct research)							
Other budget lines (specify)							
TOTAL							

XX is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	
External staff	

Description of the calculation of cost for FTE units should be included in the Annex V, section 3.

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3.2.4. Compatibility with the current multiannual financial framework

– ☐ **The proposal/initiative is compatible the current multiannual financial framework.**

– ☑ **The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.**

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.

A reprogramming of the EBA Budget line (12.020400) is required. Although the amounts envisaged will ultimately be fully covered by fees from the industry an advance will be required from the EU budget to cover the costs incurred during at least the first 24 months of operation.

After adoption of the proposal, the Commission will be required to adopt a delegated act specifying in detail the methodology for calculating and collecting the fees. This will then require non-objection from the European Parliament and the Council and publication in the Official Journal before fees can start being collected. Nevertheless, these costs should be recuperated over time, at the latest in 2021.

– ☐ **The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework[38].**

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

[…]

3.2.5. Third-party contributions

– **The proposal/initiative does not provide for co-financing by third parties.**

[38] **See Articles 11 and 17 of Council Regulation (EU, Euratom) No 1311/2013 laying down the multiannual financial framework for the years 2014-2020.**

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3.3. Estimated impact on revenue

– ☑ **The proposal/initiative has no financial impact on revenue.**

– ☐ **The proposal/initiative has the following financial impact:**

– ☐ **on own resources**

– ☐ **on other revenue**

– ☐ **please indicate, if the revenue is assigned to expenditure lines**

EUR million (to three decimal places)

Budget revenue line:	**Appropriations available for the current financial year**	**Impact of the proposal/initiative[39]**						
		Year N	**Year N+1**	**Year N+2**	**Year N+3**	**Enter as many years as necessary to show the duration of the impact (see point 1.6)**		
Article ……								

For miscellaneous 'assigned' revenue, specify the budget expenditure line(s) affected.

[…]

Specify the method for calculating the impact on revenue.

[…]

The actual allocation of the resources presented above will be reviewed in the global context of the negotiations on the present legislative proposal, which may require a revised legislative financial statement setting out the resources implications of the tasks to be entrusted to the ESAs, without prejudice to the resources authorised in the annual budgetary procedure:

[39] As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.

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