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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulations (EU) No 1095/2010, No 648/2012, No 600/2014, No 909/2014, 2015/2365, 2019/1156, 2021/23, 2022/858, 2023/1114, No 1060/2009, 2016/1011, 2017/2402, 2023/2631 and 2024/3005 as regards the further development of capital market integration and supervision within the Union

{SEC(2025) 943 final} - {SWD(2025) 943 final} - {SWD(2025) 944 final}

(Text with EEA relevance)

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Reviving the EU's economy and strengthening its international position are central to the European Commission's mandate. As stated in the Draghi and Letta reports[1] and in the 2024-2029 Commission political guidelines[2], urgent action is required to improve economic performance and to ensure that the EU can decide its own future. The Competitiveness Compass[3] sets out a comprehensive plan to strengthen the EU's economy and harness its potential, with the Savings and Investments Union (SIU) acting as a key enabler for this plan. In March 2025, the Commission unveiled its SIU strategy[4]. It aims to make it easier for citizens to grow their wealth by investing in capital markets, to increase the investment capacity in the EU, and to integrate the EU's capital markets. By breaking down barriers in financial markets and facilitating cross-border capital flows, the SIU strategy can support the EU economy, stimulate job creation, and enhance competitiveness.

The need for urgent action has been widely recognised at the highest political level, including in statements and calls to action from the European Parliament[5], the European Council[6], the Eurogroup[7], the Euro Summit[8], and the European Central Bank (ECB)[9]. The International Monetary Fund ('IMF')[10] and the Organisation for Economic Cooperation and Development ('OECD')[11] have also called for action to address remaining barriers to financial market integration.

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1 E. Letta "Report on the Future of the Single Market". Available here: https://single-market-economy.ec.europa.eu/news/enrico-lettas-report-future-single-market-2024-04-10_en; Mario Draghi, 'The Future of European Competitiveness,' 2025. https://commission.europa.eu/topics/eu-competitiveness/draghi-report_en

2 Political Guidelines 2024-2029 | European Commission. https://commission.europa.eu/document/e6cd4328-673c-4e7a-8683-f63ffb2cf648_en

3 COM(2025) 30 final. https://commission.europa.eu/topics/eu-competitiveness/competitiveness-compass_en

4 Savings and investments union strategy to enhance financial opportunities for EU citizens and businesses - Finance

5 https://www.europarl.europa.eu/doceo/document/TA-10-2025-0185_EN.pdf

6 https://www.consilium.europa.eu/media/m5jlwe0p/euco-conclusions-20240417-18-en.pdfhttps://www.consilium.europa.eu/media/viyhc2m4/20250320-european-council-conclusions-en.pdf

7 https://www.consilium.europa.eu/en/press/press-releases/2024/03/11/statement-of-the-eurogroup-in-inclusive-format-on-the-future-of-capital-markets-union/

8 "*We underline the sense of urgency and the shared responsibility for fast and decisive progress on a Savings and Investments Union with a particular focus on the Capital Markets Union to mobilise savings and unlock the financing of necessary investments to support EU competitiveness"*. See Eur Summit meeting (20 March 2025) – Statement – page 1, https://www.consilium.europa.eu/media/ce3fkikz/20250320-euro-summit-statement-en.pdf

9 European Central Bank: "Capital markets union: a deep dive". Revised May 2025. Available here: https://www.ecb.europa.eu/pub/pdf/scpops/ecb.op369~246a103ed8.en.pdf?503a501a41fd4b4659d3b0616c405190

10 International Monetary Fund: "A Recovery Short of Europe's Full Potential", 24 October 2024. Available here: https://www.imf.org/en/Publications/REO/EU/Issues/2024/10/24/regional-economic-outlook-Europe-october-2024

11 OECD, Economic Surveys: European Union and Euro Area 2025, July 2025, Available here: https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/07/oecd-economic-surveys-european-union-and-euro-area-2025_af6b738a/5ec8dcc2-en.pdf

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Implementing the SIU requires comprehensive policy measures that will have an impact on various aspects of the EU's financial system, with a holistic approach encompassing both the capital markets and the banking sector. These measures are grouped into four interconnected pillars: (i) citizens and savings, (ii) investments and financing, (iii) market integration and scale; and (iv) efficient supervision. This legislative initiative focuses on market integration and scale, and efficient supervision.

This legislative initiative focuses on barriers stemming from the lack of harmonisation of EU rules and supervisory approaches resulting in the fragmentation and underperformance of EU capital markets. These barriers hinder market-driven efforts to expand business and build scale across the single market through cross-border activities. They also hinder the use of innovative digital technologies in three areas that are essential for the smooth and efficient functioning of EU capital markets, namely trading, post-trading and asset management.

Despite the harmonisation of regulatory frameworks and the existence of financial services passports, persistent fragmentation as a result of these barriers limits the potential benefits of the EU's single market. These barriers arise from differences in regulatory approaches, often reflecting the use of discretions in the transposition and interpretation of EU directives and varying approaches to supervision. These barriers unnecessarily complicate the cross-border activities of financial market participants. As a result, either they cannot fully benefit from economies of scale and improved operational efficiency or there is no sufficient incentive for them to facilitate cross-border investments. This raises costs, delays time to market, restricts the choice of financial products and services available to businesses and the public, and makes those products and services more expensive.

This initiative also emphasises the importance of technological developments and innovation in the financial sector. Regulatory barriers are hindering the uptake and use of newer-generation technologies, such as distributed ledger technology (DLT) and tokenisation of financial instruments. Such technologies have the potential to improve financial services for people and businesses.

Divergent supervisory practices can also act as a barrier to capital market integration, as financial market participants operating across borders must manage different requirements across the single market. This fragmentation of supervisory practices creates additional costs, increased complexity and legal uncertainty for operators, especially those who intend to do business and invest across the EU. The legal uncertainty and the uneven playing field that this creates makes the EU a less appealing investment destination.

Objectives of the proposal

The general objective of this initiative is to integrate EU capital markets and improve the functioning of the EU single market in financial services for the benefit of investors, businesses and the wider EU economy. This contributes to the SIU's core objective to enable access to a wider range of financial opportunities for investors and businesses and to mobilise savings for productive investment.

The initiative will contribute to achieving the general objective through the following specific objectives.

Enable further market integration and scale effects

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The proposed amendments aim to remove barriers to integration in the core sectors of trading, post-trading and asset management, and improve the ability of market actors to operate more seamlessly across Member States, thereby enabling market integration and scale. It will foster competition, ensuring that scale benefits are effectively passed on to end users.

Enable integrated supervision

More efficient and harmonised supervision is essential to integrate EU capital markets. As progress is made towards deeper capital market integration, it is crucial for the EU supervisory framework to evolve in lock step. The initiative therefore aims to address the shortcomings and inefficiencies in the current supervisory framework, by tackling inconsistencies and complexities arising from fragmented national supervisory approaches. It aims to make supervision more effective, more conducive to cross-border activities, and more responsive to emerging risks, while reducing unnecessary burdens on firms. For certain significant and cross-border entities in the areas of trading and post-trading, and for entities in new areas like crypto-asset service providers, pooling supervision at EU level can promote market integration and more efficient functioning of the capital markets. For large asset management groups and investment funds, stronger convergence and coordination of supervision at EU level will remove barriers and increase cross-border activities. Across the board, the initiative aims to strengthen the use and effectiveness of the supervisory convergence tools of the European Securities and Markets Authority (ESMA), and introduce new tools, thereby supporting a single market for financial service.

Facilitate innovation

The proposed amendments also aims to remove regulatory obstacles to DLT-based innovation, with a view to creating a framework to enable the use of new technologies in the provision of financial services. For innovation to thrive, both the DLT Pilot Regime and the standard rulebook should allow the industry to use DLT to bring efficient solutions to the market, while ensuring that associated risks are mitigated. By removing these barriers, the proposed amendments also aim to increase competition in the area of trading and post-trading services, which will lead to improved market outcomes and enhancing capital market efficiency.

Achieve simplification

The review of specific legislative files presents an opportunity to simplify by reducing administrative burdens. The package aims to streamline regulatory requirements, making cross-border activities more cost-effective. Simplification is pursued in several ways: moving certain provisions from directives to regulations; narrowing the scope for nationally imposed ‘gold-plating’ measures; refining Level 2 empowerments; streamlining overlapping, costly and inefficient supervisory arrangements; and more generally removing barriers in EU and national frameworks for market operators and investors.

The market integration and supervision package comprises three legislative proposals, namely: proposals for a Master Regulation and a Master Directive which amend several existing pieces of EU capital market legislation, and a proposal for a Settlement Finality Regulation, which amends the Financial Collateral Directive and repeals the Settlement Finality Directive.

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- **Consistency with existing policy provisions in the policy area**

The proposed amendments in this package are consistent with existing provisions in the field of financial services. They aim to foster stronger market integration and achieve efficiency gains by: (i) removing barriers to cross-border activity and innovation, (ii) increasing regulatory and supervisory convergence; and (iii) strengthening supervisory capacity in the relevant sectors. These amendments are consistent with the goals of competition, efficient functioning of the single market in financial services, and promoting the freedom to provide services across the EU, without compromising financial stability, market integrity or investor protection. This ensures that the EU financial market remains safe and globally attractive. Implementing these amendments as a package allows to ensure consistency across sectoral legislations under review. The proposed amendments also seek to address shortcomings and inefficiencies in the current supervisory framework by tackling the inconsistencies and complexities arising from fragmented national supervisory approaches.

- **Consistency with other Union policies**

This proposal is consistent with the core objective of the SIU strategy, which is to enable access to a wider range of financial opportunities for investors and businesses, thereby mobilising savings for productive investment. This proposal is interlinked with other initiatives included in the SIU strategy, for instance the initiatives on pensions, on increasing retail participation in capital markets, and on market-based financing of the real economy. These initiatives are designed to reinforce each other and collectively contribute to the overall goals. Other measures in the SIU strategy, such as the financial literacy strategy, the recommendation on savings and investment accounts, the measure to promote equity investments, including through legislative programmes, and the measures on supplementary pensions will be less effective if the barriers to further integration of EU capital markets are not removed and continue to impose high costs on investors and businesses.

The proposal is also consistent with the EU policy to enhance Europe's competitiveness, the strategy outlined in the Competitiveness Compass, the single market strategy, the EU start-up and scale-up strategy, and the Communication on a Simpler and Faster Europe.

The proposed amendments will boost the attractiveness of EU capital markets, thereby helping to finance the EU's priorities. They will do so, in particular: (i) by further harmonising the rules; (ii) making it easier for trading venues, financial market infrastructures and investment funds to operate and provide services across borders, thus reducing costs for all market participants; and (iii) as regards innovation, by ensuring that the DLT Pilot Regime, which is designed to support DLT-based innovation in financial services, and post-trade legislation remain fit for purpose for innovation.

This package is also consistent with, and will contribute to, the Commission's simplification agenda and the single market strategy. It will do so, in particular: (i) by harmonising and streamlining some of the rules applicable to trading, post-trading and investment funds; and (ii) by moving part of the requirements applicable to those sectors from Directives to Regulations.

By removing barriers to further integration of capital markets, the measures under this initiative complement other EU initiatives, such as the 28th regime. By streamlining cross-border offering of trading, post trading services and asset management services, thereby simplifying access to public markets, this option enhances the ability of companies operating

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under a 28th regime to leverage the benefits of a more integrated EU capital market even more effectively.

Finally, this initiative is in line with the Commission's digital finance strategy[12], which supports the deployment of new technologies in financial services, by ambitiously adapting the existing rules to accommodate new technologies, such as DLT.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

Article 114 of the Treaty on the Functioning of the European Union (TFEU) confers on the European Parliament and the Council the competence to adopt measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which relate to the establishment and functioning of the internal market. Article 114 TFEU allows the EU to take measures to eliminate existing barriers to the exercise of fundamental freedoms and to prevent such barriers from emerging. This includes barriers that make it difficult for economic operators, including investors, to take full advantage of the benefits of the internal market.

The amendments contribute to the correct and safe functioning of the single market, safeguard competition and preserve incentives for innovation. Consequently, the appropriate legal basis is Article 114 TFEU.

• Subsidiarity (for non-exclusive competence)

Under Article 4 of TFEU, EU action to complete the internal market must be appraised in light of the subsidiarity principle set out in Article 5(3) of the Treaty on European Union. According to the principle of subsidiarity, action should be taken at EU level only when the objectives of the proposed action cannot be achieved sufficiently by Member States alone and thus require action at EU level.

The proposed amendments comply with the subsidiarity principle. They aim to tackle the existing barriers to the cross-border provision of services preventing the creation of a genuine single market for capital.

National action alone cannot resolve these challenges. The diversity of Member States' legal frameworks, supervisory traditions and market structures means that reforms undertaken individually would not deliver the necessary convergence of regulatory and supervisory standards and market practices. Action at EU level is therefore required to remove those barriers, enhance market integration and facilitate market integration.

• Proportionality

The initiative involves a broad review of the rules on trading, post-trading, asset management and investment funds to harmonise and streamline the requirements for businesses. This includes easing some requirements for cross-border groups and services provided on a cross-border basis, under a single license. In the settlement area, interconnectedness between central securities depositories (CSDs) would also be improved. The review also includes amendments to post-trade legislation to make it more technologically neutral, and to the DLT Pilot Regime

[12] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0591

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(DLTPR), to expand its scope and scale, and to make it more flexible and proportionate. Investment funds would gain immediate and full single market access upon authorisation, which would enable them to operate more efficiently across borders. On supervision, the amendments aim to strengthen the use and effectiveness of supervisory convergence tools and powers, focusing on ESMA and its governance. Supervisory powers would also be transferred to ESMA for the most significant and cross-border market infrastructures (central counterparties, CSDs and trading venues) and for all crypto-asset service providers (CASPs). ESMA would also have a reinforced role in fostering supervisory convergence for undertakings for collective investment in transferable securities (UCITS) and alternative investment funds (AIFs) marketed on a cross-border basis.

To the extent that divergences in the application of EU rules as well as differences between Member States' national laws create market inefficiencies and burdens, the amendments will create a more harmonised and proportionate application of the EU rules for cross-border activities.

- **Choice of the instrument**

It is proposed to implement the measures through a proposal for a Regulation amending the following acts: the Markets in Financial Instruments Regulation (MiFIR), the European Market Infrastructure Regulation (EMIR), the Central Securities Depository Regulation (CSDR), the Cross-Border Distribution Regulation (CBDR), the DLT Pilot Regime Regulation, the Markets in Crypto-Assets Regulation and the ESMA Regulation. To ensure appropriate alignment with the substantive amendments in those Regulations, amendments will also be made to the Securities Financing Transactions Regulation and the CCP Recovery and Resolution Regulation. A Regulation is the most appropriate legal instrument because the proposed amendments are inter-linked and are part of a broader political effort to create a single market for capital by harmonising the rules and removing barriers to cross-border activities in the financial sectors that form the backbone of capital markets financing. Combining the amendments in a legislative package helps ensure that the overall text is consistent.

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

- ***Ex-post* evaluations / fitness checks of existing legislation**

Currently, there are no effective solutions to ensure cross-border provision of services in the sectors that fall within the scope of this package or they are hampered by divergent national rules. Moreover, the EU rules need to be updated to make it easier to provide financial services using new technologies, in particular DLT, which can improve the efficiency of the capital markets.

Non-aligned supervisory practices and weak supervisory convergence tools and powers at EU level exacerbate these issues. These barriers lead to market inefficiencies, limited economies of scale, reduced liquidity in capital markets, increased costs for investors, restricted access to a broader investor base across borders, and higher capital costs for EU companies, ultimately undermining the productivity and competitiveness of the EU economy.

In the trading area, rules governing trading venues are not fully harmonised, and subject to a certain degree of national discretion. Passporting opportunities for regulated markets are not explicitly spelled out, leaving room for Member States to set additional requirements in their

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national laws. Differences in transposition in national laws and the possibility for additional gold-plating by Member States makes the overall regulatory landscape complex, in particular for cross-border entities or groups. It creates legal uncertainty and an uneven playing field among Member States, preventing the emergence of trading structures that operate in several Member States. To address barriers linked to supervisory fragmentation, the relevant provisions of the Markets in Financial Instruments Regulation should be amended to introduce direct EU-level supervision of certain trading venues.

In the post-trading area, settlement markets need to be more integrated and greater use needs to be made of T2S to facilitate cross-border activity by issuers, CSDs and investors. Even though settlement is governed by a Regulation (the Central Securities Depository Regulation), regulatory barriers to cross-border settlement persist. For instance, national legislation may impose additional restrictions on the freedom of issuance beyond those included in the Central Securities Depository Regulation provisions. Additionally, the passporting framework, intended to facilitate cross-border operations, is considered costly and burdensome for CSDs. The Central Securities Depository Regulation does not adequately consider market infrastructure groups from an operational, regulatory and supervisory perspective. This makes it difficult for them to reap the benefits of consolidation and achieve economies of scale. There is therefore a need to harmonise requirements for cross-border businesses and to streamline requirements and reduce operational complexity in the EU settlement infrastructures (i.e. CSDs, including the T2S costs passed on by CSDs), to gain efficiency and reduce costs. Moreover, the Central Securities Depository Regulation needs to be amended to make it more technologically neutral and address legal uncertainty around key concepts, definitions and requirements that have not kept pace with technological advances. To address barriers linked to supervisory fragmentation, the relevant provisions of the Central Securities Depository Regulation should be amended to introduce direct EU-level supervision of certain post-trading infrastructures.

In the asset management area, the marketing of UCITS funds and AIFs is mainly governed by Directives, which allow for national discretions in many areas. The cross-border marketing of UCITS and AIFs is currently time-consuming and administratively difficult to manage. Many Member States have country-specific requirements for marketing communications and disclosures in fund documentation, as well as specific administrative and operational requirements (such as additional marketing rules, regulatory fees, reporting obligations, and local physical presence requirements). These hinder the development of an effective EU passport for investment funds in the Union. Furthermore, the Cross-Border Distribution Regulation (the CBDR) acknowledges that Member States have different rules on regulatory fees and charges and provides optionality on the ex-ante verification of marketing communications. There is therefore a need to significantly reduce diverging national practices in the marketing of funds across the Union, as well as presenting the rules relating to the cross-border distribution of funds in a more efficient way, i.e. within the same legal text, in order to foster greater harmonisation in the cross-border marketing of UCITS and AIFs. This approach involves amendments to the CBDR and transferring certain provisions (with amendments) from the Directives 2009/65/EC and 2011/61/EU into the CBDR. To reduce supervisory fragmentation and improve collaboration between national competent authorities, ESMA's role in addressing cross-border barriers and resolving disagreements between the home and host national authorities should be reinforced.

In the innovation area, there are two main obstacles related to implementing DLT-based solutions in Europe. First, the DLT Pilot Regime Regulation places a heavy compliance burden on small businesses and start-ups, particularly due to relying on extensive

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requirements in the Central Securities Depository Regulation and Markets in Financial Instruments Directive, that may not be well-suited to the gradual scaling-up of operations and the specific characteristics of DLT. The DLT Pilot Regime Regulation also imposes stringent limitations on the scope and scale of the activities of participants in the pilot regime. It does so, for example, by introducing aggregate limits to the activity of an infrastructure operating under the Regulation and restricting the type and issuance size of assets that can be intermediated under the Regulation. Furthermore, market participants do not have clarity about the long-term prospects for the DLT Pilot Regime, given its experimental nature and the time limitations set out in the Regulation. Second, beyond the shortcomings of Europe's bespoke framework for DLT, the standard (non-DLTPR) regulatory frameworks, in particular post-trade legislation do not currently provide legal certainty for those wishing to use DLT outside the DLTPR. These uncertainties increase compliance risks and costs for market participants willing to explore innovative business models.

On supervision, there are two main issues. First, supervision of financial entities is largely conducted at national level. This results in a fragmented supervisory landscape that creates barriers to cross-border activities because of divergent application of EU law and divergent supervisory practices, approaches and requirements. Enforcement actions, such as infringements, can address specific instances of non-compliance, and peer reviews aim to strengthen supervisory convergence, but they are not sufficient to address the underlying issues of non-aligned supervisory practices. Second, there are limited mandates and tools available at the EU level to enforce consistent application of EU rules and adopt a unified single market supervisory approach. The use of supervisory convergence tools remains sporadic. They have limitations, are not used consistently and can be difficult to use due to procedural constraints, and lack of enforceability.

- **Stakeholder consultations**

The following consultation activities have helped to shape the content of this proposal:

- European Commission 'Call for evidence on the Savings and Investments Union: Fostering integration and scale and more efficient supervision in EU capital markets', from 8 May to 5 June 2025;
- European Commission targeted consultation on 'Integration of EU capital markets' from 15 April to 10 June 2025.

The call for evidence generated 53 responses from a broad range of stakeholders. Business associations formed the largest group, accounting for 62.3% of responses, and representing the investment, banking and asset management industries. Companies and businesses, primarily from the financial sector, accounted for 20.8%. Individual members of the public accounted for 9.4% of responses, while other categories, including chambers of commerce, professional associations and advisory firms, accounted for 5.7%, and non-governmental organisations (NGOs) accounted for 1.9%.

The purpose of the call for evidence was to (i) gather stakeholders' views on barriers that prevent the EU's trading and post-trading infrastructures from reaping the benefits of a truly frictionless single market; (ii) examine whether the current regulatory and supervisory setting is fit for the capital markets and in particular for market operators with strong cross-border activities or operating in new or emerging sectors; and (iii) review the European Supervisory Authorities' toolbox to assess areas where its effectiveness and efficiency can be strengthened and improved.

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Across all stakeholder groups, there was broad agreement on the need for more integrated capital markets and enhanced supervisory convergence. This was accompanied by a shared call for simplification, proportionality and legal certainty. Stakeholders widely recognised that a more integrated and efficient financial ecosystem would enhance Europe's competitiveness, improve access to finance, and expand investment opportunities. Nonetheless, they stressed that reforms must remain balanced, transparent and inclusive, demonstrating tangible benefits for citizens and the real economy. The level of support for centralising supervision at EU level varied significantly among stakeholders. Business associations and companies tended to prefer incremental progress within the current institutional structure, while NGOs and some members of the public favoured stronger EU-level oversight to ensure consistency and accountability.

In addition to the call for evidence, the targeted consultation on 'Integration of EU capital markets' gathered views from a broad group of stakeholders on various aspects of the EU capital markets. The online questionnaire was structured in two parts. Part 1 covered simplification and burden reduction of the EU regulatory framework in the trading, post-trading and asset management sectors, barriers to cross-border operations in the trading space and to liquidity deepening in EU capital markets, and barriers to cross-border provisions of post-trade services. Part 2 included questions on: cross-sectoral barriers in the trading and post-trading sectors (e.g. relating to innovation, group synergies, issuance of financial instruments); barriers to cross-border provision of asset management services and investment funds; and barriers specifically linked to supervision.

In total, 297 stakeholders replied to the targeted consultation through the Commission website. The majority of contributions came from business associations (31%) and companies or business entities (27%), followed by public authorities (12%). Additional input was received from NGOs (4%), EU citizens (3%), trade unions (2%), and one consumer organisation. The consultation thus attracted a diverse range of respondents from the industry, including market participants, representative associations and public authorities.

In parallel, bilateral meetings were held with selected stakeholders to gather additional input and explore specific concerns in greater depth. The Commission also introduced various aspects of the review at a meeting with representatives of the European Parliament and Member State financial services attachés in October and November 2025.

The results of the call for evidence and targeted consultation have been considered in the proposal and the Commission has sought to take account of the different stakeholder interests expressed. The most significant areas where respondents identified scope for improvements were examined and have been included in the proposal. These include calls for a more proportionate, simpler and more harmonised regulatory framework that reduces burdens and eliminates barriers in the areas of trading, post-trading and cross-border distribution of investment funds, as well as increasing the efficiency and convergence of supervision of financial entities.

- **Collection and use of expertise**

When preparing this initiative, the Commission consulted several studies and sources of information. The Commission organised in September 2024 a round-table discussion on consolidation in the investment funds sector and trading and post-trading infrastructure with private and public stakeholders, and experts in those sectors. The Commission has also organised separate bilateral outreach to key stakeholders and workshops with the industry.

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The studies used to prepare this proposal have been referenced in the impact assessment accompanying this proposal and documenting the barriers that this package is trying to address.

- **Impact assessment**

In line with the Better Regulation policy, the Commission conducted an impact assessment of policy alternatives. Beyond the option of no EU action (Baseline scenario – Option 1), two packages of policy options were identified based on a call for evidence, a targeted consultation, other stakeholder engagements, a study on consolidation and reducing fragmentation in trading and post-trading infrastructures in Europe, a study of barriers to, and drivers of, the scaling-up of funds investing in innovative and growth companies, literature reviews, and previous initiatives and reports documenting the most significant barriers to the integration of EU capital markets that have been existing for several years and have not yet been fully addressed.

Option 1 is the baseline option of doing nothing. Option 2 involves a broad review of the trading, post-trading and asset management rulebooks to harmonise and streamline requirements for business operations, including easing some requirements within groups and for services provided on a cross-border basis, under a single license. In the settlement area, interconnectedness between central securities depositories (CSDs) would also be improved.

Option 2 would also include amendments to post-trade legislation to make it more technologically neutral as well as to the DLT pilot regime (DLTPR) to expand its scope and scale. Investment funds would gain immediate and full single market access upon authorisation, and asset management groups would be able to operate more efficiently across borders. On supervision, Option 2 aims to strengthen the use and effectiveness of supervisory convergence tools and powers, focusing on the European Securities and Markets Authorities (ESMA) and its governance. This option also involves transferring supervisory powers to ESMA for the most significant infrastructures (central counterparties, CSDs and trading venues) and for all the crypto-asset service providers (CASPs), and to have ESMA coordinating the supervision of large asset managers and investment funds.

Option 3 builds on Option 2 but is more far-reaching with additional elements to establish an integrated market, such as, for instance, mandatory connection between significant trading venues, mandating links between CSDs, creating group-level authorisation for asset managers, full flexibility in the DLTPR, ESMA direct supervision of all infrastructures, asset managers and CASPs.

The analysis assesses the options in relation to three objectives: (i) enabling further market integration and scale effects; (ii) enabling integrated supervision; and (iii) facilitating innovation. It shows that the additional elements in Option 3 would imply higher costs for the sectors and for supervisors, outweighing the potential benefits. In addition, this option is less coherent with other EU policy initiatives and may have unintended consequences on competition and on financial stability risks.

The assessment concludes that Option 2 is the preferred policy package as it delivers significant integration benefits while remaining proportionate in terms of costs and subsidiarity. It combines extensive harmonisation of requirements in the relevant trading, post-trading and asset management frameworks and removal of barriers to cross-border activities, with stronger supervisory convergence tools and powers and EU-level supervision of the most significant infrastructures. These aspects reinforce one another. The

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harmonisation of rules in this package would facilitate the transfer of supervision of some operators and markets to the EU level and, in the case of CASPs, for all entities, and allow better enforcement of the single rulebook.

By removing undue regulatory barriers to integration, the measures under this option would ease regulatory burdens and operational complexity, thereby improving the efficiency of providing services across borders and fostering market integration. Implementation costs would fall mainly on infrastructures and national authorities. This option would also require significant resources and infrastructure development at ESMA, the majority of it would be fee funded. But all these costs are expected to be outweighed by efficiency gains and simplification in the medium term. The initiative would reduce legal uncertainty for issuers and investors, lower compliance costs and improve predictability. Increased flexibility in the DLT-pilot regime and changes in sectoral legislation to make it more compatible with DLT would encourage greater uptake of this technology. Stronger supervisory convergence and a more integrated supervisory framework would level the playing field, limit regulatory arbitrage and reduce the administrative burden related to cross-border activities.

The initiative will facilitate investors' access to a wide range of investment opportunities and enable companies to raise capital across borders, including SMEs. It will therefore contribute to improve how we mobilise capital in Europe and allow the right financing ecosystem to emerge in order to support EU strategic priorities and make our economy stronger, more competitive.

The Regulatory Scrutiny Board issued a positive assessment of the impact assessment following a first negative opinion. To address the comments raised by the Board, the impact assessment has been revised in order to: (i) clarify the rationale for the initiative's scope and its role within the broader SIU strategy, including its interplay with other initiatives; (ii) streamline the sections on the problem definition and problem drivers; (iii) improve the explanations related to DLT-based innovation; (iv) clarify the intervention logic and the objectives. The text has also been revised to strengthen the analysis of the magnitude of the problems, based on additional quantitative inputs received from stakeholders and on other existing studies, to better assess costs/benefits. The text is also more transparent about the limitation in data availabilities and out-of-scope factors that make a full robust modelling of the costs and benefits not possible. Stakeholder views have also been reflected more comprehensively through the text, and the impact of the proposed measures on different stakeholder groups better captured.

- **Regulatory fitness and simplification**

The measures proposed will ease regulatory burdens and operational complexity, thereby improving the efficiency of providing services across borders and fostering market-integration. Implementation costs will fall mainly on infrastructures and national authorities. ESMA will also need significant resources and infrastructure development. But all these costs are expected to be outweighed by efficiency gains and simplification in the medium term. The initiative will reduce legal uncertainty for issuers and investors, lower compliance costs and improve predictability. Increased flexibility in the DLT Pilot Regime and changes in sectoral legislation to make it more compatible with DLT will encourage greater uptake of this technology. Stronger supervisory convergence and a more integrated supervisory framework will level the playing field and reduce the administrative burden related to cross-border activities. Simplification will be achieved in several ways: transitioning certain provisions from directives to regulations; eliminating scope for nationally imposed 'gold-plating' measures; streamlining overlapping, costly and inefficient supervisory arrangements; and

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more generally removing barriers in the EU and national frameworks for market operators and investors. With a view to simplifying the regulatory framework and reducing regulatory and administrative burdens, this proposal refines Level 2 empowerments by deleting and updating empowerments including those, which following the consultations with the European Parliament, the Council and European Supervisory Authorities were considered non-essential for the effective functioning of the corresponding provisions in the basic acts. Furthermore, the Commission has, in this proposal, sought to limit as much as possible the number of new Level 2 empowerments.

- **Fundamental rights**

The proposal respects fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the right to provide services in any Member State (Article 15(2), the freedom to conduct a business (Article 16), the right to property (Article 17), access to services of general economic interest to promote social and territorial cohesion within the Union (Article 36), and consumer protection (Article 38).

4. BUDGETARY IMPLICATIONS

The financial and budgetary impact of this package is explained in detail in the legislative financial statement annexed to the Master Regulation. It also includes the financial and budgetary impacts of the Master Directive.

5. OTHER ELEMENTS

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

The Commission will monitor progress towards achieving the specific objectives based on the non-exhaustive list of indicators listed in Section 9 of the accompanying impact assessment. The list focuses on the indicators per sector, but broader indicators to measure the wider impact on the market will also be monitored, even if those can be less directly attributed to this initiative. Such indicators include measures assessing access to capital and corporate financing structures or the level of retail investor participation in capital market.

Ex-post evaluation of all new legislative measures is a priority for the Commission. The Commission services will review the outputs, results and impacts of this initiative once the legal instrument has entered into force. After five years, the Commission will carry out the next evaluation of the amendments contained in this proposal, in line with the Commission's Better Regulation Guidelines.

- **Explanatory documents (for directives)**

No explanatory documents are considered necessary.

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

This Master Regulation consists of amendments to:

- Regulation (EU) No 1095/2010 (ESMA Regulation; Article 1);
- Regulation (EU) No 648/2012 (EMIR; Article 2);
- Regulation (EU) No 600/2014 (MiFIR; Article 3);

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- Regulation (EU) No 909/2014 (CSDR; Article 4);
- Regulation (EU) 2015/2365 (SFTR; Article 5);
- Regulation (EU) 2019/1156 (CBDR; Article 6);
- Regulation (EU) 2021/23 (CCPRRR; Article 7);
- Regulation (EU) 2022/858 (DLTPR; Article 8);
- Regulation (EU) 2023/1114 (MiCA; Article 9);
- Regulation (EC) No 1060/2009 (CRA Regulation; Article 10);
- Regulation (EU) 2016/1011 (Benchmarks Regulation; Article 11);
- Regulation (EU) 2017/2402 (Securitisation Regulation; Article 12);
- Regulation (EU) 2023/2631 (European Green Bonds Regulation; Article 13); and
- Regulation (EU) 2024/3005 (ESG Ratings Regulation; Article 14).

Article 1 – Amendments to ESMA Regulation

The proposed amendments to Regulation (EU) No 1095/2010 (the ESMA Regulation) aim to strengthen ESMA's mandate, governance and funding to ensure more consistent, transparent and accountable supervision across the EU. This will create better conditions for market integration, generate efficiency gains and increase investors' trust in the single market.

In terms of tasks and powers the proposed amendments adopt a twofold approach: (i) a proposal to transfer supervisory powers to ESMA for significant market infrastructure entities and CASPs; and (ii) amendments to increase the use and effectiveness of supervisory convergence tools. These changes are underpinned by a review of ESMA's governance and funding arrangements to ensure that decision-making at EU level is simple, independent and efficient and that appropriate resources are available to implement the new objectives.

General tasks and powers

The amendments to **Articles 1, 4 and 8** aim to clarify the scope of the Regulation and provide updated definitions to reflect the new direct supervisory responsibilities. The changes also bring ESMA's mandate into line with the objectives of promoting innovation, data driven supervision and effective enforcement.

The new **Article 8a** on the **duty of cooperation** emphasises the importance of cooperation between ESMA and authorities. The aim is to promote greater collaboration, information-sharing, and mutual support and create a framework for structured yet flexible cooperation between ESMA and other competent or relevant authorities. In particular, this would ensure that ESMA can carry out its direct supervisory tasks smoothly, effectively, and proportionately, while safeguarding its independence. It is proposed that ESMA will establish flexible practical **arrangements for cooperation**, tailored to specific sectors and tasks, and guided by the principles of efficiency, proportionality and mutual trust. These arrangements may include joint supervisory teams, joint inspections, or operational coordination. They should allow for gradual adjustments over time. Arrangements for cooperation should prioritise effective and resource-efficient supervision, continuity and consistency of supervisory outcomes, and respect for the statutory responsibilities and resources of other authorities. The new Article 8a will enable ESMA and other authorities to work more effectively together, leveraging their collective expertise and resources to address the complex

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challenges facing the EU's financial system. This, in turn, will contribute to a more integrated, stable, and prosperous European financial market.

To ensure effective supervision, the amendments to **Article 9a** broaden the scope of ESMA's power to issue "no action letters" to cater for specific circumstances where the application of a legislative act raises significant issues for market participants. The aim is to provide clarity and guidance to market participants and reduce the risk of inconsistent application of EU law.

The amendments to **Articles 10 and 15** give the Commission the power to adopt an amending delegated or implementing act even if ESMA does not provide a draft. This addresses a current gap in the procedural framework for the adoption of technical standards. The proposed amendments also establish a procedure for temporarily suspending regulatory or implementing standards (or parts of them) under specific conditions. These procedures aim to make ESMA's regulatory powers more flexible and adaptable and should allow the Commission to improve rulemaking and increase responsiveness to new market developments, thereby ensuring the smooth functioning of the financial markets.

The amendments to **Articles 8(2), 17 and 19(4)** clarify that, in accordance with the Corneli judgment[13], ESMA must apply Union law. This includes national laws that implement EU Directives, which should be interpreted in a way that is consistent with those Directives.

Article 17aa gives ESMA a new power in the area of supervisory convergence to require a competent authority to seek its opinion in cases where a peer review or investigation has identified serious supervisory failures. Furthermore, ESMA will have the power to require prompt and effective corrective actions to be taken to address supervisory shortcomings. The aim of this new safeguard measure is to allow ESMA to act in cases where products or entities would be granted access to the EU market without adequate supervision or where supervisory arbitrage would undermine the passport system.

Article 19a introduces collaboration platforms between competent authorities, that will enhance cooperation and supervision of cross-border activities. This builds on the successful experience with similar platforms under the Solvency II Directive. These platforms will facilitate information exchange, propose solutions and promote a culture of collaboration. ESMA will have the power to resolve any disputes.

Articles 28a and 28b provide for a mechanism to be set up for the mutual recognition of administrative fines and assistance with their recovery in a cross-border context. The aim is to make it easier to enforce the rules in the single market, in contrast to the current situation, in which recovering fines in another jurisdiction is very complex or even impossible.

Supervisory powers

To ensure effective and consistent supervision across sectors, it is proposed to insert a **new Chapter IIa** which consolidates ESMA's procedural powers as currently set out in sectoral legislation into a single, cross-sectoral framework. This framework streamlines the rules for information requests, investigations, on-site inspections, supervisory measures, and penalties, while safeguarding rights of defence, legal professional privilege, and judicial protection. By establishing a consistent and uniform set of procedural powers, the Regulation increases legal certainty, promotes supervisory convergence and efficiency, and helps ESMA's to exercise its

13 https://curia.europa.eu/juris/document/document.jsf;jsessionid=B54F40B5C7801E9DFE7713D203D58677?text=&docid=302484&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=9588492

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direct supervisory responsibilities accountably. These powers are without prejudice to any more specific or different powers set out in other EU Acts.

Funding

To ensure the ESMA's supervisory activities are financed in a fair and transparent manner, the Regulation proposes to harmonise the principles governing the fees charged to financial market participants under ESMA's supervision (**Article 39n**). The Regulation consolidates the principles currently scattered across sectoral legislation in order to establish a unified framework for fee calculation, scope and transparency. The proposed amendments promote legal certainty and transparency for both existing and new entities, thereby enabling them to better anticipate and plan for supervisory fees. The proposed amendments ultimately help ESMA to effectively supervise and regulate the financial sector.

An amendment has also been made to Regulation (EU) 2015/2365 to bring it into line with the changes to the fees charged to financial market participants by ESMA.

Governance

This proposal provides for a more effective governance structure for ESMA. It replaces the current Management Board with an **Executive Board** with independent full-time members (Articles 44a and 46a) and adjusts the composition of the Board of Supervisors (Article 40). The proposal clarifies the respective responsibilities of these two boards (Articles 43 and 46a). The Executive Board will consist of the chairperson and 5 full-time members, with diverse supervisory experiences, and, collectively, an appropriate understanding of the sectors under ESMA's supervision. The members will be appointed in a process involving the Commission, the European Parliament and the Council. They will be subject to strict conflict of interest rules and their mandate will be limited to 5 years with the possibility of an extension of two years. Article 46a sets out the tasks of the Executive Board, which will mainly be responsible for decisions relating to the direct supervision of financial market participants. The Executive Board will also have a range of decision-making powers, including over individual competent authorities on certain non-regulatory matters, such as dispute settlement, matters relating to a breach of EU law and independent reviews. This will contribute to more effective decision-making that ensures a good balance between national specificities and common EU interests. The Executive Board will take over the responsibilities of the Management Board for preparing ESMA's work programmes and budget, and the activities of the Management Board will cease. All existing references to the Management Board will be replaced by references to the Executive Board. The members of the Executive Board, including the chairperson, will have one vote each and the chairperson will have a casting vote.

The **Board of Supervisors** remains ESMA's main body in charge of overall guidance and decision-making on regulatory matters and supervisory convergence. The proposed amendments to Article 40 change the composition of the Board of Supervisors to include the full-time members of the Executive Board. The Board of Supervisors will be able to object to the main supervisory decisions taken by the Executive Board within 10 days, or 48 hours in urgent cases. The Executive Board can request opinions from the Board of Supervisors on supervisory matters and must report to the Board of Supervisors on its supervisory activities twice a year. In their capacity as voting members of the Board of Supervisors, the members of the Executive Board will bring their expertise to the Board of Supervisors and vote on general supervisory convergence matters.

Article 2 – Amendments to the European Market Infrastructure Regulation

Supervision of significant CCPs

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New Articles 22a to 22c are introduced to give ESMA direct supervision over significant CCPs, to specify all the details regarding the processes for a CCP to be determined as a significant CCP by ESMA, to specify the powers attributed to ESMA over significant CCPs and to introduce a provision regarding the supervisory fees charged by ESMA to CCPs it supervises. Article 12 is amended to give ESMA the power to impose penalties. A new Annex V is also introduced to provide a list of infringements for which ESMA can impose fines. Article 2 is amended to adapt the definition of 'competent authority' and to introduce new definitions of the terms 'significant CCP', 'CCP's competent authority' and 'national competent authority'. In addition, Article 22 is amended to provide Member States with the option to appoint ESMA as the CCP's competent authority also for their less significant CCPs. To ensure that these definitions are consistent across related pieces of Regulation and to reflect ESMA's supervisory authority over significant CCPs, amendments have also been introduced to Regulation (EU) 2021/23.

Articles 14, 17 18, 20 are adapted to abolish colleges for significant CCPs and to adjust the various procedures to account for ESMA's new role, for example by removing the need for ESMA opinions when significant CCPs are involved and to cater for the abolition of the CCP Supervisory Committee.

In addition, Article 23 is amended to add provisions about ESMA's collaboration with the 'relevant authorities for significant CCPs'. This change is accompanied by the introduction of a new definition of the term 'relevant authorities for significant CCPs' in Article 2, and a new Article 22d to provide a detailed list of relevant authorities for such CCPs. In addition, Articles, 17c, 20, 23, and 24 are amended to take into account this new term in the related procedures and information flows.

Article 89 is amended to align the transitional provisions for CCPs which were already authorised before the entry into force of this amending Regulation.

Supervision of less significant CCPs

Article 2 is amended to introduce a definition of 'less significant CCP'. Article 18 is amended to make ESMA the sole chair of colleges for less significant CCPs. In addition, Articles 24a, 24d and 25c are amended and Articles 24e and 90 are deleted to reflect changes to ESMA's internal governance, notably the introduction of ESMA's new Executive Board and the removal of the CCP Supervisory Committee.

Open access and interoperability processes

Articles 7, 8 and 54 are amended to give ESMA the right to arbitrate requests for access to a CCP and requests for access to a trading venue and to approve requests for interoperability arrangements.

Article 3 – Amendments to the Markets in Financial Infrastructure Regulation

Trading venues are currently supervised on a national basis. A key pillar of this proposal is to transfer supervisory competences for significant trading venues and Pan-European Market Operators or PEMOs (and trading venues operated by PEMOs) to ESMA. A trading venue will be deemed significant if it is important for the EU economy or if, in addition to being significant in size, it has a significant cross-border dimension. The proposal gives ESMA the necessary powers to carry out its supervisory tasks, although certain market surveillance powers remain at national level and are conferred on the national surveillance authorities.

Given the importance of proximity to the local market ecosystems, national surveillance authorities would retain responsibilities at local level to ensure the market integrity of the

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significant trading venues or trading venues operated by a PEMO. However, those responsibilities would be limited to supervising orderly trading and monitoring market abuse and would not extend to obligations directly imposed on trading venues.

Harmonisation of the rules applicable to trading venues

Directive 2014/65/EU (the Markets in Financial Instruments Directive II) sets out the rules for the authorisation and operation of trading venues. However, the fact that those rules were set out in a Directive has led to EU law being transposed and interpreted differently. It has also resulted in many Member States adopting additional measures in areas not strictly harmonised under the Directive, such as prudential requirements for regulated markets. Creating a truly 'single rule book' for trading venues is a precondition for effective supervision at EU level. The proposal therefore inserts a new Title Ia in Regulation (EU) No 600/2014 (the Markets in Financial Instruments Regulation) to further harmonise the rules for trading venues and remove national rules that hinder the functioning of the single market. A significant number of the measures have been directly transferred from the Markets in Financial Instruments Directive II, but the new Title Ia also further specifies the applicable framework in areas that were previously left to national discretion.

In addition, the proposed new Title Ia clarifies the types of cross-border activities that a regulated market may carry out on the basis of its individual licence. It therefore also clarifies that not only should regulated markets be able to provide arrangements to enable access to their venue from other Member States (through 'trading screens'), as already provided for in the Markets in Financial Instruments Directive II, but they should also be able to provide services linked to: (i) the admission to trading of securities on their venue; and (ii) the admission of new members from other Member States. It also clarifies that regulated markets can do this either by setting up a branch or, without a branch, through the freedom to provide services across the EU single market. Multilateral trading facilities and organised trading facilities have the same rights.

Lastly, the proposal aims to make it easier to allocate resources and functions within a group. Title Ia therefore clarifies that allocating resources to an entity within the same group or relying on such an entity to perform certain functions should not be considered outsourcing for the purpose of the Markets in Financial Instruments Regulation. It also clarifies that the geographical location of an entity to which resources are allocated or which is relied upon to perform certain functions should not be relevant to the competent authority's assessment of the compliance of the trading venue with its organisational requirements.

Creation of a 'Pan-European Market Operator' status

The proposal creates a new 'Pan-European Market Operator' (PEMO) status, which allows for the operation of several trading venues in more than one Member State on the basis of a single licence. If a PEMO takes over existing trading venues, the proposal provides for the individual authorisation(s) under which those venues operated to be deemed void once the new PEMO authorisation is issued. The new Title Ia sets out the authorisation procedure in detail and the requirements applicable to PEMOs. The proposal also clarifies that a PEMO should be responsible for ensuring that the trading venues it operates comply with the requirements applicable to regulated markets, multilateral trading facilities or organised trading facilities, as appropriate. Lastly, for areas of law that are not yet harmonised (e.g. tax law) or not yet fully harmonised (e.g. rules on transparency) under EU law, the proposal clarifies that, for each trading venue, the PEMO should apply the law of the Member State where that trading venue is deemed to be situated or operated, and that the relevant national surveillance authority should be that of the Member State where a venue operated by a PEMO is deemed to be situated or operated. In addition, it is clarified that, where a PEMO takes over

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the operation of a trading venue that has already been authorised, that trading venue should be deemed to be situated or operated in the Member State where it was initially authorised.

Open access

Under this proposal, the rules under which a trading venue has access to the services of a CCP (Article 35 of the Markets in Financial Instruments Regulation) and under which a CCP has access to the trade feeds of a trading venue (Article 36 of the Markets in Financial Instruments Regulation) would be streamlined to ensure that such access is not unjustifiably delayed and that access is refused only where there are significant systemic risks or risks to the orderly functioning of the markets. Furthermore, the market practice known as 'preferred clearing' would be prohibited where two parties choose to clear at different CCPs that have already been granted access to a given trading venue and have already put in place interoperability arrangements.

Enhancement of the consolidated tape

Under the current Markets in Financial Instruments Regulation, the consolidated tape for shares and exchange-traded funds does not provide information on the identity of the trading venue offering the best bid and offer price or on the depth of the trading book. Given the importance of this information to users of the consolidated tape, the proposal adds it to the tape. The proposal also enhances transparency on quotes by systematic internalisers for orders originating from retail clients.

Article 4 – Amendments to the Central Securities Depository Regulation

Modernisation of the regulatory framework for CSD services

Article 2 of the Central Securities Depositories Regulation is amended in order to allow for the provision of CSD services using DLT. Specifically, the existing definitions of 'book-entry', 'cash' and 'securities accounts' are amended and definitions of 'distributed ledger technology' and 'e-money token' are added. Similarly, Article 30 related to outsourcing is amended to cover the provision of CSD services using DLT and a new article (Article 45a) is introduced on risks related to the use of DLT outside of an outsourcing arrangement. Finally, the framework set out in Title IV for the settlement of the cash leg of a securities transaction is amended to allow settlement, under specific conditions, with certain e-money tokens authorised under the Markets in Crypto-Assets Regulation.

Supervision of significant CSDs

Article 11 of the CSDR is amended to give ESMA direct supervisory authority over significant CSDs and a new Article 11a is added to set out the conditions and procedures for determining which EU CSDs are 'significant'. As ESMA will become the direct supervisor of significant CSDs, Article 2 is amended to adjust the definition of 'competent authority', and a new definition of 'national competent authority' is added. Article 10 is amended to reflect ESMA's new role as supervisor. Title V on sanctions is also amended to reflect ESMA's new role, and a new Annex II lists the of infringements for which ESMA can impose sanctions.

Article 24a is amended to abolish colleges for significant CSDs and Articles 15, 16, 17, 19, 20, 21, 21a, 22b, 27b, 60 and 62 are amended to adjust the various procedures to account for ESMA's new role. This includes, for example, removing the need for an opinion from ESMA where significant CSDs are involved. Article 10 also provides further details of ESMA's oversight and supervisory powers over significant CSDs.

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Given ESMA's new powers over significant CSDs, a new Article 25a sets out the framework for the supervisory fees that can be charged by ESMA.

Integration of CSD services

Article 14 is amended to provide more detailed provisions on the cooperation between ESMA, relevant authorities, and national competent authorities.

Article 2 is amended to introduce a definition of the term 'CSD hub', and a new Article 48a sets out the procedure for ESMA to determine which EU CSDs are considered CSD hubs. To facilitate access to all financial instruments issued in EU CSDs, Article 48a introduces a requirement for CSD hubs to establish reciprocal links with other CSD hubs, and for CSDs that are not hubs to establish reciprocal links with a CSD hub.

To further integrate EU CSDs, Article 40 is amended to require EU CSDs that settle the cash leg of their transactions in a currency available on an EU integrated platform to directly connect to that platform and enable their participants to settle the cash leg in accounts opened on that platform.

Article 54 is amended to relax the requirements that apply when a CSD wishes to designate a credit institution to provide banking-type ancillary services, specifically when the cash leg is settled in non-EU currencies.

Article 19a is added to introduce a simplified process for outsourcing core services within a group of CSDs.

Improving the CSD passporting regime

With the aim of lifting the remaining barriers to the passporting of CSD services in the EU, Article 23 is amended to require only an ex-post notification when an EU CSD starts offering its services to issuers established in another Member State than the Member State of authorisation of the CSD.

Article 6 – Amendments to the Cross-Border Distribution Regulation

The proposeed changes to Regulation (EU) 2019/1156 (the Cross-Border Distribution Regulation) are aimed at removing barriers to the cross-border operations of investment funds and strengthen ESMA's powers to foster a common supervisory culture and better coordinate activities across home and host national competent authorities.

Harmonisation of marketing communications

Article 4 of the Cross-Border Distribution Regulation is amended to clarify that AIFMs, EuVECA and EuSEF managers and UCITS management companies should ensure that the requirements on marketing communications are met even when the marketing function is delegated to a third party. However, where the marketing is performed by third-party distributors acting on their own behalf so that the AIFMs and UCITS management companies are no longer in control of the marketing function, the AIFMs and UCITS management companies are not subject to the requirements on marketing communications. It is further specified that host Member States cannot impose any additional requirements on marketing communications than the ones laid down in Article 4. Moreover, the Commission is empowered to adopt delegated acts to specify the format and content of marketing communications.

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Articles 5, 6, 8, 11 and 13 of the Cross-Border Distribution Regulation are deleted to reduce diverging national practices on marketing communications and the payment of regulatory fees and charges.

Article 7 of the Cross-Border Distribution Regulation is replaced by a new Article 7 specifying that the competent authorities of host Member States shall not require prior notification of marketing communications, but where they believe that marketing communications do not comply with the requirements of Article 4, they may ask the competent authorities of the home Member State of the AIFM, EuVECA or EuSEF manager or UCITS to take all appropriate measures to prevent or penalise further irregularities. The competent authorities of host Member States may further refer the matter to ESMA if they are not satisfied with the actions taken by the home competent authorities.

Increase transparency on fees and charges levied by host Member States

Article 9 of Regulation (EU) 2019/1156 is amended to mandate ESMA to publish and maintain up-to-date information on the regulatory fees and changes imposed by host competent authorities to AIFMs, EuVECA managers, EuSEF managers and UCITS marketing AIFs or UCITS in their territories, including the level and frequency of those fees and the modalities of their payment.

Improve the passporting regime for UCITS and AIFs

Article 12 of the Cross-Border Distribution Regulation is deleted and is replaced by a new power for ESMA to develop a data platform that would include information on AIFs and UCITS marketed on a cross-border basis, the documentation provided as part of their marketing notification and any changes thereof, and the de-notifications of marketing arrangements.

The former Chapter XI of Directive 2009/65/EC and Articles 30a, 31, 32 and 32a of Directive 2011/61/EU governing the marketing of UCITS and EU AIFs managed by EU AIFMs across the Union are imported into Regulation (EU) 2019/1156 and amended to optimise marketing notification and de-notification procedures and facilitate the cross-border marketing of AIFs and UCITS. In particular, Regulation (EU) 2019/1156 is complemented to allow UCITS and AIFMs to market funds in a Member State other than their home Member State, by indicating such intention in their application for authorisation and transmitting as part of their authorisation documentation linked to the marketing of UCITS or AIFs in other Member States (eg. marketing communications, the key investor information document, the prospectus, the annual report). Upon authorisation, the competent authorities of the home Member State of the UCITS or AIFM shall transmit that information to the ESMA data platform and the UCITS or AIFM can access the markets of the Member States indicated in their application for authorisation as of the date of that transmission. Regulation (EU) 2019/1156 is further complemented to introduce specific procedures when there are changes to the scope of the initial marketing notification, including changes to the Member States in which the units or shares of UCITS or AIFs are to be marketed.

The former Articles 32a of Directive 2011/61/EU and 93a of Directive 2009/65/EC are imported to Regulation (EU) 2019/1156 and are amended to simplify the de-notification of arrangements made for the marketing of units or shares of UCITS or AIFs. The existing 36-month prohibition of pre-marketing of units or shares of EU AIFs with similar investment strategies in the Member State identified in the de-notification is removed.

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Supervision of UCITS and AIFs marketed across the EU

The Cross-Border Distribution Regulation is complemented to specify the powers of the host competent authorities of the AIFM and UCITS vis-a-vis the AIFs and UCITS marketed in their territories. Regulation (EU) 2019/1156 is further supplemented to empower ESMA to identify and pursue actions to address diverging, duplicative, redundant and deficient supervisory actions hindering the cross-border marketing of EU AIFs managed by an EU AIFM and of UCITS across the Union. In addition, the Cross-Border Distribution Regulation is amended to grant ESMA the power to intervene when national authorities do not effectively apply Union rules, or to directly suspend the cross-border marketing of AIFs and UCITS in certain cases.

Finally, the Cross-Border Distribution Regulation is supplemented to clarify that competent authorities should be able to refer to ESMA any disagreements on assessments, actions, or omissions, which ESMA should settle in accordance with the powers conferred to it under Article 19 of Regulation (EU) No 1095/2010.

Article 8 – Amendments to EU DLT Pilot Regime Regulation

This proposal also amends the DLT Pilot regime (Regulation (EU) 2022/858) to increase the regime's flexibility and proportionality, as well as its scale and scope and to address concerns around the durability of the regime by removing the time limits of the permissions granted under the pilot.

Expanding and making more flexible the scope of eligible instruments and scale of activities

Article 2 is amended to introduce new concepts. Among others, the trading infrastructure in the Pilot is now referred to as a DLT trading venue (DLT TV) to reflect that it would be possible to operate both a multilateral trading system and an organised trading facility under the Pilot. Article 3 is amended to make more flexible current limits of the pilot regime, both on the type of financial instruments that are eligible as well as on the scale of activity that can be carried out in these instruments. For the scale of activities, the proposal would maintain a total maximal aggregated market value of all the DLT financial instruments that can be admitted to trading or recorded on a DLT market infrastructure but raise it to EUR 100 billion. Finally, product-specific threshold would be removed.

Creating a simplified regime for smaller DLT market infrastructures

Article 3 is further amended and a new Article 7a is added to introduce a simplified regime for operators of smaller DLT infrastructures providing CSD services as long as they remain under threshold of no more than EUR 10 billion of total market value of recorded DLT financial instruments. The simplified regime would feature rules that are adapted to the scale of activities undertaken by smaller operators. Depending on the activities they plan to undertake, applicants to the simplified regime would be required to hold an underlying authorisation to be eligible, such as a CASP, a CSD or an investment firm licence. The entities operating under the simplified regime would be subject to a specified subset of provisions of Regulation (EU) No 909/2014 that result in a more proportionate and principles-based approach to the regulation of small-scale provision of CSD services.

Expanding scope of eligible entities

Article 4 is amended to expand the scope of entities which can operate a DLT TV and a DLT trading and settlement system (DLT TSS) to include, in addition to investment firms and

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CSDs, also crypto-assets services providers (CASPs) that are authorised to operate a crypto-asset trading platform. CASPs permitted to operate a DLT market infrastructure, would become subject to requirements set out in EU trading and post-trading rules (Regulation (EU) No 600/2014, Directive 2014/65/EU and Regulation (EU) No 909/2014) while benefiting from targeted and justifiable exemptions like other operators of DLT market infrastructures.

Additional exemptions regarding applicants operating a DLT TV and a DLT settlement systems (DLT SS)

New Articles 4a and 5a are introduced to offer operators of DLT market infrastructures the possibility to obtain, under certain strict conditions, exemptions from a wide range of provisions of Directive 2014/65/EU, Regulation (EU) No 600/2014 and Regulation (EU) No 909/2014 where these have been found to be incompatible or highly disproportionate with the use of DLT. Before granting exemptions from specific provisions, competent authorities must seek a non-binding opinion from ESMA.

Specific rules for operators of a DLT SS settling payments using commercial bank money and e-money tokens

Article 5 is amended to enable operators of a DLT SS to designate credit institutions for the settlement of payments in commercial bank money that satisfy the prudential and capital requirements of Regulation (EU) No 909/2014 but that will be able to engage in other activities beyond providing banking-type ancillary services of the purpose of settlement. As regards settlement of payments in e-money tokens, it is clarified that most banking ancillary services involving e-money tokens should be provided by the same type of credit institutions as those that can settle payments in commercial bank money.

Provision of individual CSD services, settlement schemes and interoperability between DLT market infrastructures

New Articles 10a to 10f are introduced to, firstly, allow for service-specific regulation of two CSD core services, the notary and central maintenance service, and, secondly, to introduce a new model for settlement that relies on of DLT account keepers with access to central bank money. These articles also ensure comprehensive supervision of these new ways to provide CSD core services. Both the DLT notary and the DLT central maintenance services can be provided by an investment firm, a regulated market, a credit institution, a CSD, or a CASP that obtain a specific permission to provide that service, upon demonstrating compliance with applicable provisions of Regulation (EU) No 909/2014. Consequently, it will be possible to issue and record DLT financial instruments outside a CSD, however, these instruments will be required to be settled with a regulated market infrastructure. Furthermore, the settlement of DLT financial instruments will be possible between DLT account keepers having access to central bank money accounts. These DLT account keepers will have to be a part of a settlement scheme, which is a set of rules and procedures agreed between participants for settling DLT financial instruments, and which has to be previously assessed and authorised by ESMA. The settlement scheme and participating DLT account keepers will have to comply with a number of requirements ensuring robust settlement outcomes and report regularly to ESMA.

Finally, new Article 10g requires entities active in the post-trading value chain in the Pilot, and beyond, to establish technical standards that support interoperability between DLT market infrastructures, with an obligation to report on their work on ESMA. Taking into account the efforts of the industry, ESMA is required to provide the Commission with technical advice on supporting interoperability between DLT market infrastructures.

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Article 9 – Amendments to the Markets in Crypto-Assets Regulation

Transfer of supervision of crypto-asset service providers

The amendments to the Markets in Crypto-Assets Regulation (EU) 2023/1114 (MiCA) seek to transfer the authorization, monitoring and supervision of all crypto-asset service providers ("CASPs") from national competent authorities to ESMA. In this respect, the definitions in Article 3 and the provisions of Titles V and VI (Articles 59-92) of the MiCA Regulation are amended to render ESMA responsible for the authorisation, monitoring and supervision of crypto-asset service providers, including the provisions that relate to market abuse for the crypto-asset sector.

Treatment of certain financial entities providing crypto-asset services

Certain firms subject to Union legislative acts on financial services are already allowed to provide all or some crypto-asset services without being required to obtain an authorization as a crypto-asset service provider under MiCA. These entities will continue to be supervised for their crypto-asset activities by the competent authorities that granted them authorization under other Union acts. However, where the provision of crypto-asset services becomes the main activity of those entities, they will be treated as crypto-asset service providers and the supervision for all their activities will be transferred to ESMA. To fulfil this duty, it is provided that ESMA should establish cooperation agreements with the competent authorities that authorised those entities under other Union legislative acts on financial services. On the basis of the cooperation agreement, those competent authorities shall provide support and assistance to ESMA in the supervision of the activities that are not covered by Regulation (EU) 2023/1114. As there is already a centralized system of banking supervision, ensuring integration and consistency in supervision, there should be no transfer of supervisory powers where the entity providing crypto-asset services is a credit institution.

Supervisory powers of ESMA

In order to fulfil its supervisory duties under MiCA, including investigation of infringements of the rules on market abuse, the amendment introduces a new section on supervisory powers and competences of ESMA in Title VII (Articles 138a – 138j). This is accompanied by a new Annex VII, listing the possible infringements of provisions in Titles V and VI for crypto-asset service providers and other persons. ESMA will rely on the new supervisory powers introduced in Regulation (EU) No 1095/2010 and the sector specific powers introduced in the new Chapter 6 of Title VII. Such powers include the power to carry out on-site inspections, take supervisory measures and impose fines. ESMA is empowered to take a range of supervisory measures, including, but not limited to, requiring the crypto-asset service provider to bring the infringement to an end, suspend the provision of crypto-asset services, and withdrawing the authorisation under certain conditions.

Cooperation with other authorities and assistance in carrying out tasks

ESMA is empowered to exchange information with competent authorities in Member States and third countries in order to carry out its supervisory responsibilities effectively, as well as cooperate with other relevant authorities and the European Banking Authority (Articles 138c - 138f).

Transitional provisions

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To avoid disruption to existing crypto-asset service providers, the amendment introduces transitional provisions (Article 143a) to ensure the smooth transition of supervision from national competent authorities to ESMA and a smooth transmission of files and working documents from national competent authorities to ESMA. A transitional period is also provided for applicants whose application for a CASP authorisation is currently being assessed by national competent authorities but has not been concluded.

Article 5 and Articles 10 to 14 - Amendments to Securities Financing Transactions Regulation, Credit rating agencies Regulation, Benchmarks Regulation, Securitisation Regulation, European Green Bonds Regulation and ESG Ratings Regulation

The amendments introduced in Articles 5 and 10 to 14 streamline the supervisory and enforcement framework applicable to trade repositories, credit rating agencies, benchmark administrators, securitisation repositories, external reviewers for European Green Bonds and ESG ratings providers by aligning their procedural regimes with the new horizontal supervisory framework established under the ESMA Regulation. A large number of sector-specific procedural provisions—particularly those governing investigatory powers, fines, periodic penalty payments, and related decision-making processes—are deleted and replaced with references to the consolidated toolbox in Articles 39a to 39m of Regulation (EU) No 1095/2010. This shift removes duplicative and sometimes inconsistent procedural rules embedded in individual sectoral acts and replaces them with a single, coherent and predictable set of supervisory procedures. At the same time, the acts are updated to ensure that ESMA retains all powers necessary to supervise the relevant entities, including the power to suspend the use of credit ratings, impose fines, or exercise oversight over external reviewers, while fee-setting provisions are harmonised through a cross-cutting regime based on turnover. Collectively, these amendments reduce fragmentation, improve legal clarity and operational efficiency, and ensure that cross-sector supervision is exercised under a unified procedural framework, while preserving sector-specific rules where these remain essential.

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2025/0383 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulations (EU) No 1095/2010, No 648/2012, No 600/2014, No 909/2014, 2015/2365, 2019/1156, 2021/23, 2022/858, 2023/1114, No 1060/2009, 2016/1011, 2017/2402, 2023/2631 and 2024/3005 as regards the further development of capital market integration and supervision within the Union

(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 Economic and Social Committee[14],

Having regard to the opinion of the European Central Bank,

Having regard to the opinion of the European Data Protection Supervisor,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) The Savings and Investments Union (SIU) strategy is part of the Commission strategy to provide a vision of the Union as an economic powerhouse. For that purpose, it is necessary to establish a single market for financial services by addressing market inefficiencies resulting from fragmentation and to create the truly integrated European capital markets which are accessible to all citizens and businesses across the Union. It is also important that financial markets potential of the Union is unlocked by providing access to more efficient capital-market based financing and by facilitating cross-border capital flows, which in turn should support the economy of the Union, stimulate job creation and enhance competitiveness.

(2) It is necessary to foster a seamless capital market across the EU by strengthening the supervisory framework and addressing regulatory fragmentation, thereby ensuring better integration of capital markets throughout the Union. In particular, while the integration of capital markets in the Union should ultimately be a market-driven process, certain barriers stemming notably from the Union legislative framework can obstruct progress. The Union should therefore focus on removing barriers in the sectors of trading, post-trading and asset management, and barriers hindering the uptake of new technologies. As market integration deepened, it is also crucial for the Union supervisory framework to evolve in accordance with it.

[14] OJ C , , p. .

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(3) In the context of the political objective of simplifying financial services legislation and delivering more effective and efficient implementation of Union policies, the Commission, after having consulted the European Supervisory Authorities, AMLA, the Council and the European Parliament, sent a letter on 1 October 2025 deprioritising empowerments non-essential for the effective functioning of the Level 1 legislations. For those deprioritised empowerments where the Commission would be legally required to act ('shall + a date') legal clarity for stakeholders would be enhanced when the basic act is also amended.

(4) The development of a deeper and more integrated Union capital market, as envisaged in the Savings and Investments Union Communication, requires consistent and effective supervision across Member States. Divergent national supervisory practices create legal uncertainty, increase the cost of cross-border activity and fragment the single market for financial services, thereby hindering market integration and the efficient allocation of capital. To address those challenges, it is necessary to strengthen supervisory convergence and, where appropriate, entrust the European Securities and Markets Authority ('ESMA') with additional tasks and powers to ensure the uniform application of Union law and the effective oversight of entities with significant cross-border relevance.

(5) For that purpose, ESMA should be given additional competences and its governance and funding framework should be reinforced to promote transparent, accountable and efficient decision-making at Union level and to ensure that ESMA has sufficient resources to fulfil its expanded responsibilities. The transfer of direct supervisory powers to ESMA in relation to significant entities in the field of market infrastructure and to crypto-asset service providers (CASPs), together with enhanced supervisory convergence tools, should contribute to a more integrated, competitive and resilient capital market that delivers better outcomes for investors, firms and the broader economy.

(6) Pursuant to Article 1(2) of Regulation (EU) No 1095/2010 of the European Parliament and of the Council([15]), ESMA is to act within the powers conferred on it by a range of Union legislative acts, including several Directives and Regulations listed therein. To ensure the full application of Union financial legislation, ESMA should apply national legislation transposing directives in a manner consistent with Union Law in a way that respects the primacy of Union Law,

(7) In addition, Article 1(2) of that Regulation further provides that ESMA is to act within the powers conferred by any other legally binding Union act which assigns tasks to ESMA. It is necessary to ensure that the scope of ESMA's responsibilities and tasks automatically extends to any subsequent Union legislation conferring powers or functions on ESMA.

(8) To reflect the progressive extension of ESMA's direct supervisory, investigatory, enforcement and other responsibilities across different sectors of the financial system, it is necessary to introduce a definition of financial market participants that are under ESMA's supervision. That definition should encompass all financial market participants for which ESMA has been conferred powers. That definition should

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15 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, pp. *84–119*, ELI: http://data.europa.eu/eli/reg/2010/1095/oj

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ensure consistency and clarity in the application of ESMA's supervisory powers, irrespective of the legal instrument from which those powers derive, and facilitate the establishment of common procedural and organisational arrangements for supervision and enforcement.

(9) To ensure the effective exercise of its direct supervisory responsibilities, ESMA should establish structured yet flexible cooperation arrangements with other authorities. Such cooperation should capture a range of situations, corresponding to the evolving role of ESMA. Such arrangements should cater, first, for cases where national competent authorities are still responsible for certain entities or activities but will cease to be in charge of supervision of certain entities following the assumption of direct supervisory powers by ESMA, thereby requiring transitional solutions to ensure continuity and an orderly transfer of responsibilities. Second, those cooperation arrangements should cover cases where, alongside ESMA's direct supervisory powers, other Union or national authorities, although not acting or having acted as competent authorities, hold relevant expertise or consultation rights under Union law, such as the European Central Bank in relation to central counterparties. Third, those cooperation arrangements should cover cases where tasks are not transferred to ESMA, such as market surveillance for trading venues. To address these different situations and, in particular, to ensure a smooth transition, the Authority should have the flexibility to set up cooperation arrangements adapted to the sector concerned, the nature of the tasks and the degree of involvement required. Such arrangements may range from close structural cooperation, including the establishment of joint supervisory teams or the conduct of joint inspections, to looser forms of operational coordination and, progressively, to more autonomous supervisory action by the Authority as its capacity develops. Those cooperation arrangements should also allow for their gradual adjustments over time and, where appropriate, the establishment of local presences of the Authority in Member States. Those cooperation arrangements should also promote effective and resource-efficient supervision, ensure the continuity and consistency of supervisory outcomes, and take due account of the statutory responsibilities and resources of other authorities. Cooperation should be guided by the principles of efficiency, proportionality, mutual trust and good faith, and should promote the effective use of resources while safeguarding ESMA's independence and accountability for the performance of its tasks. To reflect the progressive build-up of ESMA's supervisory capacity and to ensure the full and effective assumption of its supervisory tasks, the cooperation arrangements should be subject to regular review by ESMA.

(10) In certain circumstances, temporary exemptions or other transitional arrangements under Union financial services legislation may expire before the entry into force or full implementation of new or amended provisions introducing a permanent exemption, replacement framework, or new regulatory treatment. In addition, significant market developments may occur that render compliance with specific requirements under existing Union law temporarily disproportionate, operationally impracticable, or unduly burdensome in light of prevailing market conditions and the underlying regulatory objectives. To ensure legal certainty and regulatory continuity, and to avoid unnecessary market disruption, it is appropriate to provide that the no-action letter as set out in Article 9a of Regulation (EU) No 1095/2010 may also apply in cases where (i) a regulatory gap arises during the phasing-in of new requirements, or (ii) exceptional market conditions lead to disproportionate compliance burdens for market participants.

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(11) To support cooperation between authorities and facilitate the new collaboration platforms, the Authority should develop a corresponding technological platform to facilitate the collection, storage, access to and processing of data and information. That data platform should contribute to high-quality data governance consistent with FAIR principles (Findable, Accessible, Interoperable, Reusable) and also include the supervisory technology and other tools to enhance analysis and monitoring capabilities of the relevant authorities.

(12) In its capacity as processor of personal data, the Agency should implement appropriate technical and organisational measures to ensure the security, availability, maintenance and development of the software and IT infrastructure of the platform and that processing of personal data in the context of facilitating the access to and exchange of information on the platform in in line with Union law laying down the obligations to collect and exchange those data and in line with data protection laws. Where the Agency has the obligation to processes personal data pursuant other Union acts, the Agency should fulfil its obligations as controllers in regard to that information.

(13) In view of ESMA's powers and competence over a broad category of entities and to ensure the effective, consistent exercise of its supervisory powers across sectors, it is appropriate to rationalise and consolidate in Regulation (EU) No 1095/2010 the procedural framework for the exercise of supervisory tools necessary for the Authority to carry out its tasks. Those powers, which are currently dispersed across various sectoral Union acts should be replaced, to the extent possible, by a single horizontal framework applicable to all entities under the Authority's direct supervision. That horizontal framework should provide a coherent set of procedural rules governing ESMA's requests for information, investigations and on-site inspections, as well as the adoption of supervisory measures, fines and periodic penalty payments. Such requests for and access to information, including during investigations and on-site inspections, may encompass personal data insofar as it is relevant and necessary for the performance of the Authority's tasks, and any processing of such data should comply with the applicable Union rules on the protection of personal data, in particular the principles of necessity, proportionality and purpose limitation. Moreover, that horizontal framework should ensure full respect for the rights of defence and for legal professional privilege, and provide for appropriate judicial protection, including the review of ESMA's decisions by the Court of Justice of the European Union. By setting such a procedural framework in a coherent and uniform manner and abolishing sector-specific procedural provisions, the Union should enhance legal certainty, promote supervisory convergence and efficiency, and support the effective and accountable exercise of ESMA's direct supervisory responsibilities. To avoid regulatory overlap or inconsistency, to ensure that the Authority exercises its powers in an effective manner, to preserve the coherence of the Union acquis and respect the principle whereby specific rules take precedence over general rules, where sectoral legislation contains specific provisions tailored to the procedural powers of the Authority in particular sectors or areas, those provisions should continue to apply and, where appropriate, prevail over the general powers laid down in that Regulation.

(14) Effective supervision and cooperation among competent authorities in the context of cross-border provision of financial services is essential to protect investors and foster trust and confidence in the financial system within the Union. For that purpose, ESMA should be equipped with enhanced supervisory convergence tools, including mechanisms to address supervisory failures and tools to facilitate cooperation and

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resolve disputes between competent authorities to ensure that financial market participants are subject to high-quality supervision.

(15) To address proven supervisory failures in the approval of financial products, services or entities operating across the Union, it is necessary to enable ESMA to require a competent authority to seek its opinion before granting approval where a peer review or an investigation reveals failures in supervision which could jeopardize the integrity of financial markets, financial stability, or investor protection. The peer review or investigation process, as set out in Article 22(4) of Regulation (EU) No 1095/2010, provides a robust and transparent framework for identifying supervisory failures and for taking corrective action. ESMA's opinion should provide an additional layer of scrutiny and oversight, ensuring that financial products and services, and entities operating in the Union meet the highest standards of supervision. To prevent products, services or entities from entering the EU market without adequate supervision, it is necessary to enable ESMA to require in its opinion that competent authorities take corrective actions to address any shortcomings in supervision identified by ESMA.

(16) To facilitate regular and structured information exchange, propose solutions, and enhance cooperation to address common challenges and risks, and to support the overall goal of consistent and effective supervision, it is necessary to provide for collaboration platforms between competent authorities. Such platforms should be flexible, enabling ESMA to initiate or respond to requests from competent authorities, and should not prejudice the existing supervisory mandates and responsibilities of those competent authorities. Those collaboration platforms should also promote transparency, accountability, and a culture of compliance among financial market participants, with ESMA exercising its powers to resolve disputes and ensure compliance with Union law.

(17) Due to the lack of a mechanism for mutual recognition of administrative decisions, national competent authorities have significant difficulties in enforcing recovery of administrative fines in a cross-border context. To ensure effective enforcement of rules and the proper functioning of the single market in the area of financial services, it is necessary to introduce a mechanism for mutual recognition of decisions imposing an administrative fine and for assistance in executing requests to recover such a fine and such mechanism should be based on the principle of mutual trust. To that end, the grounds for a refusal to execute the request to recover an administrative fine should be limited to the minimum necessary.

(18) To ensure a consistent and transparent approach to the financing of ESMA's supervisory activities, it is necessary to harmonise and consolidate the principles governing the levying of fees on entities under ESMA's competence, which are currently set out separately in sectoral legislation conferring direct supervisory powers on ESMA. Establishing common principles on the scope, calculation, and transparency of such fees should promote a level playing field among entities across sectors, ensure the proportional application of supervisory costs, and provide legal certainty for both existing and new entities falling under ESMA's competence. Those fees should cover all costs incurred by ESMA in the performance of its supervisory tasks, including, but not limited to, the costs of supervisory convergence work in the relevant sector, the development, operation and maintenance of IT tools and systems necessary for direct supervision, as well as the depreciated cost of such systems and related infrastructure. ESMA should be appropriately financed. It is therefore necessary to lay down that ESMA should be financed 50 % from Union funds and 50 % through contributions from Member States, made in accordance with the weighting

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of votes set out in Article 3(3) of the Protocol (No 36) on transitional provisions for the new tasks envisaged for ESMA by this Regulation that are not fee funded.

(19) In light of the future new competences of ESMA, its governance structure should be adapted accordingly. To ensure the effective and impartial functioning of ESMA it is necessary to strengthen its governance by introducing an independent Executive Board with full-time members, which should enhance its capacity to take swift and Union-oriented decisions, in particular for the supervision of financial market participants. The Executive Board, composed of the Chairperson and five independent full-time members with diverse supervisory experiences and expertise in the sectors under ESMA's supervision, should be responsible for decisions addressed to financial market participants in supervisory matters. The Executive Board should also be responsible for decisions addressed to one or a limited number of competent authorities, including dispute settlements, breaches of Union law, and peer reviews. These decisions are attributed to the Executive Board to increase the agility and reactivity of the decision-making and to ensure that the decisions take into account a common European interest. The Executive Board should also assume the competence of the current Management Board in preparing ESMA's work programmes and budget. This should ensure effective, impartial and EU-oriented decisions. To ensure transparency and democratic control, the full-time members of the Executive Board should be appointed by the Council, based on a shortlist drawn up by the Commission and a proposal by the Board of Supervisors, following approval by the European Parliament.

(20) To ensure a clear division of responsibilities and effective checks and balances, the Board of Supervisors should remain ESMA's main body for regulatory decisions and supervisory convergence. To enhance the Union dimension in the decision-making process within the Board of Supervisors its composition should be adjusted to include the full-time members of the Executive Board as voting members for supervisory decisions. To ensure a balanced approach and the consideration of national perspectives the Board of Supervisors should have the power to object to major supervisory decisions taken by the Executive Board within 10 days (or 48 hours in urgent cases), while the Executive Board should be required to report to the Board of Supervisors twice a year on its supervisory activities and should be able to request opinions on supervisory matters.

(21) It is necessary to streamline and align the review clause of the Regulation (EU) No 1095/2010 with existing evaluation requirements for the agencies, as set out in the Joint Statement and Common Approach on EU decentralised agencies from July 2012, which provide for periodic evaluations every five years instead of three years. The targeted reviews provided for in that Regulation, starting five years after the date of entry into force, replace evaluations and enable the Commission to assess the relevant aspects of ESMA's performance after an adequate period of time has elapsed. This approach is consistent with the objective of reducing regulatory burdens and promoting a more targeted and effective regulatory framework, allowing for informed decisions on potential simplifications and improvements.

(22) Central counterparties ('CCPs') within the Union are currently authorised and supervised by the competent authorities of the Member States in which they are established, in cooperation with ESMA and CCP colleges. Despite progress achieved so far in harmonising supervisory activity for CCPs in the Union, diverging supervisory practices for CCPs amongst those national authorities across the Union persist, creating an unlevel playing field among CCPs within the Union. This increases

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the complexity of the Union CCP framework and places an additional burden and additional costs on CCPs within the Union, including when compared with Tier 2 CCPs directly supervised by ESMA. With the development of deeper, more liquid Union capital markets under the Savings and Investments Union, that unlevel playing field could increase the risk of, and incentives for, supervisory arbitrage which could in turn lead to financial stability issues. Therefore, to ensure that the prudential, organisational and business conduct requirements for CCPs within the Union are applied in a uniform manner, in particular for CCPs with substantial clearing activity, CCPs with a material cross-border dimension, and CCPs that are part of a group that includes other market infrastructures that are supervised by ESMA, should be supervised by ESMA, based on its expertise and experience in the application of Regulation (EU) No 648/2012 of the European Parliament and of the Council[16]. CCPs with low clearing activity and a more domestic standing, deemed less significant, should continue to benefit from the supervision of local authorities with a greater familiarity with domestic markets.[17]

(23) To determine which CCPs authorised under Regulation (EU) No 648/2012 should be deemed significant and thus subject to supervision by ESMA, it is necessary to provide clear and objective criteria, which should reflect the activities and risks of the CCPs concerned. With the aim of simplification and of avoiding unnecessary administrative burden, an existing CCP determined as significant at a later stage, should not be re-authorised.

(24) National competent authorities supervising less significant CCPs should have stronger cooperation with ESMA to ensure a consistent approach to supervision and hence ensure a level playing field for CCPs. In case they wish to do so, Member States should have the option to designate ESMA as the competent authority for less significant CCPs established in their jurisdictions. Moreover, should a previously significant CCP no longer meet the conditions to be considered as such, a sufficient transition period should be granted to the national competent authority to allow it to prepare before formally taking over supervisory responsibilities for that CCP. Alternatively, the national competent authority should be able to leave the supervision of this previously significant CCP to ESMA. In addition, to ensure consistency and a level playing field between significant and less significant CCPs, ESMA should also be the authority responsible for authorising interoperability arrangements and for chairing the colleges for less significant CCPs. The new supervisory arrangements for CCPs in the Union, in particular the role of ESMA as competent authority for significant CCPs, should be reflected in Regulation (EU) 2021/23 of the European Parliament and of the Council[18].

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16 Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1, ELI: http://data.europa.eu/eli/reg/2012/648/oj).

17 Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1, ELI: http://data.europa.eu/eli/reg/2012/648/oj).

18 Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 (OJ L 22, 22.1.2021, p. 1, ELI: http://data.europa.eu/eli/reg/2021/23/oj).

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(25) ESMA should closely cooperate with, and draw on the experience of, the bodies responsible for the oversight of CCPs authorised in the Union and with authorities experienced in the supervision of CCPs to benefit from the knowledge of those bodies. For that purpose, ESMA should develop comprehensive cooperation arrangements with those bodies and authorities, including the national competent authority in the Member State in which the CCP concerned is established, the European Central Bank, other central banks of issue of the most relevant Union currencies that the CCP processes, the competent authorities responsible for the supervision of the trading venues and the central securities depositories served by the CCP, and the competent authority responsible for the supervision of the most active clearing members. Those arrangements should set out the specific modalities and operational arrangements both in ongoing supervision and in exceptional circumstances, such as emergency situations.

(26) The new supervisory responsibilities granted to ESMA and the changes to ESMA's internal organisational structure, including the removal of the CCP Supervisory Committee, whose tasks should be assigned to the newly established Executive Board, should be reflected in Regulation (EU) No 648/2012. Due to the unique status of third-country CCPs, the provisions concerning the procedures applying to them should remain in Regulation (EU) No 648/2012 rather than shifting those provisions to Regulation (EU) No 1095/2010. Furthermore, taking into account those changes, to further simplify the future organisational structure and working arrangements, and to remove unnecessary burden, significant CCPs should not be required to have a college. Similarly, given ESMA's new supervisory responsibilities for significant CCPs, the requirements for ESMA opinions in relation to those CCPs should be removed. Supervisory arrangements for less significant CCPs should largely remain as they were as those CCPs have a more domestic scope and should benefit from the local knowledge and expertise of national authorities.

(27) Regulation (EU) 2024/791 of the European Parliament and of the Council[19] amended Regulation (EU) No 600/2014 of the European Parliament and of the Council[20] to remove obstacles to the emergence of consolidated tapes in bonds, shares and exchange-traded funds ('ETFs') and OTC derivatives. For a given share or ETF at any given timestamp, the provider of the consolidated tape is required to disseminate the European best bid and offer price ('EBBO') and the volume available at those prices across the Union. However, the consolidated tape would not disclose the identity of the trading venue of the EBBO, as it would not attribute the volumes that are available at the EBBO to individual trading venues, nor would it include bid and offer data beyond the EBBO and accompanying volumes. That significantly limits the value added of the consolidated tape, depriving its users of the ability to locate the volumes available at the EBBO and of a representative view of the depth of liquidity that is available for trading. Therefore, to further enhance its attractiveness, the consolidated tape for shares and ETFs should offer a more in-depth view of trading interests, covering the five best buying and selling prices, with the volumes available at those

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19 Regulation (EU) 2024/791 of the European Parliament and of the Council of 28 February 2024 amending Regulation (EU) No 600/2014 as regards enhancing data transparency, removing obstacles to the emergence of consolidated tapes, optimising the trading obligations and prohibiting receiving payment for order flow (OJ L, 2024/791, 8.3.2024, ELI: http://data.europa.eu/eli/reg/2024/791/oj).

20 Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84, ELI: http://data.europa.eu/eli/reg/2014/600/oj).

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prices, and the indication of the individual trading venue on which those volumes are available.

(28) The closing price of the trading day is essential for equity markets as it provides a key reference price, typically used for the valuation of funds, ETFs and benchmarks. Most times, the closing price is derived from the closing auction that takes place on the trading venue where the securities were first admitted to trading (the 'primary exchange'). The proportion of equity volumes traded at the closing auction has increased significantly over time. However, competition in the closing auction segment remains limited, with primary exchange closing auctions still capturing the largest share of closing auction trading. In addition, that situation raises resilience concerns, as incidents, including outages, on the primary exchanges may have a direct impact on the capacity of market participants to value their assets. To foster competition in the closing price segment and to ensure that market participants can rely on a closing price that is alternative to the closing auction price produced by the primary exchange, it is necessary to require the provider of the consolidated tape for shares and ETFs to disseminate a volume-weighted closing price resulting from all closing auctions operated by trading venues that are data contributors. ESMA should issue recommendations to specify the methodology that the consolidated tape should apply to determine the volume-weighted closing price.

(29) Directive 2014/65/EU of the European Parliament and of the Council[21] contains harmonised rules on the authorisation and operation of trading venues. However, the transposition of that Directive led to diverging national requirements. In addition, Member States complemented the transposed provisions with national requirements in instances where the Directive did not set out any requirements. That approach has resulted in an unlevel playing field, the fragmentation of the single market, and increased burden and costs for operators of trading venues located in several Member States and, eventually, the issuers and end-investors they serve. A more uniform framework is therefore necessary to level the playing field, avoid potential regulatory arbitrage, and support the development of activities across borders. It is therefore necessary to transfer requirements on the authorisation and operation of regulated markets and on the operation by an investment firm or a market operator of a multilateral trading facility ('MTF') or an organised trading facility ('OTF') from Directive 2014/65/EU to Regulation (EU) No 600/2014 and to further complement those provisions, notably to introduce harmonised rules in the areas that were previously subject to national legislation.

(30) The organisational requirements laid down in Article 19(3) and in Article 47 of Directive 2014/65/EU do not take into account whether a market operator or an investment firm operating a trading venue is part of a group. In particular, any intra-group arrangement for resource or function allocation between group entities is treated in the same way as an outsourcing arrangement entered into with entities outside the group. That approach fails to acknowledge the emergence of cross-border groups of trading venues and, as a result, limits the ability of those groups to enjoy group synergies and benefit from economies of scale, thus creating barriers to the cross-border allocation of resources and functions within a group. Additionally, allocating resources within a group, where all entities are subject to the same internal controls

[21] 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, pp. 349–496, ELI: http://data.europa.eu/eli/dir/2014/65/oj).

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and procedures, carries a lower level of risk compared to outsourcing to external parties. The current approach, however, does not sufficiently distinguish between the risks associated with intragroup resource allocation and external outsourcing. Therefore, organisational requirements for trading venues should be simplified for trading venues that are part of a group and that intend to rely on the resources of or the performance of a function by another entity that is part of the same group and that is located in the Union. Such group arrangements should not be considered outsourcing for the purpose of Regulation No (EU) 600/2014, provided that certain conditions are met to ensure effective supervision. A trading venue that relies on the resources of or the performance of a function by another entity that is part of the same group should however remain fully responsible for the discharge of its obligations under Regulation No (EU) 600/2014. Given the increased supervisory risks, an intra-group arrangement that involves an entity located outside the Union should still be considered outsourcing.

(31) Article 53(6) of Directive 2014/65/EU sets out the right for a regulated market authorised in one Member State to provide appropriate arrangements on the territory of other Member States so as to facilitate access to and trading on that market by remote members or participants established in those other Member States. Directive 2014/65/EU does not expressly regulate other passporting rights for regulated markets, including the possibility to set up branches in other Member States. The absence of an explicit provision has led to diverging interpretations with respect to whether a regulated market may set up a branch in another Member State and with respect to the activities that a regulated market may perform under the passporting regime. It is important to enhance the clarity of the passporting regime for regulated markets by making it more explicit that regulated markets are able to seamlessly provide the activity, for which they have been authorised across the Union through the freedom to provide services or through the right of establishment. That includes, in addition to the provision of appropriate arrangements to facilitate access to and trading on that regulated market by remote members or participants established in other Member State, activities relating to the admission of members or participants on that regulated market and activities relating to the admission of financial instruments to trading on that regulated market. To ensure a level playing field between all trading venues, the same passporting regime should apply to market operators and investment firms operating an MTF or OTF.

(32) Directive 2014/65/EU currently requires that each regulated market in the Union is subject to an individual authorisation. It follows that market operators that intend to operate regulated markets in different Member States can only do so by seeking authorisation, for each individual regulated market that they intend to operate, from the competent authority of the home Member State, which is also responsible for the ongoing supervision of that market. That led to the situation where several Member States had introduced national laws to require, as a condition for the authorisation of a regulated market, that the market operator is a legal entity established in the Member State where a regulated market seeks authorisation. Due to that, groups operating regulated markets in several Member States cannot streamline their organisational structure and supervisory relationships, as they are obliged to maintain several supervised entities in different Member States. That significantly increases the costs and complexity of operating regulated markets across different Member States. To remove barriers and reduce operational costs for cross-border groups, it is necessary to remove the possibility for Member States to require the set-up of a separate legal entity in their territories as a condition for the authorisation of a regulated market. In

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addition, to further facilitate the cross-border operation of regulated markets, a new framework is introduced to allow legal persons that wish to operate more than one trading venue in more than one Member State to do so based on a single authorisation as a pan-European market operator ('PEMO') granted by ESMA. That new framework should not replace the existing authorisation and operation regime for regulated markets. Instead, it should apply on a voluntary basis to those entities that wish to operate under a single authorisation.

(33) The authorisation of a PEMO should list all the trading venues that the PEMO is authorised to operate. A PEMO that intends to operate additional trading venues should seek an extension of its original authorisation. To ensure that the supervisory arrangements of a PEMO are effectively simplified, the PEMO should not be required to seek individual authorisation for the trading venues that it operates in the Member States where those trading venues are situated or operated. Similarly, when a PEMO becomes the operator of an existing trading venue, the authorisation granted to that specific regulated market, or, in the case of MTFs or OTFs, to the market operator or investment firm for the purpose of operating that trading venue, should be deemed revoked upon the entry into effect of the authorisation to the PEMO or of the extended authorisation containing the amended list of the trading venues that that PEMO operates.

(34) Under Union and national laws, the territory where a trading venue is situated or operated is often used as the criterion to determine the national law that should apply to areas not directly governed by Union law, and to identify the competent authority. That includes Directive 2004/109/EC of the European Parliament and of the Council, which establishes requirements in relation to the disclosure of periodic and ongoing information about issuers whose securities are already admitted to trading on a regulated market situated or operating within a Member State, and Regulation (EU) No 596/2014 of the European Parliament and of the Council, pursuant to which national competent authorities are required to ensure that market abuse provisions are applied on their territory regarding all actions carried out in relation to instruments admitted to trading or traded on a regulated market, an MTF or an OTF operating within their territory. A PEMO will operate, whether through the freedom to provide services or by establishing a branch, trading venues in multiple Member States on the basis of a single licence that is given to the PEMO itself and not to the trading venues that it operates. In the absence of an individual authorisation for each trading venue operated by a PEMO, and considering that the PEMO will operate all venues through one legal entity established in one Member State and operating cross-border, it is necessary that the PEMO determines, for each trading venues that it operates, the Member State in the territory of which that trading venue is to be considered to be situated or operated. This determination should depend on how the PEMO chooses to market its trading venue to companies seeking admission to trading on that trading venue or to members or participants admitted on that trading venue. The national laws of that Member State should apply to all matters relating to trading not governed by directly applicable Union law, where that application is dependent on the situation or operation of a trading venue. To ensure legal predictability, in cases where a PEMO becomes the operator of a trading venue that is already authorised, it is necessary to require that such trading venue is considered to be situated or operated in the Member State where it was initially authorised.

(35) ESMA assessed the trading activity of interest rate derivatives. It appeared from the assessment that forward rate agreements and single currency interest rate basis swaps

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are generally illiquid. To ensure that only the most standardised and liquid interest rate derivatives are subject to the transparency requirements, it is necessary to exclude forward rate agreements and single currency interest rate basis swaps from transparency requirements.

(36) Article 14 of Regulation (EU) No 600/2014 requires systematic internalisers that deal in sizes of up to and including two times the standard market size to make public firm quotes on a regular and continuous basis during normal trading hours in respect of those shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on a trading venue, for which they are systematic internalisers and for which there is a liquid market. Article 15 of Regulation (EU) No 600/2014 requires systematic internalisers to execute orders they receive from their clients in respect of those instruments at the quoted prices at the time of reception of the order. That Article also allows systematic internalisers to execute clients' orders at a better price provided that the price falls within a public range close to market conditions. To strengthen price formation for retail orders, it is necessary to ensure that, where a systematic internaliser executes a retail client's order, specifically flagged as such, at a price that is better than the quoted price, that systematic internaliser immediately, and in any event before execution, updates the quoted price to reflect that price improvement. In addition, systematic internalisers should be obliged to transmit to the consolidated tape for shares and ETFs the data that they publish pursuant to Article 14 of Regulation (EU) No 600/2014 to allow the consolidated tape to disseminate, for a given share or ETF, in addition to the best bids and offers for continuous order books, separately, the five best bid and offer quotes across the Union published by systematic internalisers with the indication of the individual systematic internaliser where those are offered. Those five best bid and offer quotes should correspond to the five best bid and offer quotes across all quotes for a given share or ETF published in the Union by different systematic internalisers.

(37) Article 21(1) of Regulation (EU) No 600/2014 requires investment firms which, either on own account or on behalf of clients, conclude transactions in OTC derivatives as referred to in Article 8a(2) of that Regulation, to make public the volume and price of those transactions and the time at which they were concluded through an Approved Publication Arrangement ('APA'). To minimise burden for investment firms and to avoid the publication of misleading information, investment firms should not be required to publish through an APA the transactions in OTC derivatives that they conclude on a third-country trading venue, provided that the third-country trading venue (i) operates a multilateral system, (ii) is subject to authorisation, ongoing supervision and enforcement in accordance with the legal and supervisory framework of the third-country, and (iii) is subject to post-trade transparency provisions under which transactions concluded on that trading venue are published as soon as possible after the transaction was executed or, in clearly defined situations, after a deferral period. To ensure legal certainty and a high degree of supervisory convergence in the Union, ESMA should publish and regularly update a list of third-country trading venues that are considered to meet all criteria. Investment firms concluding transactions in OTC derivatives on third-country trading venues that do not meet all criteria should be required to make those transactions public in the Union through an APA.

(38) Articles 57 and 58 of Directive 2014/65/EU set out rules as regards the trading of commodity derivatives, emission allowances, and derivatives of emission allowances. Some of those rules are applicable to trading venues. As

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rules regarding the operation of trading venues are transferred from Directive 2014/65/EU to Regulation (EU) No 600/2014, it is appropriate to amend Regulation (EU) No 600/2014 to ensure that those rules are included in that Regulation.

(39) Articles 35 and 36 of Regulation (EU) No 600/2014 provide for the conditions, under which trading venues can access the services of a central counterparty ('CCP'), and under which CCPs can access the trade feeds of a trading venue. Those criteria have proven to be inappropriately framed and thus leave grounds for unjustified rejections or delays in granting access. In addition, the systematic involvement of national competent authorities renders the procedures excessively complex and burdensome. It is therefore appropriate to review those conditions for access to ensure rejections only occur in limited cases subject to the specific and justified conditions, to ensure that delays in granting access are avoided, and that ESMA is involved only in the case of conflicts between parties. In addition, trading venues may currently preclude two market participants executing a transaction on their venue from freely choosing different CCPs, even where those CCPs have established interoperability arrangements pursuant to Regulation (EU) No 648/2012, and are therefore technically able to clear efficiently those transactions. Such market practices prevent the full exploitation of synergies that can be drawn from interoperability arrangements and increase costs of trading and clearing for market participants. In order to facilitate interoperable clearing, it is therefore necessary to prohibit trading venues from preventing access to their trade feeds for transactions involving two counterparties that have chosen to clear a transaction executed on their venue through two different CCPs that have established interoperability arrangements.

(40) Pursuant to Title VI of Directive 2014/65/EU, national competent authorities are currently responsible for the oversight of trading venues in the Union. On 20 March 2025[22], the European Council adopted conclusions where it called for the improvement of the efficiency of supervision of Union capital markets and the reduction of their fragmentation. Furthermore, the Draghi and Letta reports[23] called for a more integrated supervision at the Union level. To reduce fragmentation and foster consistency in supervisory outcomes to support the establishment of a Savings and Investment Union, it is appropriate to confer on ESMA direct supervisory powers for significant trading venues with an important cross-border dimension. ESMA should also have direct supervisory powers over PEMOs. To determine what should be understood by 'significant trading venues', it is necessary to set out specific conditions. To avoid multiple supervisors for entities within the same group, it is also necessary to ensure that all entities that operate trading venues within the same group become subject to supervision by ESMA, once any entity within that group meets the conditions to be a significant trading venue. Similarly, all entities that operate trading venues in the group, in which at least one CCP or CSD is subject to supervision by ESMA, should also become subject to supervision by ESMA.

(41) For ESMA to ensure effective oversight over PEMOs and significant trading venues, ESMA should have the necessary supervisory powers, including the powers to conduct investigations and on-site inspections, to impose fines or periodic penalty payments to put an end to an infringement of Regulation (EU) No 600/2014, and to request the necessary information. To ensure that ESMA adequately performs its supervisory

22 European Council meeting (20 March 2025) – Conclusions

23 The Draghi Report on Competitiveness, September 2024
Enrico Letta – Much more than a market, April 2024

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duties over PEMOs and significant trading venues, it is important that ESMA carries out such duties in close cooperation with national surveillance authorities. To avoid inefficient supervisory approaches resulting from double supervision, the involvement of national surveillance authorities should be limited to the powers and tasks explicitly conferred upon them by Regulation (EU) No 600/2014 and Directive 2014/65/EU.

(42) Considering the geographical proximity of national supervisors with the local ecosystems, it is necessary, for significant trading venues and PEMOs, that the responsibility for the surveillance of markets and oversight of issuers, remains with authorities that are competent at national level. Therefore, while ESMA should be in charge of enforcing the rules laid down in Regulation (EU) No 600/2014 vis-à-vis significant trading venues and PEMOs and, where relevant, the rules laid down in Directive 2014/65/EU, including with respect to the assessment of effective systems and controls aiming to prevent and detect market abuse or the assessment of parameters for halting trading, national surveillance authorities should retain some powers to enable those authorities to perform market surveillance tasks or carry out duties necessary for the preservation of market integrity. Those powers should include the receipt of transaction data, the possibility to request order book data, or the adoption of urgent measures to impose temporary trading halts in emergency situations or suspend financial instruments from trading. When exercising their powers, national surveillance authorities should cooperate closely with ESMA.

(43) To ensure equal treatment as regards supervisory oversight of operators of trading venues, ESMA should become the competent authority for all relevant trading venues, including those operated by investment firms. It follows that ESMA should be entrusted with the authorisation and supervision of investment firms in case they wish to be exclusively authorised to operate relevant MTFs or OTFs. Investment firms that simultaneously operate MTFs or OTFs, that are subject to ESMA supervision, and perform other investment activities or provide other investment services should remain under national supervision for those other investment services and activities. To ensure that those investment firms maintain one point of entry and contact with a single supervising authority when seeking authorisation, it is necessary to introduce a specific framework for the authorisation of those investment firms. Where those investment firms wish to be initially authorised to perform other investment services together with the operation of MTFs or OTFs, the national competent authority of the Member State where those applicant investment firms are based should be entrusted with the authorisation, considering that their authorisation also covers other services that are not under ESMA supervision. Nevertheless, in those cases, to ensure ESMA can perform its duties as competent authority for relevant trading venues, it should provide the national competent authority with a binding opinion on the authorisation of the trading venues. The national competent authority concerned should not authorise the applicant investment firms to operate MTFs or OTFs in case of a negative opinion by ESMA. The same approach should be followed in case an investment firm, originally authorised to provide other investment services, wishes to extend its authorisation to the operation of MTFs or OTFs that are subject to ESMA supervision. In case of a negative opinion by ESMA, the extension of the authorisation should not be granted by the national competent authority. Lastly, where an investment firm authorised by ESMA to exclusively operate MTFs or OTFs seeks to extend its authorisation to other investment services, the national competent authority of the Member State where the investment firm is based should issue to ESMA a binding opinion on the provision of the additional investment services. In case of a negative opinion, ESMA should not extend the authorisation.

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(44) To ensure that trading venues are subject to the most appropriate supervisory model, it is important to put in place a process whereby trading venues deemed significant are placed under ESMA's supervision, while introducing the possibility for trading venues that no longer meet the conditions to be 'significant' to revert to national supervision. In that context, ESMA should identify which trading venues meet the conditions to qualify as significant, and should regularly monitor whether trading venues continue to meet those conditions over time. To ensure that the change of a supervisory model occurs smoothly and without causing excessive burden for trading venues, it is important to establish an appropriate timeline and a supervisory transition plan, developed through a thorough collaboration between ESMA and the national supervisory authority concerned. To provide clarity to market participants, ESMA should also establish and regularly update a list of all significant trading venues under its supervision and publish it on its website.

(45) Regulation (EU) No 909/2014 of the European Parliament and of the Council[24] sets out standardised requirements for the settlement of financial instruments and rules on the organisation and conduct of central securities depositories (CSDs) to promote safe, efficient and smooth settlement.

(46) In 2025, the Commission consulted stakeholders on their views on the barriers to the integration and modernisation of post-trading infrastructures in general, and on the barriers to the provision of cross-border services in the area of post trading in particular. The feedback indicated that stakeholders support and consider relevant the objective of Regulation (EU) No 909/2014 to promote safe, efficient and smooth settlement of financial instruments, but underlined the need to adapt that Regulation to technological innovation while ensuring fair competition between providers of settlement services.

(47) The concepts used and the rules laid down, in Regulation (EU) No 909/2014, should not hinder the use of any particular technology, including distributed ledger technology (DLT). To account for innovation and the application of new technologies in the provision of CSD services, in particular where those services are provided using DLT, Regulation (EU) No 909/2014 should be amended to ensure that all definitions, concepts and requirements should be updated so that they can be applied to situations in which a CSD provides its services using DLT. It is equally necessary to ensure that certain tokenised assets, including e-money tokens can be used as a means of payment when settling securities transactions or to pay penalties for settlement fails.

(48) Regulation (EU) No 909/2014 should take into account developments in DLT in the provision of CSD services so that entities authorised under the pilot regime provided for in Regulation (EU) 2022/858[25] can fall under the scope of Regulation (EU) No 909/2014 once they have outgrown that regime. Regulation (EU) No 909/2014 should also allow CSDs established in the Union that intend, from the very beginning, to provide CSD services in relation to DLT-based securities whose value would

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24 Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1, ELI: http://data.europa.eu/eli/reg/2014/909/oj).

25 Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology, and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU (OJ L 151, 2.6.2022, p. 1, ELI: http://data.europa.eu/eli/reg/2022/858/oj).

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exceed the thresholds set out in Regulation (EU) 2022/858, to seek an authorisation directly under Regulation (EU) No 909/2014.

(49) Considering the significant volumes and values of securities transactions settled by settlement internalisers, it is important to strengthen the monitoring of the potential legal and operational risks related to that activity. The granularity of volume and value reporting requirements for settlement internalisers should therefore be increased and information on settlement fails included in reports to facilitate such risk monitoring. In addition, to ensure that market participants can compare prices of settlement services provided by settlement internalisers with prices of those services provided by CSDs, settlement internalisers should disclose their prices and fees to their clients.

(50) CSDs in the Union are authorised and supervised by the competent authorities of the Member States in which they are established, in cooperation with a college of supervisors where those CSDs offer services of substantial importance in two or more host Member States. Despite progress so far, diverging supervisory practices for CSDs amongst those national authorities persist, creating an unlevel playing field among CSDs in the Union and increasing the costs and burden for CSDs and groups of CSDs operating and seeking to operate cross-border. With the development of deeper, more liquid Union capital markets under the SIU, that unlevel playing field increases the risk of supervisory arbitrage which could lead to financial stability issues. To ensure that the prudential, organisational and business conduct requirements for CSDs established in the Union are applied in a uniform manner, in particular for CSDs with substantial settlement activity, CSDs with a material cross-border dimension, and CSDs that are part of a group that includes other market infrastructures that are supervised by ESMA, should be supervised by ESMA, based on its expertise and experience in the application of Regulation (EU) No 909/2014.

(51) To determine which CSDs authorised under Regulation (EU) No 909/2014 should be subject to supervision by ESMA, it is necessary to lay down clear and objective criteria for their identification, including criteria based on size and cross-border activity. With the aim of simplification and of avoiding unnecessary administrative burden, a CSD that has already been authorised should not be re-authorised by ESMA once it becomes significant.

(52) Given CSDs' central role in securities markets, their connection to other financial market infrastructures and the fact that most of the volume of settlement transactions in CSDs in the Union happens in central bank money, ESMA should develop deep and comprehensive cooperation arrangements with other authorities, in particular the ECB and other central banks of issue of the most relevant Union currencies that the CSDs settle in. Such cooperation arrangements should cover the close involvement of those other authorities in the daily supervision of significant CSDs and should include arrangements for regular events, such as onsite inspections, and ad hoc events, such as emergency situations.

(53) The amendments to Regulation (EU) No 1095/2010, and in particular the changes to ESMA's internal organisational structure and the shift in supervisory responsibilities, should be reflected in Regulation (EU) No 909/2014. In addition, taking into account the shift in supervisory responsibilities, the involvement of national competent authorities in ESMA's governance structure, and to avoid any duplicative assignment of tasks between ESMA and the supervisory college, significant CSDs should no longer be required to have a college.

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(54) As opposed to significant CSDs, less significant CSDs do not have substantial cross-border activities. They should therefore remain under the supervision of their national competent authorities. Supervisory arrangements for less significant CSDs should largely remain as they were. However, to ensure a consistent supervisory approach for those CSDs, it is necessary to provide for stronger cooperation between those national competent authorities with ESMA. In case they wish to do so, Member States should have the option to designate ESMA as the competent authority for less significant CSDs established in their jurisdictions. Moreover, should a previously significant CSD no longer meet the conditions to be considered as such, a sufficient transition period should be granted to the national competent authority to allow it to prepare before formally taking over supervisory responsibilities for that CSD. Alternatively, the national competent authority should be able to leave the supervision of this previously significant CSD to ESMA. In addition, to ensure consistency and a level playing field between significant and less significant CSDs, ESMA should also be the authority responsible for authorising interoperability arrangements such as, in the context of CSD services, interoperable links. For these purposes, ESMA should also be responsible for chairing the colleges for less significant CSDs.

(55) To modernise the exchange of information and to allow for faster procedures, ESMA should establish and maintain an electronic central database in the form of a platform. All relevant competent authorities and bodies referred to in Regulation (EU) No 909/2014 should have access to such platform for the information that is pertinent for their tasks and responsibilities. Entities subject to Regulation (EU) No 909/2014 should have access to the information and documentation they have submitted and any documentation that is addressed to them. To ensure the swift and efficient sharing of information and documentation under Regulation (EU) No 909/2014, the central database should be used to share as much information and documentation as possible.

(56) To allow groups of CSDs to benefit from their consolidation, Regulation (EU) No 909/2014 should enable CSDs that are part of a group to outsource their core services to CSDs that are part of the same group. In addition, situations where a CSD wishes to provide its core services by using a DLT solution it developed should not be considered as outsourcing but rather as an extension of the CSD's authorisation.

(57) The requirement to ensure the integrity of securities' issuance applies equally to conventional CSDs and CSDs using DLT. For CSDs using DLT, the rules should take into account the specific ways in which DLT works by allowing for appropriate reconciliation measures to be performed by nodes verifying that the number of securities making up a securities issue or part of a securities issue submitted to the CSD is equal to the sum of securities recorded on the securities accounts of the participants of the securities settlement system operated by the CSD.

(58) CSDs should be able to take advantage of the functionality offered by a common settlement infrastructure offering securities settlement with central bank money, in particular where such common settlement infrastructure provides for liquidity optimisation tools and promotes safe and efficient settlement, including across borders. To give to their participants the possibility to settle their securities transactions on that common settlement infrastructure, CSDs that offer settlement in currencies available on such a common settlement infrastructure should be required to directly connect to it. The requirement to connect to a common settlement infrastructure should take into account the technological developments in the area of central bank money settlement.

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(59) Regulation (EU) 1114/2023 of the European Parliament and of the Council[26] sets out a framework for the safe issuance in the Union of e-money tokens. To support innovation in securities settlement, CSDs in the Union should be able to settle the payments of securities transactions in e-money tokens, subject to appropriate safeguards. That possibility should be available to both CSDs that are authorised to provide banking-type ancillary services and CSDs that are not. CSDs that are not authorised to provide banking-type ancillary services should be able to settle the payments in e-money tokens, in any currency, through accounts opened with CSDs that are authorised to provide banking-type ancillary services or through accounts opened with a credit institution, subject to the threshold determined by EBA for the settlement of payments in commercial bank money.

(60) Regulation (EU) No 909/2014 sets out rules for the establishment and the maintenance of link arrangements set up between CSDs. To foster the provision of cross-border services, the access to another CSD in the Union via a standard link should be facilitated and the related process simplified. In addition, with the aim of fostering further integration of Union capital markets, CSDs should be required to establish a minimum number of bilateral links. To ensure proportionality, the number of links a CSD should be required to establish should depend on the significance of the CSD.

(61) This amending Regulation introduces targeted amendments to Regulation (EU) 2019/1156 with the aim of removing barriers to the cross-border marketing of AIFs and UCITS, harmonising rules on marketing communications and strengthening ESMA's powers to foster a common supervisory culture and better coordinate activities across home and host national competent authorities.

(62) The marketing of AIFs and UCITS is not always conducted by the AIFM, EuVECA or EuSEF manager, or UCITS management company directly but by one or several distributors either on behalf of those managers or on their own behalf. Arrangements whereby a distributor acts on behalf of the AIFM, EuVECA or EuSEF manager, or UCITS management company should be considered to be delegation arrangements subject to the provisions of Directive 2011/61/EU, Regulation (EU) No 345/2013, Regulation (EU) No 346/2013 and Directive 2009/65/EC regarding delegation. To ensure legal clarity, Regulation (EU) 2019/1156 is amended to clarify that where the marketing function is delegated to a third party acting on behalf of the AIFM, EuVECA or EuSEF manager, and UCITS management company, the latter remain responsible for ensuring that the marketing communications prepared and addressed to investors are compliant with the requirements of that Regulation. On the other hand, where a distributor acts on its own behalf and markets an AIF or UCITS under Directive 2014/65/EU or through life-insurance based investment products in accordance with Directive (EU) 2016/97, the provisions of Directive 2011/61/EU and Directive 2009/65/EC regarding delegation do not apply. Regulation (EU) 2019/1156 is therefore amended to clarify that in those cases where the marketing function is performed by one or several distributors acting on their own behalf, those distributors (and not the AIFM or UCITS management company) are liable to ensure that the marketing communications that they prepare and address to investors are compliant with the requirements of this Regulation.

[26] Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (OJ L 150, 9.6.2023, p. 40, ELI: http://data.europa.eu/eli/reg/2023/1114/oj).

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(63) To reduce unnecessary delays and divergent supervisory practices and to facilitate the seamless marketing of AIFs and UCITS in the Single Market, it is appropriate that Regulation (EU) 2019/1156 prohibits the competent authorities of the host Member State from requiring the notification of marketing communications as a prior condition for the marketing of AIFs and UCITS in their territory. In order to protect investors in the host Member State and improve supervisory cooperation and effectiveness, where the competent authorities of the host Member State have reasonable grounds to believe that marketing communications are not in compliance with Regulation (EU) 2019/1156 or the relevant Commission delegated acts, they retain the right to request the competent authorities of the home Member State of the AIFM, EuVECA or EuSEF manager or UCITS to take all appropriate measures to prevent or penalise further irregularities. The competent authorities of host Member States may further refer the matter to ESMA if they are not satisfied with the actions taken by the home competent authorities.

(64) In order to ensure high levels of transparency on the fees or charges levied by host competent authorities for carrying out their duties in relation to AIFs and UCITS marketed in their territory and to facilitate the recovery of those fees or charges, ESMA should publish up to date information on the amount of fees or charges levied by each host competent authority, their frequency and the modalities of their payment. To ensure consistency of the fees or charges levied by competent authorities, ESMA should, every 2 years, analyse whether such fees or charges are consistent with the overall cost relating to the performance of the functions of the competent authorities and submit a report to the Commission on that basis.

(65) To facilitate the marketing of AIFs and UCITS across the Union and to optimise the interactions and the exchange of information between home and host Member States, it is appropriate and necessary for ESMA to establish a “one-stop-shop” for the cross-border marketing of AIFs and UCITS, that would allow competent authorities to easily transmit and exchange information and documentation on marketing notifications. It is therefore essential that ESMA develops a data platform for marketing notifications and de-notifications that would be accessible to all competent authorities. UCITS and AIFMs should provide all information and documentation necessary for the marketing of AIFs and UCITS across the Union, including any amendments thereof to the competent authorities of their home Member State and the latter will in turn transmit them to ESMA through that data platform. All relevant host competent authorities should have immediate and direct access to the information and documentation in connection with the UCITS and AIFs marketed in their territory through the data platform. The data platform will simplify and expedite the passporting procedure for UCITS and AIFMs, allowing for immediate Single Market access upon their authorisation, as well as increasing transparency and cooperation among competent authorities. To fund the expenditure relating to the new passporting procedure, including the appropriate share of maintenance costs of the data platform that is utilised for that purpose, ESMA should charge UCITS and AIFMs a fee when they avail of the passporting based on authorisation procedure. The fee structure should be commensurate to the number of host Member States in which the units of UCITS or AIFs are marketed.

(66) To ensure a consistent implementation and greater harmonisation of marketing requirements and notification procedures across Member States, the provisions of Directive 2011/61/EU and Directive 2009/65/EC as regards the marketing of EU AIFs

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managed by EU AIFMs to professional investors and the marketing of UCITS across the Union are transferred to Regulation (EU) 2019/1156.

(67) EU AIFMs marketing EU AIFs to professional investors, and UCITS marketing their units across the Union, are already authorised and subject to strict regulatory safeguards and prudential requirements. However, the cross-border marketing of UCITS and AIFs remains hampered by lengthy notification procedures and divergent national requirements and administrative practices, including obligations relating to translations, the appointment of local agents and differing national deadlines. Those divergences hinder the functioning of the internal market, as UCITS and AIFs must navigate a patchwork of national rules and processes when operating in several Member States. It is therefore necessary to streamline marketing notification and de-notification procedures, shorten processing times and remove national requirements that create obstacles to the cross-border marketing of investment funds. For that purpose, Regulation (EU) 2019/1156 is amended to allow UCITS and AIFMs, at the time of their authorisation, to notify their home Member State of their intention to market units or shares of UCITS or AIFs in other Member States through a simplified procedure. Once the home Member State has received the required information and documentation through the authorisation application, it should transmit it to the ESMA data platform. That information should be automatically accessible to host Member States and, from the moment of its transmission to the data platform, UCITS and AIFs should enjoy unrestricted access to the markets of those Member States.

(68) The de-notification of marketing arrangements should likewise be subject to the simplified procedure, allowing UCITS and AIFMs to notify their intention to terminate marketing activities in a host Member State to their home competent authority, who will in turn notify the relevant host Member States and ESMA through the data platform.

(69) Although the requirement of a physical presence as a precondition for the marketing of UCITS and AIFs in a host Member State is prohibited, Member States often require, through market practice or otherwise, the appointment of a local agent to conduct certain tasks locally. Such practices undermine the functioning of the Single Market and generate unnecessary costs and complexity for funds marketed across the Union. It is therefore necessary to clarify that host Member States should not impose, through market practice or otherwise, any form of physical local presence obligation on UCITS and AIFs marketed in their territory, even where such presence is not formally a precondition for marketing but creates additional burdens or places those funds at a disadvantage compared to domestic funds.

(70) To ensure greater harmonisation in the exercise of supervisory powers by the competent authorities of home and host Member States, the provisions of Directive 2011/61/EU and Directive 2009/65/EC concerning supervisory powers over UCITS and AIFs marketed across the Union should be transferred into Regulation (EU) 2019/1156. In order to promote effective cooperation between home and host competent authorities and to ensure that any potential disagreements are resolved efficiently and without creating obstacles to the marketing of UCITS and AIFs within the Union, it is necessary to clarify that the competent authorities of host Member States should refer to ESMA any matters of disagreement with the competent authorities of the home Member State of the UCITS or AIFM, or cases where the host Member State considers that the marketing of a UCITS or AIF should be prohibited in its territory. In such cases, ESMA should resolve the matter in accordance with its powers to address cross-border issues.

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(71) To ensure the effective functioning of the Single Market for investment funds and remove supervisory obstacles that impede the cross-border exercise of passporting rights, ESMA should be empowered to detect and address instances of divergent, duplicative, redundant or deficient supervisory practices that hinder the cross-border marketing of UCITS and AIFs or instances where the cross-border marketing of UCITS or AIFs does not comply with Union law. In those cases, ESMA should implement an escalation process, starting with engaging with competent authorities and stakeholders, fostering greater collaboration between them and, where necessary, using its convergence and intervention powers so that unjustified restrictions on cross-border activities or cases of non-compliance with EU law are remedied in a timely and effective manner. For the same reasons, it is necessary to ensure that, if those problems persist despite this escalation process, ESMA should then exercise its powers to launch breach of Union law procedures in accordance with Article 17 of Regulation (EU) No 1095/2010, to suspend the right to market UCITS or AIFs on a cross-border basis in accordance with Article 17aaa of Regulation (EU) No 1095/2010, to arrange binding mediation in accordance with Article 19 of Regulation (EU) No 1095/2010 or to organise collaboration platforms in accordance with Article 19a of Regulation (EU) No 1095/2010, where appropriate, in order to effectively remedy those problems.

(72) To ensure consistent supervision and effective cooperation between competent authorities of Member States, competent authorities should be able to refer to ESMA any disagreements on assessments, actions, or omissions in areas where Regulation (EU) 2019/1156 requires coordination, so that ESMA can intervene using the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

(73) It is necessary to amend Regulation (EU) 2021/23 to account for ESMA's new role as the supervisor of significant CCPs and the abolition of colleges for those CCPs.

(74) Whereas Regulation (EU) 2022/858 was adopted to promote the uptake of distributed ledger technology (DLT) in the financial sector, by providing for an EU pilot regime that allows market participants to experiment with the use of DLT for the trading and settlement of financial instruments. Three years after the entry into application of the Regulation, its uptake remains moderate, with a limited number of approved applicants, despite a growing interest in the market in using DLT for financial services. In line with the objective set in the priorities for achieving the Savings and Investment Union of enhancing the interoperability, interconnection and efficiency of EU trading and post-trading infrastructures, it appears justified to review the current regulatory setting of Regulation (EU) 2022/858 to ensure that the DLT Pilot Regulation is better capable of accompanying regulated firms wanting to leverage DLT for trading and post-trading. To achieve this objective, the review broadly comprises two sets of amendments: firstly, those that aim to increase the flexibility and proportionality of the framework and, secondly, those that aim to extend its scale and scope.

(75) DLT is used, among others, for the issuance, recording and transferring of financial instruments. As such, where appropriate operational risk management is implemented by its users, it does not make the financial instruments managed through DLT inherently riskier than the instruments managed based on other, functionally analogous technologies. Therefore, the scope of eligible assets and financial instruments admitted to trading on a DLT market infrastructure, or to be recorded on a DLT market infrastructure under this Regulation should be expanded to cover all financial

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instruments, regardless of their type, subject to appropriate application of investor protection rules.

(76) Regulation (EU) 2022/858 lays down various limits to the scale of activities carried out under the Pilot, with limits to the issuance size and market capitalisation of assets eligible for the DLT Pilot (asset-specific caps), and an aggregate cap that limits the total value of financial instruments intermediated by a DLT market infrastructure of EUR 6 billion. Those activity thresholds have made it difficult for certain large market participants to use the Pilot framework for their activity and develop large scale business models. Therefore, all asset-specific caps should be withdrawn, whereas the aggregate cap should be raised to EUR 100 billion. To mitigate risks from increased activity, those changes should be accompanied by targeted increases in prudential requirements for those Pilot participants providing CSD services that wish to benefit from increased thresholds. At the same time, to make it easier for small innovative companies to use the DLT Pilot for their activities, a simplified regime comprising obligations that are proportionate to the risk and size of those companies should be established. The simplified regime should be open to operators of a DLT TSS or a DLT SS where the aggregate market value of all DLT financial instruments that they service does not exceed EUR 10 billion at the moment of admission to trading or initial recording of a new DLT financial instrument.

(77) Regulation (EU) 2022/858 limits the types of eligible entities that can participate in the Pilot, which have to be either trading venues authorised under Directive 2014/65 or CSDs. That approach excludes regulated financial entities that have an interest and experience in organising trading and transfers of digital assets to participate in the Pilot, namely the crypto-assets services providers (CASP) that operate trading platforms. Therefore, those CASPs should be allowed, under certain conditions and subject to their compliance with the relevant requirements set out in Directive 2014/65, Regulation (EU) No 600/2014 and Regulation (EU) No 909/2014, as applicable, to obtain a specific permission to operate a DLT trading venue (DLT TV) or a DLT trading and settlement system (DLT TSS). Accordingly, the rules laid down for entities operating DLT market infrastructure should be apply to CASPs.

(78) Regulation (EU) 2022/858 grants its participants the possibility to request exemptions from specific provisions of the sectoral legislation. However, certain provisions of sectoral legislation may be identified as incompatible with DLT only by applicants to the Pilot themselves, as they develop their business models and apply for a permission to operate a DLT market infrastructure, or after obtaining the permission. To ensure flexibility of the Pilot regime in supporting innovation, the competent authorities should be allowed to grant requests for exemptions from provisions belonging to the specified parts of sectoral legislation under certain conditions. Such requests should be based on clear justification by the DLT TV or DLT SS operators that the required exemption is incompatible or disproportionate with the use of DLT, and should be accompanied, where appropriate, with compensatory measures that can achieve the objective of the provision for which the exemption is requested. To ensure supervisory convergence between competent authorities granting the exemptions, ESMA should be closely involved in granting the requests by issuing non-binding opinions on the requests and assessments made by the competent authorities.

(79) Finding robust solutions for settlement of the cash leg in commercial bank money may be more difficult in the nascent market of DLT market infrastructures. To support operators of a DLT SS or a DLT TSS in finding efficient solutions for processing commercial bank money payments within their settlement systems, they should be

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able to designate credit institutions whose banking activities are not limited to CSDs but otherwise comply with Title IV of Regulation (EU) No 909/2014. Furthermore, to increase legal certainty for existing projects developed under the Pilot, settlement in commercial bank money executed by an investment firm operating a DLT TSS should be explicitly recognised, provided it sufficiently monitors the risks arising from its settlement model.

(80) Since e-money tokens have emerged as one of the most widely used means of DLT-based settlement, further legal clarity should be provided for the use of e-money tokens in the Pilot. To recognise that Regulation (EU) 2023/1114, adopted after Regulation (EU) 2022/858, governs the services of custody of e-money tokens, it should be specified that e-money tokens cash accounts for the purpose settlement may be provided by a set of appropriately regulated financial institutions, including CASPs. However, it should be laid down that most banking type ancillary services with regards to e-money tokens, other than providing cash accounts and processing payments, may be provided only by credit institutions. Furthermore, to promote the use of e-money tokens denominated in Union currencies and to protect the market from foreign exchange risk, settlement of payments for assets denominated in Union currencies should be carried out in e-money tokens referencing EU currencies. To support the development of euro denominated stablecoins, DLT market infrastructures should be encouraged to offer settlement in e-money tokens denominated in euro, even if the financial instrument that is settled is denominated in a non-EU currency.

(81) It is necessary to ensure that small businesses seeking to innovate are subject to requirements of Regulation (EU) No 909/2014 that are proportionate to their size and risk. For that reason, operators of a DLT SS or a DLT TSS benefiting from the simplified regime should, with regard to the provision of CSD services, only be subject to those provisions of Regulation (EU) No 909/2014 that are essential to ensure safe and robust provision of CSD services, while not setting a burdensome compliance standard. For the same reason, and to ensure that the delegated regulations adopted pursuant to Regulation (EU) No 909/2014 are made proportionate to the risk and size of small businesses operating under the simplified regime, ESMA should be instructed to amend those delegated regulations for the needs of the simplified regime. To ensure that the requirements applicable to the Pilot participants become more stringent as businesses scale and risks increase, DLT market infrastructures wishing to transition to from the simplified to the regular regime should comply with all of the requirements of Regulation (EU) No 909/2014, as adapted and derogated from by Regulation (EU) 2022/858. Given the novelty of the simplified regime for the activities of the DLT settlement system (DLT SS) or the DLT trading and settlement system (DLT TSS) introduced in this regulation, and to ensure supervisory convergence by competent authorities, ESMA should be mandated to issue guidelines on the implementation of that simplified regime.

(82) Distributed ledgers act as platforms on which financial intermediaries may provide financial services in a synchronised manner. In order to allow market participants to leverage the platform nature of distributed ledgers, the Pilot should make it possible for eligible financial entities to obtain a specific permission to perform an individual CSD service within the territory of the Union. Therefore, a legal person who is authorised as an investment firm, a regulated market, a credit institution, a CSD, or a CASP should be allowed to perform the DLT notary service or the DLT central maintenance service under the Pilot. To ensure these services are provided in accordance with the standards laid down in Regulation (EU) No 909/2014, while

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taking into account the specificities of DLT, DLT notaries and DLT account keepers should be subject to the provisions of that regulation that govern the application of the notary and the central maintenance service and the additional requirements for DLT market infrastructures set out in Regulation (EU) 2022/858.

(83) DLT financial instruments issued and safeguarded by the DLT notary and DLT account keepers outside a CSD should only be settled through a DLT SS, DLT TSS or a CSD operating solely under Regulation (EU) No 909/2014. Furthermore, given the experimental nature of this model for the distributed provision of CSD services, the market value of DLT financial instruments issued and safeguarded by DLT notaries and DLT account keepers should be limited by allowing operators of a DLT SS, DLT TSS or a CSD operating solely under Regulation (EU) No 909/2014 to admit for settlement up to EUR 10 billion of market value of such instruments, which should be increased to EUR 30 billion of market value for transferable securities issued by SMEs.

(84) To reflect the distributed nature of roles and responsibilities that is possible under the Pilot with the creation of the DLT notary and DLT account keeper function, it should be made clear that where, for a given DLT financial instrument, a DLT notary or a DLT account keeper provides CSD core services jointly with a DLT SS, TSS or a CSD operating solely under Regulation (EU) No 909/2014, the DLT SS, TSS or CSD operating solely under Regulation (EU) No 909/2014 should not be liable for compliance with those requirements laid down in Regulation (EU) No 909/2014 that are discharged by the DLT notary or a DLT account keeper.

(85) To ensure transparency on the market about joint provision of CSD services, ESMA should enter the information about each of the DLT notary and the DLT central maintenance services operated by a specific DLT SS, TSS or a CSD operating solely under Regulation (EU) No 909/2014 in the CSD register maintained under Article 21 of Regulation (EU) No 909/2014.

(86) Additionally, because distributed ledgers allow its users to more easily synchronise and automate operations, the Pilot should allow market participants to experiment with a new business model that does not involve a single operator of a settlement system, but rather relies on regulated entities that are individually and jointly required, through the establishment of a settlement scheme, to ensure robust settlement outcomes. Given their experimental nature, these business models should be subject to the same thresholds as those applicable to DLT market infrastructures settling DLT financial instruments issued and safeguarded by DLT notaries and DLT account keepers. Additionally, to further mitigate risks stemming from this new business model, the eligible participants to settlement schemes should only be DLT account keepers, the settlement should be conducted through central bank money accounts managed by those DLT account keepers, and should be settled on a 'delivery versus payment' basis. Additionally, to ensure the sound functioning of the settlement scheme, its participants should ensure safe, efficient and smooth settlement, protection of client assets and robust risk management of operations. In particular, to ensure robust management of credit and liquidity risks stemming from providing banking services to their clients, DLT account keepers participating in the scheme should comply with a set of prudential requirements on an ongoing basis. To ensure this compliance, the settlement scheme should be authorised and supervised by ESMA, in cooperation with competent authorities of the DLT account keepers participating in the scheme.

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(87) To facilitate the development of DLT CSD services across Member States, DLT notaries and DLT account keepers should be allowed to provide CSD services throughout the Union, without being required to have a physical presence in the territory of a host Member State as long as they submit a list of the Member States in which they intend to provide CSD services to the competent authority of their home Member State, which is requested to then share this list with the competent authorities of the relevant host Member States and ESMA before the DLT notary or the DLT account keeper may begin to provide CSD services in those host Member States.

(88) To ensure that DLT market infrastructures do not fragment the Union's trading and post-trading infrastructure and that they form a part of an integrated capital market DLT market infrastructures participating in the Pilot, as well as other interested parties, should form an industry group for the purpose of establishing industry standards that facilitate settlement of DLT financial instruments between DLT market infrastructures. Building on the work of that industry group, ESMA should provide technical advice to the Commission on supporting interoperability between DLT market infrastructures.

(89) Colleges of supervisors should be established to ensure the efficient supervision of the novel business models for CSD services allowed under the Pilot and the necessary cooperation and exchange of information between all the supervisors that those business models may involve. Firstly, colleges of supervisors should be established in accordance with Article 24a of Regulation (EU) No 909/2014 where a DLT SS or a DLT TSS operating under the regular regime provides CSD services and fulfils the conditions set out in that article. To ensure comprehensive involvement of all relevant authorities, competent authorities of the DLT notary or the DLT account keeper that is involved in the provision of CSD services and EBA, where e-money tokens are used for the settlement of payments, should be allowed to join the college of supervisors. Secondly, ESMA should also establish and chair a college of supervisors for settlement schemes, comprising ESMA, the competent authorities of DLT account keepers participating in the settlement scheme and the central bank in the Union of the currency that is or will be used for the settlement of cash payments in the settlement scheme. Competent authorities of DLT notaries participating in the settlement scheme should be able to participate in the college upon request.

(90) To remove any ambiguity in relation to the long-term viability of the Pilot, the time limits for the duration of the permissions granted in accordance with Regulation (EU) 2022/858 should no longer apply.

(91) Well-integrated crypto-asset markets depend on coordinated supervisory frameworks to operate efficiently, while more centralised supervision can, in turn, promote deeper market integration. Centralising supervisory powers and capacities at Union's level, including by transferring direct supervisory responsibilities in the area of crypto-asset service providers is a critical element to further develop the mutually reinforcing dynamic between market integration and supervisory alignment.

(92) Because crypto-asset service providers are a new area of financial activity which has only recently come under supervision and because it is important to ensure supervisory consistency from the beginning, ESMA should exercise that centralised supervision, thereby guaranteeing a level playing field. Crypto-asset services is also an area dominated by increased cross-border activity carried out using electronic means and new technology. Risks should therefore be monitored and addressed in a comprehensive and consistent manner. Centralised oversight should ensure the

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consistent application of standards and rules, mitigate supervisory gaps across jurisdictions and address the disproportionate impact a potential failure of crypto-asset service providers could have on the Union's crypto-asset ecosystem. Centralised supervision should mean the danger of supervisory fragmentation will not materialise.

(93) In the fight against market abuse of crypto-assets admitted to trading or of which a request for admission to trading has been made, centralised market surveillance by ESMA and investigation powers for cross border cases should achieve economies of scale, overcome the issue of fragmented access to data, reduce reliance on international cooperation and ultimately give ESMA a better view over complex strategies taking place across jurisdictions.

(94) In this respect, ESMA should be responsible for the authorisation and supervision of the crypto-asset service providers and ongoing monitoring for market abuse in the crypto-asset sector.

(95) Certain firms subject to Union legislative acts on financial services are already allowed to provide all or some crypto-asset services without being required to obtain an authorization as a crypto-asset service provider under Regulation (EU) 2023/1114. These entities should continue to be supervised for their crypto-asset activities by the competent authorities that granted them authorisation under other Union acts. However, where the provision of crypto-asset services becomes the main activity of those entities, they should be treated as crypto-asset service providers and the supervision for all their activities should be transferred to ESMA. To fulfil this duty, ESMA should establish cooperation agreements with the competent authorities that authorised those entities under other Union legislative acts on financial services. On the basis of the cooperation agreement, those competent authorities shall provide support and assistance to ESMA in the supervision of the activities that are not covered by Regulation (EU) 2023/1114.

(96) As there is already a centralized system of banking supervision in the Union in the form of the Single Supervisory Mechanism, ensuring integration and consistency in the supervision of the activities of credit institutions, there should be no transfer of supervisory powers where the entity providing crypto-asset services is a credit institution.

(97) To supervise crypto-asset service providers, ESMA should have the powers to suspend or, prohibit the provision of a crypto-asset service, to withdraw the authorisation of a crypto-asset service provider, to investigate infringements of the rules on market abuse, to request information, to carry out on-site inspections and investigations, to take supervisory measures and to impose fines. When determining the type and level of an administrative penalty or other administrative measure, ESMA should take into account all relevant circumstances, including the gravity and the duration of the infringement and whether it was committed intentionally. In order to carry out its supervisory duties, ESMA should cooperate and be assisted by other competent authorities as well as the competent authorities responsible for the supervision of [Directive (EU) 2015/849].

(98) ESMA should charge fees to crypto-asset service providers to cover its costs for supervision, including for overheads, and the cost of conducting market surveillance to prevent market abuse. The fee should be proportionate to the size of the crypto-asset service provider. To avoid disruption to existing crypto-asset service providers, it is necessary to lay down transitional provisions for crypto-asset service providers that have been authorised pursuant to Regulation (EU) 2023/1114 and for applicants whose

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application for a crypto-asset service provider authorisation is currently being assessed by national competent authorities. For reasons of legal certainty, it is also appropriate to establish clear transitional measures for the transmission of files and working documents from the competent authorities to ESMA.

(99) To avoid disruption to existing crypto-asset service providers, the authorisation of a crypto-asset service provider by a competent authority should remain valid throughout the Union after the transition of supervisory powers from the competent authorities to ESMA.

(100) In order to fulfil the objectives of Regulation (EU) No 1095/2010, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the adoption of rules of procedures for the exercise of ESMA's power to charge fees, for the imposition of fines and a settlement procedure, including the rights of defence, disclosure and effects of settlements. In addition, in order to ensure the effectiveness of Regulation (EU) No 648/2012, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the specification of the fees to be paid to ESMA for the supervision of significant CCPs, the matters for which those fees are due, the calculation of the amount of those fees, and the manner in which those fees are to be paid , and in respect of amending the list of infringements for which ESMA can impose supervisory measures on significant CCPs. Furthermore, to ensure the effectiveness and the consistent application of Regulation (EU) No 600/2014, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the specification of the fees to be paid by operators of the trading venues that are subject to supervision by ESMA, in respect of the conditions and methodologies used to determine whether a trading venue should be deemed significant, and in respect of the conditions under which a trading venue or a CCP should grant access to its services. In parallel, in order to ensure the effectiveness of Regulation (EU) No 909/2014, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the specification of the type of fees to be paid to ESMA for the supervision of significant CSDs, the matters for which those fees are due, the calculation of the amount of those fees and the manner in which they are to be paid; amending the list of infringements for which ESMA can impose supervisory measures; the further specification of the requirements applicable to the participation in a CSD, and the amendment of the conditions under which a CSD shall be subject to the obligation to establish bilateral links. In addition, in order to ensure that the activity thresholds laid down in Regulation (EU) 2022/858 can be modified in light of market developments and policy learnings from the pilot regime established by that act, the power to adopt delegated acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the adaptation of those thresholds to, among others, market conditions and possible risks to financial stability. Furthermore, in order to ensure the effectiveness of Regulation (EU) 2023/1114, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of further specifying the type and the calculation of the amount of supervisory fees that ESMA can charge to the crypto-asset service providers. Lastly, to ensure an orderly application of provisions transferred from Directive 2014/65/EU to Regulation (EU) No 600/2014, it is appropriate to ensure that delegated acts and implementing acts that have been adopted on the basis of empowerments laid down in Directive 2014/65/EU that are to be transferred to Regulation (EU) No 600/2014, continue to apply. The Commission should be empowered to amend those delegated and implementing act in accordance

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with the procedures set out in Article 10(4a) or 15(4a) of Regulation (EU) No 1095/1010. 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 of 13 April 2016 on Better Law-Making[27]. 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.

(101) To ensure consistent application of the relevant provisions under Regulation (EU) No 600/2014, the Commission should be empowered to adopt, in accordance with Article 290 TFEU and Articles 10 to 14 of Regulation (EU) No 1095/2010, regulatory technical standards developed by ESMA related to the authorisation of regulated markets and PEMOs, and to the operation of trading venues. Furthermore, to ensure consistent harmonisation of standards, the Commission should be empowered to adopt, in accordance with Article 290 TFEU and with Articles 10 to 14 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council[28] and of Regulation (EU) No 1095/2010, regulatory technical standards developed by the European Banking Authority ('EBA') and by the European Securities and Markets Authority ('ESMA') with regard to the procedures for the calculation of the criteria for establishing the significance of a CSD and the set of data EU CSDs are to report to ESMA for such calculation; the measures to be put in place by CSDs and market participants to prevent settlement fails and to increase the settlement efficiency of Union capital markets; the conditions under which an outsourcing arrangement is to be considered as the outsourcing of core CSD services; the measures to be implemented by CSDs to mitigate the specific risks stemming from the provision of CSD services using DLT; and the risk management measures and prudential requirements with respect to the settlement in commercial bank money and in e-money tokens. In addition, in order to ensure consistent harmonisation in the fees to be charged by ESMA to UCITS and AIFMs in connection with the passporting procedure and the maintenance of the data platform, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of measures to specify the type, amount, frequency and the modalities governing the payment of those fees. Furthermore, in order to ensure consistent harmonisation in the marketing communications made available to investors, the power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission to specify the content and format of marketing communications. 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 of 13 April 2016 on Better Law-Making. 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. Lastly, to

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27 Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016.

28 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).

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identify the requirements of Regulation (EU) No 909/2014 that should apply to the providers of the DLT notary and DLT central account maintenance service, and adapt them to the use of distributed ledger technology and the specificities of business models involving DLT notaries and DLT account keepers, ESMA should develop draft regulatory technical standards to supplement the provisions of Title III of Regulation (EU) No 909/2014.

(102) In order to ensure uniform conditions for the implementation of Regulation (EU) No 909/2014, implementing powers should be conferred on the Commission to adopt implementing technical standards developed by ESMA with regard to the standard forms, templates and procedures for the disclosure of fees and prices by CSDs and by settlement internalisers. Those powers should be exercised in in accordance with Article 15 of Regulation (EU) No 1095/2010.

(103) Regulations (EU) No 1095/2010, No 648/2012, No 600/2014, No 909/2014, 2015/2365, 2019/1156, 2021/23, 2022/858, 2023/1114, No 1060/2009, 2016/1011, 2017/2402, 2023/2631 and 2024/3005 should therefore be amended accordingly.

(104) It is necessary to provide ESMA with sufficient time to prepare for its new supervisory role, which entails changes to its governance. The amendments to Regulations (EU) 1095/2010, 2015/2365, 2019/1156, 2021/23, 2022/858, 2023/1114, (EU) No 1060/2009, 2016/1011, 2017/2402, 2023/2631, 2024/3005 should therefore start to apply from 12 months after the entry into force of this Regulation. However, to enable the Executive Board to be operational and to effectively take over the tasks assigned to it, the selection and appointment procedure for the members of the Executive Board should start to apply as from the date of entry into force of this Regulation.

(105) To ensure consistency with the amendments to Regulation (EU) No 1095/2010, the amendments to Regulation (EU) No 648/2012 should apply 12 months after the entry into force of this Regulation. However, to enable ESMA to start assessing whether a CCP is a significant CCP before the obligations on significant CCPs start to apply, the provisions that relate to that assessment should start to apply from the date of entry into force of this Regulation. To allow ESMA to gradually phase in the new supervisory responsibilities and to establish the necessary capacity and frameworks of cooperation, the amendments to Regulation (EU) No 909/2014 that relate to the supervision of significant CSDs should apply 24 months after the entry into force of this Regulation. However, to enable ESMA to start assessing whether a CSD is a significant CSD before the obligations on significant CSDs start to apply, the provisions that relate to that assessment should apply from the date of entry into force of this Regulation.

(106) To ensure legal certainty and to avoid disruptions to the establishment of the consolidated tape for shares and ETFs by the first CTP authorised in accordance with Article 27db of Regulation (EU) No 600/2014, the amendments to that Regulation that relate to the consolidated tape for shares and ETFs should apply from [*OP insert date = the day following the expiry of the first period of 5 years referred to in Article 27da of Regulation (EU) No 600/2014 with respect to the CTP for shares and ETFs*]. To ensure consistency with the amendments to Regulation (EU) No 1095/2010, the amendments to Regulation (EU) No 600/2014 that relate to ESMA's powers should start to apply 12 months after the entry into force of this Regulation. To allow for sufficient time to prepare the transfer from national competent authorities to ESMA of competences and duties with respect to the relevant trading venues, ESMA should

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become the competent authority for the entities concerned 24 months after the entry into force of this Regulation.

(107) The Regulation introduces binding requirements for cross-border digital public services within the meaning of Regulation (EU) 2024/903. An interoperability assessment has therefore been completed. The Digital Dimensions chapter of the Legislative Financial and Digital Statement constitutes the resulting report. This will also be published on the Interoperable Europe Portal following the Act's adoption.

(108) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council[29] and delivered an opinion on [XX].

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) No 1095/2010

Regulation (EU) No 1095/2010 is amended as follows:

(1) Article 1 is amended as follows:

(a) the following paragraph 3b is inserted:

'3b. The Authority shall exercise powers over certain financial market participants, in accordance with this Regulation and other Union acts. Such powers shall include, where conferred by this Regulation and other Union acts, the registration, authorisation, recognition, ongoing supervision, investigation including the power to conduct on-site inspections, and enforcement in respect of those entities.'

(b) paragraph 5 is amended as follows:

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

'(a) improving the functioning of the internal market, including in particular a sound, effective and consistent level of regulation, supervision and enforcement,'

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

'(c) strengthening international supervisory coordination and exchange of information;'

(3) the following point (h) is added:

'(h) supporting market integration in the Union and innovation in the financial sector.'

(2) Article 3 is amended as follows:

(a) the following paragraphs 4a and 4b are inserted:

'4a. At the request of the Council, the Chairperson shall participate in a Council session on the performance of the Authority. The Chairperson shall make a statement

[29] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39, ELI: http://data.europa.eu/eli/reg/2018/1725/oj).

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before the Council and answer any questions from its members, whenever so requested.

4b. When representing the Authority before the Council or the European Parliament according to paragraphs 4 and 4a the Chairperson may be accompanied by one or several members of the Executive Board.;';

(b) paragraph 5 is replaced by the following:

'5. The Chairperson shall report in writing on the activities of the Authority to the European Parliament and the Council when requested and at least 15 days before making the statement referred to in paragraph 4 and 4a.';

(3) Article 4 is amended as follows:

(a) in point (3), point (i) is replaced by the following:

'(i) competent authorities or supervisory authorities as defined, designated or specified in the legislation referred to in Article 1(2);'

(b) the following points (4), (5) and (6) are added:

'(4) financial market participant under the Authority's supervision' means any financial market participant for which the Authority has been conferred supervisory, investigatory, enforcement or any other powers under this Regulation and other Union acts;

(5) 'applicant authority' means a competent authority of a Member State that has adopted a decision to impose an administrative fine upon a natural or legal person for a breach occurred within its jurisdiction and requests assistance of a competent authority of another Member State in recovering that fine in accordance with Articles 28a and 28b;

(6) 'requested authority' means a competent authority that is requested to assist in recovering an administrative fine within its own jurisdiction from the applicant authority in accordance with Articles 28a and 28b.';

(4) in Article 6 point (2) is replaced by the following:

'(2) an Executive Board, which shall exercise the tasks set out in Article 46a;';

(5) the title of Chapter II is replaced by the following:

'GENERAL TASKS AND POWERS OF THE AUTHORITY'

(6) Article 8 is amended as follows:

(a) paragraph 1 is amended as follows:

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

'(aa) to develop and maintain an up-to-date Union supervisory handbook on the supervision of financial market participants in the Union and enforcement of the rules regulating their activity which is to set out best practices and high-quality methodologies and processes and takes into account, inter alia, business practices and business models and the size of financial market participants and of markets;';

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

'(b) to contribute to the consistent application of legally binding Union acts, in particular by contributing to a common supervisory and enforcement culture, ensuring consistent, efficient and effective application of the legislative acts referred

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to in Article 1(2), preventing regulatory arbitrage, fostering and monitoring supervisory independence, mediating and settling disagreements between competent authorities, ensuring effective and consistent supervision of financial market participants and enforcement of the rules regulating their activity, ensuring a coherent functioning of colleges of supervisors or other forms of supervisory cooperation and taking actions, inter alia, in emergency situations;';

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

'(e) to organise and conduct peer 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 and enforcement outcomes;'

(4) point (ia) is replaced by the following:

'(ia) to contribute to the establishment of a common Union financial data strategy and ensure efficient exchange of information within the Union;'

(5) the following point (iaa) is inserted:

'(iaa) to develop in collaboration with competent authorities, the ESFS and, where relevant other European bodies, agencies or institutions, supervisory technology or other tools to enhance analysis and monitoring capabilities;'

(6) the following points point (l), (m) and (n) are added:

'(l) to perform its supervisory duties and exercise powers with regard to financial market participants under the Authority's supervision in accordance with this Regulation and other Union law;

(m) to carry out the prudential supervision of central counterparties and central securities depositories when exercising its powers under Regulation (EU) No 648/2012 and Regulation (EU) No 909/2014*, and in relation thereto, to cooperate with the European Central Bank and the other relevant central banks of issue of the Union currencies;

(n) to assess the resilience of the financial system of the Union, as well as risks arising from cross-border activities of financial market participants under the Authority's supervision, including risks due to interconnectedness, interlinkages or concentration risks, when carrying out supervisory duties in accordance with this Regulation or other Union acts.';

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*Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 OJ L 257, 28.8.2014, pp. 1–72 ELI: http://data.europa.eu/eli/reg/2014/909/oj

(b) paragraph 2 is amended as follows:

(1) The introductory wording is replaced by the following:

'To achieve the tasks set out in paragraph 1, the Authority shall have the powers set out in this Regulation and shall apply all relevant Union law, and where this Union law is composed of Directives, the national legislation transposing those Directives interpreted in a manner consistent with it, in particular to:';

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

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‘(f) take individual decisions addressed to financial market participants, in the specific cases referred to in Article 17(6), Article 17aaa, Article 18(4) and Article19(4);’;

(3) point (ga) is deleted;

(4) the following points (k) and (l) are added:

‘(k) to take individual decisions addressed to financial market participants when exercising direct supervisory tasks and adopt supervisory, investigatory and enforcement measures as referred to in Chapter IIa of this Regulation and other Union acts;’;

(l) undertake assessments and issue technical advice upon request;’;

(7) the following Article 8a is inserted:

‘Article 8a

Duty of cooperation

1. The Authority shall carry out its tasks in cooperation with relevant competent authorities and other national authorities, Union institutions or Union bodies that are relevant pursuant to the legislation referred to in Article 1(2) (hereinafter ‘the authorities’). The Authority shall be responsible for the effective and consistent functioning of the cooperation arrangements with the authorities while ensuring that it develops and maintains the necessary capacity to perform its tasks independently.

2. Both the Authority and the authorities shall be subject to a duty of cooperation in good faith and an obligation to exchange information to effectively exercise their tasks. When exercising its tasks, the Authority may draw from the expertise and knowledge of the authorities, including their supervisory experience and understanding of economic, organisational and cultural specificities. Where appropriate and without prejudice to the responsibility and accountability of the Authority for the tasks conferred on it by this Regulation and the legislation referred to in Article 1(2), the authorities shall be responsible for assisting the Authority, under the conditions set out in the arrangements set out in this Article. This may include support with the preparation and implementation of acts relating to the tasks referred to in Article 8(1) point (l), including assistance in verification activities or performance of specific operational tasks. The authorities shall follow the instructions given by the Authority when giving support and performing tasks under these arrangements.

3. For the purpose of carrying out tasks according to Article 8(1), point (l), and without prejudice to specific arrangements envisaged in other Union acts, the Authority shall establish, under its overall responsibility, and after consulting with the authorities the practical arrangements for cooperation.

4. The Authority shall bear any costs incurred by the authorities, in connection with the cooperation provided pursuant to this Article, unless otherwise agreed.

5. The practical arrangements for cooperation shall define the modalities of support, the procedures and processes, including time-limits, for the cooperation between the Authority and the authorities and shall be guided by the following principles:

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(a) they may be tailored or adjusted to the sector concerned and the nature of the supervisory tasks and the intensity of cooperation including the organisation, functioning and participation in the cooperation;

(b) they shall allow for transitional solutions to ensure continuity and smooth transfer of responsibilities from the authorities to the Authority and from the Authority to the authorities;

(c) they shall promote efficiency in terms of both time and resources and shall take due account of resource implications and cost-efficiency;

(d) they shall be proportionate and shall take due account of their statutory responsibilities and resources of the authorities;

(e) they shall be established and followed without prejudice to the Authority's ability to carry out effectively, autonomously and consistently the tasks conferred upon it by this Regulation and other Union acts;

(f) they shall ensure seamless and secure information flows, including confidentiality safeguards and the handling of third-party information;

(g) they shall set out operational or organisational modalities in relation to the Authority's direct supervisory tasks, including arrangements such as joint teams, cooperation in investigations, on-site inspections or implementation activities;

(h) where appropriate, they may envisage the establishment of local presences of the Authority in Member States;

(i) they may determine the modalities for the calculation and reimbursement of any costs incurred by the authorities, taking into account differences across sectors, the nature of the activity supervised or of the tasks performed.

6. The practical arrangements for cooperation shall be approved by the Executive Board. The Executive Board shall also ensure their implementation and the authorities shall, in cases where ESMA is exercising direct supervisory tasks, follow the instructions given by the Executive Board when performing the tasks set out in the arrangements.

7. The practical arrangements for cooperation established pursuant to this Article shall be subject to periodic review by the Authority, in consultation with the authorities, to ensure their continued effectiveness, proportionality and consistency with the Authority's evolving supervisory capacity and Union law.'

(8) Article 9a is amended as follows:

(a) paragraph 1 is amended as follows:

(1) the introductory wording is replaced by the following:

'The Authority shall take the measures referred to in paragraph 2 of this Article only in urgent and unforeseen circumstances when it considers that the application of one of the legislative acts referred to in Article 1(2), or of any delegated or implementing acts based on those legislative acts, is liable to raise significant issues, for one of the following reasons:';

(2) the following points (d) and (e) are added:

'(d) where a temporary exemption or transitional provision, measure or arrangement set out in one of the legislative acts referred to in Article 1(2) would

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expire prior to the entry into application of new or amended provisions establishing a permanent exemption or a new regulatory framework;

(e) where significant market developments lead to a disproportionate burden of compliance with a specific requirement set out in one of the legislative acts referred to in Article 1(2).';

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

'In the cases referred to in paragraph 1, points (a), (b), (d) and (e), the Authority shall provide the Commission with an opinion on any action it considers appropriate, in the form of a new legislative proposal or a proposal for a new delegated or implementing act, and on the urgency that, in the Authority's judgment, is attached to the issue. The Authority shall make its opinion public.';

(c) paragraph 4 is replaced by the following:

'4. Where, on the basis of information received, in particular from competent authorities, the Authority considers that any of the legislative acts referred to in Article 1(2), or any delegated or implementing act based on those legislative acts, raises significant issues pertaining to market confidence, customer or investor protection, the orderly functioning and integrity of financial markets or commodity markets, or the stability of the whole or part of the financial system in the Union, it shall, without undue delay, send a detailed account in writing to the competent authorities and the Commission of the issues it considers to exist. The Authority may provide the Commission with an opinion on any action it considers appropriate, in the form of a new legislative proposal or a proposal for a new delegated or implementing act, and on the urgency of the issue. The Authority shall make its opinion public.';

(9) Article 10 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. Where the Authority has not submitted a draft regulatory technical standard within the time limit set out in the legislative acts referred to in Article 1(2) or the legislative acts referred to in Article 1(2) do not set out such a time limit, the Commission may request such a draft within a new time limit. The Commission shall inform the European Parliament and the Council about the new timeline. The Authority shall inform the European Parliament, the Council and the Commission, in due time, where it will not comply with the new time limit.';

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

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

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

'5. Where the Commission is of the view that amendments to a regulatory technical standard are required, it shall send a letter to the Authority, explaining the reasons and the content of any required amendments. The letter shall contain a time limit for the submission of a draft regulatory technical standard. The Authority shall submit a revised draft regulatory technical standards to the Commission for adoption according to the procedure set out in paragraph 1. Where the Authority has not

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submitted a draft regulatory technical standard within the time limit set out in the letter from the Commission, the Commission may adopt amendments to the regulatory technical standard without a draft from the Authority by means of a delegated act pursuant to Article 290 TFEU.

6. Where there is the need to address an immediate threat to investor protection, to the orderly functioning and integrity of financial markets, the stability of the whole or part of the financial system in the Union, or fair competition between firms based in the Union and those based in third countries, the Commission may suspend a regulatory technical standard on its own initiative, without a draft from the Authority, by means of a delegated act pursuant to Article 290 TFEU. In the preparation of such delegated act, the Commission may consult the Authority or request its input.

The Commission may adopt the regulatory technical standards referred to in this paragraph using the urgency procedure. When using the urgency procedure, the Commission shall notify the European Parliament and the Council of the adopted regulatory technical standards, stating the reasons for the use of the urgency procedure. Those standards shall be published in the Official Journal of the European Union and shall enter into force without delay. The European Parliament or the Council may object to the adopted regulatory technical standards within a period of one month from the date of notification of the regulatory technical standard adopted by the Commission and if an objection is expressed, the Commission shall repeal the regulatory technical standards immediately following notification of the decision to object.

The suspension of provisions of a regulatory technical standard shall be temporary and limited to a maximum period of 12 months, renewable once. The Authority shall review the delegated act referred to in this paragraph and shall submit a report to the Commission on the application of the suspension at least two months before the expiration of the suspension, including an assessment of whether the suspension remains necessary.';

(10) Article 15 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. Where the Authority has not submitted a draft implementing technical standard within the time limit set out in the legislative acts referred to in Article 1(2) or the legislative acts referred to in Article 1(2) do not set out such a time limit, the Commission may request such a draft within a new time limit. The Authority shall inform the European Parliament, the Council and the Commission, in due time, that it will not comply with the new time limit.';

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

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

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

'5. Where the Commission is of the view that amendments to an implementing technical standard are required, it shall send a letter to the Authority, explaining the reasons and, the content of any required amendments. The letter shall contain a time

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limit for the submission of a draft implementing technical standard. The Authority shall submit a revised draft implementing technical standards to the Commission for adoption according to the procedure set out in paragraph 1. Where the Authority has not submitted a draft implementing technical standard within the time limits set out in the letter from the Commission, the Commission may adopt an implementing technical standard without a draft from the Authority by means of an implementing act pursuant to Article 291 TFEU.

6.Where there is the need to address an immediate threat to investor protection, to the orderly functioning and integrity of financial markets, the stability of the whole or part of the financial system in the Union, or fair competition between firms based in the Union and those based in third countries, the Commission may suspend an implementing technical standard on its own initiative, without a draft from the Authority, by means of an implementing act pursuant to Article 291 TFEU. In the preparation of such implementing act, the Commission may consult the Authority or request its input.

The suspension of provisions of an implementing technical standard shall be temporary and limited to a maximum period of 12 months, renewable once. The Authority shall review the implementing act referred to in this paragraph and shall submit a report to the Commission on the application of the suspension at least two months before the expiration of the suspension, including an assessment of whether the suspension remains necessary.';

(11) Article 16b is deleted.

(12) Article 17 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. Upon request from one or more competent authorities, the European Parliament, the Council, the Commission, the Securities and Markets Stakeholder Group, or on its own initiative, including when this is based on well substantiated information from natural or legal persons, and after having informed the competent authority concerned, the Authority shall outline how it intends to proceed with the case and shall investigate the alleged breach or non-application of Union law, where there are reasonable grounds to believe that a breach or non-application of Union law has occurred and the competent authority concerned has not already taken adequate measures to address the alleged breach or non-application.';

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

'Where the investigation concludes that the competent authority is not complying with Union law, the Authority shall, not later than 4 months from initiating its investigation, address a recommendation to the competent authority concerned setting out the action necessary to comply with Union law. The Authority shall, as soon as possible, share its recommendation with the Commission.';

(c) paragraph 6 is 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 of this Article within the period 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 shall, where

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the relevant requirements of the legislative acts referred to in Article 1(2) of this Regulation are directly applicable to financial market participants, including requirements in national law transposing directives interpreted in a manner consistent with them, adopt an individual decision addressed to a financial market participant requiring it to take all necessary action to comply with its obligations under Union law including the cessation of any practice.

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

(d) the following paragraph 9 is added:

'9. For the purpose of carrying out the Commission's duties, and at its request, the competent authorities and the Authority shall provide the Commission with all necessary information and documents in their possession.'

(13) the following Article 17aa is inserted:

'Article 17aa

Failure in supervision on approval of financial products, services or entities

1. Where a peer review or an inquiry under Article 22(4) reveals that a competent authority may be failing to effectively supervise market participants in the sector subject to the peer review or inquiry, and that such supervisory failure could jeopardize the integrity of financial markets, financial stability or investor protection, the Authority may require a competent authority to seek its opinion before granting approval to financial products, services, activities or entities in that sector.

Without prejudice to the powers laid down in Article 35, the competent authority shall provide the Authority with the necessary information to make a decision how the acts referred to in Article 1(2) and where that Union law is composed of Directives, the national legislation transposing those Directives interpreted in a manner consistent with it are applied in accordance with Union law. If the Authority needs additional information, it may also request it directly from other competent authorities after informing the competent authority concerned. The addressee of such a request shall provide the Authority with clear, accurate and complete information without undue delay.

2. Before requiring the competent authority concerned to seek its opinion before granting approval to financial products, services, activities or entities and where it deems it necessary and proportionate, the Authority shall engage with the competent authority concerned to address the identified supervisory shortcomings and reach a mutually agreed solution. The Authority may propose corrective actions to be taken by the competent authority in relation to existing financial products, services, activities or entities that have been affected by the identified supervisory shortcomings.

Where attempts to find such a mutually acceptable solution are not successful, the Authority shall require the competent authority to seek its opinion before granting approval to financial products, services, activities or entities. The Authority shall provide a comprehensive explanation for its decision, including a detailed analysis of the identified supervisory failures and the rationale for its requirement for an opinion. The Authority may also publish that explanation and shall record the requirement for an opinion in the register maintained by the Authority, pursuant to the legislative acts

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referred to Article 1(2) and where this Union law is composed of Directives, the national legislation transposing those Directives interpreted in a manner consistent with it.

3. Where a requirement to seek the Authority's opinion before granting approval to financial products, services, activities or entities has been established, the competent authority shall submit a detailed proposal for the approval of the financial product, service, activity or entity subject to the Authority's opinion, including a thorough justification for the proposal and all relevant supporting documentation.

Within fifteen working days, the Authority shall issue its opinion, which shall include a thorough explanation for any objection or concern it may have regarding the proposal. Should the Authority fail to issue its opinion within the specified timeframe, the competent authority may adopt the proposal without an opinion. The competent authority shall, within fifteen working days from the receipt of the opinion, inform the Authority of the steps it has taken or intends to take to implement the opinion. Where the competent authority has not taken the necessary steps to implement the opinion, the Authority shall take a decision according to paragraph 4.

4. The Authority's decision taken pursuant to the second subparagraph of paragraph 2 may include corrective actions to be implemented by the competent authority, which may include actions in relation to existing financial products, services, activities or entities that have been affected by the identified supervisory shortcomings. If the corrective actions are not implemented within the deadline specified by the Authority, the Authority shall take a decision requiring the competent authority to revoke or amend a decision that it has adopted or to make use of the powers which it has under the relevant Union law. The Authority shall notify the decision to the relevant host competent authorities where the financial products, services or activities concerned by the decision are provided. The decision of the Authority shall be binding on the competent authority concerned and shall enable the host competent authorities to take appropriate measures to suspend the provision of such products, services or activities in their territory.';

(14) The following Article 17aaa is inserted:

'Article 17aaa

Suspension of rights to provide services on a cross-border basis

1. Where the Authority has reasonable grounds for considering that an entity authorised under Union law that provides the services or activities, for which it is authorised, on a cross-border basis has committed a serious infringement of the obligations set out in this Regulation or any Union act referred to in Article 1(2) or obligations set out in the provisions adopted pursuant to Union law referred to in Article 1(2) that could jeopardise the integrity of financial markets, financial stability or investor protection, it shall refer those findings to the competent authority that has granted the authorisation to that entity. The competent authority shall provide the Authority with clear, accurate and complete information that demonstrate the absence of the alleged infringement, or, where the competent authority agrees with the findings of the Authority, sets out the measures already adopted by that competent authority to stop the infringement. That information shall be provided within a reasonable timeline set by the Authority.

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2. Where, despite the information provided by the competent authority pursuant to paragraph 1, the Authority continues to have reasonable grounds for considering that the infringement persists, the Authority shall, within 10 working days from the receipt of the information pursuant to paragraph 1 or from the expiry of the period referred to in that paragraph, take a decision requiring that competent authority to order the relevant entity to suspend the provision of services or activities on a cross-border basis.

3. Where the relevant competent authority does not comply with the decision referred to in paragraph 2 within 2 working days, the Authority shall adopt within 5 working days a decision requiring the relevant entity to suspend its provision of services or activities on a cross-border basis. The Authority shall simultaneously inform the competent authority referred to in paragraph 1 as well as all other competent authorities of the Member States where the entity provided its services or activities of that decision. Those competent authorities shall take all appropriate measures to ensure that the decision of the Authority is applied within their respective territories.

4. Where the relevant entity has adopted all the necessary corrective measures to stop the infringement, it shall provide to the Authority and to its competent authority the necessary information to assess the effectiveness of those measures.

5. The Authority shall within 15 working days from the receipt of the information referred to in paragraph 4 assess, in consultation with the competent authority that has granted the authorisation to the entity, the effectiveness of the corrective measures, as well as notify to the relevant entity and all relevant competent authorities whether the corrective measures are sufficient, in which case it shall revoke its earlier decision addressed to the relevant entity. Upon receipt of that notification by the Authority, the relevant entity may resume the provision of its cross-border services and activities in the Union.

6. To carry out the tasks conferred on the Authority pursuant to this Article, the Authority may address a duly justified and reasoned request for information to any financial market participant, national competent authority or any other relevant person.

7. The provisions set out in this Article shall not apply to cases where the Authority is the competent authority of an entity.';

(15) Article 19 is amended as follows:

(a) in paragraph 1 the first subparagraph is replaced by the following:

'In relation to the legislative acts referred to in Article 1(2) as well as in the situation set out under Article 28b(6), 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 of this Article 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 reasons, disagreement can be determined between competent authorities.';

(b) paragraph 3 is replaced by the following:

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‘3. Where the competent authorities concerned fail to reach an agreement within the conciliation phase referred to in paragraph 2, the Authority shall take a decision requiring those authorities to take specific action, or to refrain from certain action, in order to settle the matter, and 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.’;

(c) paragraph 4 is replaced by the following:

‘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 market participant complies with requirements directly applicable to it by virtue of the legislative acts referred to in Article 1(2) of this Regulation, and where this Union law is composed of Directives, the national legislation transposing those Directives interpreted in a manner consistent with it, the Authority may adopt an individual decision addressed to that financial market participant requiring it to take all necessary action to comply with its obligations under Union law, including the cessation of any practice.’;

(16) the following Article 19a is inserted:

‘Article 19a

Collaboration platforms

1. In the case of justified concerns about negative effects on investors, financial stability or in the case it has reasonable grounds to suspect an issue of compliance with Union law, or the existence of diverging or deficient supervisory practices related to the freedom to provide services, to pursue the activities of financial market participants or the freedom of establishment provided for in the legislative acts referred to Article 1(2), the Authority may, on its own initiative or at the request of one or more of the relevant competent authorities, set up and coordinate a collaboration platform to strengthen the exchange of information, propose solutions and to enhance collaboration between the relevant competent authorities.

   If a collaboration platform is set up at the request of a competent authority, that competent authority shall notify the Authority and the other relevant competent authorities of its justified concerns referred to in paragraph 1.

2. The setting up of a collaboration platform pursuant to paragraphs 1 is without prejudice to the supervisory mandate of the competent authorities provided for in the legislative acts referred to Article 1(2).

3. Without prejudice to Article 35, at the request of the Authority or any competent authority, the relevant competent authorities shall provide all necessary information in a timely manner to allow for the proper functioning of the collaboration platform.

4. In the event of disagreement within the platform about the procedure or about the content of an action to be taken, or inaction, in relation to a market participant and where there are serious concerns about the impacts of a situation referred to in paragraph 1, the Authority may call for the competent authority to carry out an on-site inspection pursuant to the legislative acts referred to Article 1(2). The competent

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authority shall launch the on-site inspection without delay and shall invite the Authority and other relevant competent authorities concerned to participate in it.

5. Where two or more relevant competent authorities of a collaboration platform disagree about the content of an action to be taken, or inaction, in relation to a market participant or about information sharing pursuant to this Article, the Authority may exercise the power conferred on it under Article 19(1).';

(17) in Article 21(2), the second subparagraph is deleted.;

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

'Following an inquiry conducted pursuant to the first subparagraph, the Executive Board may make appropriate recommendations for action to the competent authorities concerned.';

(19) Article 28 is amended as follows:

(a) in paragraph 1, the first sentence is replaced by the following:

'1. Competent authorities may, with the consent of the delegatee, delegate tasks or responsibilities to the Authority or other competent authorities subject to the conditions set out in this Article.';

(b) the following paragraphs 1a, to 1e are inserted:

'1a. A competent authority may delegate specific supervisory tasks or responsibilities to the Authority, where this is necessary for the proper performance of any such supervisory tasks or responsibilities.

1b. Prior to the delegation of a supervisory task or responsibility to the Authority, the competent authority shall consult the Authority. Such consultation shall concern:

(a) the scope of the task or responsibility to be delegated;

(b) the timetable for the performance of the task or responsibility to be delegated;

(c) the transmission of necessary information by and to the competent authority.

1c. The Authority shall exercise any delegated task or responsibility in accordance with the provisions set out in Chapter IIa, other relevant Union acts and subject to any conditions agreed with the competent authority.

1d. The competent authority shall reimburse the Authority for the costs incurred as a result of carrying out delegated tasks or responsibilities.

1e. The competent authority shall review the delegation referred to in paragraph 1a at appropriate intervals. A delegation of supervisory tasks or responsibilities may be revoked at any time.';

(20) the following Articles 28a and 28b are inserted:

'*Article 28a*

Mutual assistance between competent authorities

1. Competent authorities shall assist each other in recovering administrative fines imposed for the breach of any provision laid down in the acts referred to in Article

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1(2), when the administrative fine must be recovered within the jurisdiction of a Member State other than the Member State where that fine was issued.

2. When the decision imposing the administrative fine on the concerned natural or legal person in the Member State of the applicant authority has become final and enforceable and the fine has not been paid, the requested authority shall, upon request of the applicant authority, assist in the recovery of the related amounts in its own jurisdiction.

3. The request referred to in paragraph 2 shall be transmitted to the requested authority by means of a digital form. which shall contain all the following elements:

(a) the name, address and other contact details of the requested authority;

(b) the name, known address of the addressee of the decision imposing the administrative fine, and any other relevant information for the identification of the addressee;

(c) a summary of the relevant facts and circumstances leading to the adoption of the decision imposing the administrative fine;

(d) a summary of the decision imposing the administrative fine and a copy thereof;

(e) information about the enforceability of the decision and the date when the decision became final and enforceable;

(f) the amount of the fine to be paid;

(g) the period within which enforcement should be carried out, such as statutory deadlines or limitation periods;

(h) information showing the reasonable efforts made by the applicant authority to enforce the decision in its own jurisdiction, including the ascertained absence of sufficient assets belonging to the concerned natural or legal person thereto to enable the enforcement of the administrative fine;

(i) information according to which the concerned natural or legal person has sufficient assets in the Member State of the requested authority to enable the enforcement of the administrative fine.

4. The applicant authority shall send the digital form to the requested authority in the official language, or in one of the official languages, of the Member State of the requested authority, unless the requested authority and the applicant authority agree that the digital form may be sent in another language.

Where required under the national law of the Member State of the requested authority, the applicant authority shall provide a translation of the decision to impose the fine into the official language, or into one of the official languages, of the Member State of the requested authority, unless the requested authority and applicant authority agree that such translation may be provided in a different language.

Article 28b

General principles applicable to the enforcement of decisions imposing administrative fines

1. The request to assist in recovering administrative fines sent in accordance with paragraphs 3 and 4 of Article 28a shall constitute the sole legal basis for the enforcement measures taken by the requested authority without any further formality,

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supplement or replacement being required. The requested authority shall, upon receipt, forthwith take all the necessary measures for its enforcement according to the rules and procedures laid down by its national law, unless the requested authority invokes paragraph 4. The requested authority shall inform the applicant authority with due diligence of any action it has taken on the request for recovery.

2. The amount recovered from enforcing the decision to impose the administrative fine shall accrue to the Member State of the applicant authority in its own currency, unless otherwise agreed between the Member State of the applicant authority and the Member State of the requested authority. The requested authority shall, if necessary for the recovery, convert the administrative fine into the currency of its Member State at the euro foreign exchange reference rate published by the European Central Bank applying on the date when the administrative fine was imposed.

3. The requested authority may recover the full costs incurred in relation to actions taken as referred to in paragraph 1 from the fine it has collected on behalf of the applicant authority, including translation, labour and administrative costs, irrespective of the outcome of the recovery proceedings.

4. The requested authority may refuse to enforce the decision of the applicant authority to impose an administrative fine only if it has established any of the following:

   (a) the request does not fulfil all the requirements set out in paragraphs 3 and 4 of Article 28a;

   (b) the decision is no longer enforceable under the law of the Member State of the requested authority due to lapse of time.

   (c) the enforcement of the decision would be contrary to the principle of ne bis in idem;

   (d) there are reasonable grounds showing that the execution of the request would be manifestly contrary to public policy in the Member State in which enforcement is sought.

5. Article 28b and paragraphs 1 to 4 of this Article shall not preclude the application of the Council Framework Decision 2005/214/JHA([30]) bilateral or multilateral agreements or arrangements between Member States in so far as such agreements or arrangements help simplify or facilitate further the procedures for the enforcement of administrative fines falling under the scope of Articles 28a.

6. The Authority shall encourage and facilitate the mutual assistance between competent authorities in enforcing administrative fines imposed outside their jurisdictions in accordance with Article 28a and this Article.

   Where the requested authority refuses to assist the applicant authority in accordance with Article 28a and none of the grounds under paragraph 4 of this Article is established, Article 17 shall apply.

   Where the requested authority refuses to assist the applicant authority by invoking one of the reasons under paragraph 4, letters (a) to (c) of this Article, the Authority may assist the competent authorities in reaching an agreement, if appropriate, in accordance with the procedure set out under Article 19.

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30 Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, ELI: http://data.europa.eu/eli/dec_framw/2005/214/oj

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7. The Authority shall develop the electronic format of the digital form referred to in paragraph 3 of Article 28a.';

(21) Article 29 is amended as follows:

(a) the title is replaced by the following:

'Common supervisory and enforcement culture';

(b) paragraph 1 is amended as follows:

(1) the first sentence is replaced by the following:

'The Authority shall play an active role in building a common Union supervisory and enforcement culture and consistent supervisory and enforcement practices, as well as in ensuring uniform procedures and consistent approaches throughout the Union.';

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

'(ab) establishing coordination groups in accordance with Article 45b to promote supervisory and enforcement convergence and identify best practices;'

(3) point (c) is replaced by the following:

'(c) contributing to developing high-quality and uniform supervisory and enforcement standards, including reporting standards, and international accounting standards in accordance with Article 1(3);'

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

'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 markets participants and enforcement of the rules regulating their activities in the Union, which duly takes into account the nature, scale and complexity of risks, business practices, business models and size of financial institutions and of markets, including changes due to technological innovation, of financial market participants and markets. The Union supervisory handbook shall set out best practices and shall specify high-quality methodologies and processes. Where a competent authority decides not to comply with the Union supervisory handbook or substantial elements thereof, it shall communicate this fact to the Authority and provide its reasons for doing so.';

(d) the following paragraph (3) is added:

'3. The Authority shall forward questions that require the interpretation of Union law to the Commission. The Authority shall publish any answers provided by the Commission.';

(22) Article 30 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. For the purposes of this Article, the Authority shall establish ad hoc peer review committees, which shall be composed of staff from the Authority and members of the competent authorities. The peer review committees shall be chaired by a member of the Authority's staff. The Chairperson, following an open call for participation, shall propose the chair and the members of a peer review committee which shall be approved by the Executive Board. The proposal shall be deemed to be approved unless, within 10 days of the Chairperson proposing it, the Executive Board adopts a decision to reject it.';

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

'The Authority shall produce a report setting out the results of the peer review. That peer review report shall be prepared by the peer review committee and adopted by the Executive Board. When drafting that report, the peer review committee shall consult the Executive Board in order to maintain consistency with other peer review reports and to ensure a level playing field. The Executive Board shall assess in particular whether the methodology has been applied in the same manner. The report shall explain and indicate the follow-up measures that are deemed appropriate, proportionate and necessary as a result of the peer review. Those follow-up measures may be adopted in the form of guidelines and recommendations pursuant to Article 16 and opinions pursuant to point (a) of Article 29(1) and Article 17aa.';

(c) paragraph 6 is replaced by the following:

'6. The Authority shall undertake a follow-up report after two years of the publication of the peer review report. The follow-up report shall be prepared by the peer review committee and adopted by the Executive Board. When drafting that report, the peer review committee shall consult the Executive Board in order to maintain consistency with other follow up reports. The follow-up report shall include an assessment of, but shall not be limited to, the adequacy and effectiveness of the actions undertaken by the competent authorities that are subject to the peer review in response to the follow up measures of the peer review report.';

(d) paragraph 8 is replaced by the following:

'8. For the purposes of this Article the Executive Board shall adopt a peer review work plan for the coming two years, which shall inter alia reflect the lessons learnt from the past peer re-view processes and the discussions of coordination groups referred to in Article 45b. The peer review work plan shall constitute a separate part of the annual and multiannual working programme. It shall be made public. In case of urgency or unforeseen events, the Authority may decide to carry out additional peer reviews.';

(23) Article 33 is amended as follows:

(a) in paragraph 1, the first subparagraph is replaced by the following:

'1. Without prejudice to the respective competences of the Member States and the Union institutions, the Authority may develop contacts and enter into administrative arrangements with third country regulatory and supervisory authorities and international organisations for the purpose of fostering international supervisory cooperation, including through the exchange of information and/or staff.

Before entering into negotiations on any administrative arrangement referred to in the first subparagraph, the Authority shall inform the Commission in writing of its intention to do so, including the envisaged scope and objectives of such arrangement.

Under the conditions set out in administrative arrangements referred to in the first subparagraph and which shall include provisions governing professional secrecy and take due account of applicable data protection legislation, the Authority may in particular exchange information and documents to support the identification, monitoring and mitigation of cross border risks, including risks to financial stability and market integrity.

Administrative arrangements referred to in the preceding subparagraphs shall not create legal obligations in respect of the Union and its Member States nor shall they

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prevent Member States and their competent authorities from entering into bilateral or multilateral arrangements with those third countries.

(b) paragraph 4 is amended as follows:

(1) in the first subparagraph, the first sentence is replaced by the following:

‘Without prejudice to specific requirements set out in the legislative acts referred to in Article 1(2) and the administrative arrangements entered into pursuant to paragraph 1 of this Article, the Authority shall cooperate where possible with the relevant authorities of third countries whose regulatory and supervisory regimes have been recognised as equivalent.’;

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

‘(b) to the extent necessary for the follow-up of such equivalence decisions, the procedures concerning the coordination of supervisory activities including, where necessary and provided for in other Union acts, on-site inspections.’;

(3) the last subparagraph is replaced by the following:

‘The Authority shall inform the Commission where a relevant third-country authority refuses to conclude such administrative arrangements or when it refuses to effectively cooperate.’;

(24) in Article 35, paragraph 1 is replaced by the following:

‘1. At the request of the Authority, the competent authorities shall provide the Authority, without undue delay, with all the necessary information to carry out the duties assigned to it by this Regulation and other Union acts, provided that they have legal access to the relevant information. Where a competent authority refuses to provide the requested information, it shall demonstrate that the information cannot be legally shared with the Authority.’;

(25) the following Article 35c is inserted:

‘*Article 35c*

Data platform

1. The Authority shall establish and maintain a data platform to facilitate the collection, storage, access to and processing of information as provided for under this Regulation or in other Union acts mandating to use of this platform.

2. The data platform shall include supervisory technology and other relevant tools to enhance analysis and monitoring capabilities and facilitate collaboration between authorities.

3. The Authority shall ensure that the platform is designed and operated in the most efficient manner and avoids where possible duplication of data collection and ensures the accuracy and interoperability of data.

4. The Authority shall ensure that the collection, storage, access to and processing of any data on the platform complies with the obligations of professional secrecy and confidentiality laid down in Article 70 of this Regulation and any other applicable Union acts.

5. The Authority shall be in particular responsible for ensuring the security, availability, maintenance and development of the software and IT infrastructure of the platform.

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6. When personal data are processed in the data platform, the Authority shall process them only to the extent it is necessary to facilitate the collection, storage, access to and processing of the information submitted in accordance with the applicable Union acts referred to in paragraph 1.';

(26) Article 39 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The Authority shall act in accordance with paragraphs 2 to 6 of this Article when adopting decisions pursuant to Articles 17, 17aa, 17aaa, 18, 19 and 19a.'

(b) paragraph 6 is replaced by the following:

'6. The decisions which the Authority takes pursuant to Article 17, 17aa, 17aaa, 18, 19 or 19a 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 those 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.'

(27) The following chapter IIa is inserted:

'CHAPTER IIa

POWERS OF THE AUTHORITY OVER FINANCIAL MARKET PARTICIPANTS UNDER THE AUTHORITY'S SUPERVISION

Article 39a

Scope

1. This Chapter shall apply to all financial market participants under the Authority's supervision unless otherwise specified in this Chapter. However, it shall not apply to central counterparties recognised under Article 25 of Regulation (EU) No 648/2012.

2. If the provisions of this Chapter conflict with a provision of another Union act governing specific aspects of procedural powers of the Authority in a specific sector or area, the provision of the other Union act shall prevail and shall apply to those specific sector or area. The powers conferred on the Authority, its officials or other persons authorised by it shall not be used to require the disclosure of information or documents which are subject to legal professional privilege.

Article 39b

Requests for information

1. For the purpose of exercising its tasks, the Authority may request financial market participants under the Authority's supervision, persons involved in the activities of financial market participants under the Authority's supervision or affected by them, related third parties, third parties to whom the financial market participants under the Authority's supervision have outsourced operational functions or activities and persons otherwise closely and substantially related or connected to the financial market participants under the Authority's supervision or their activities and any other

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persons as provided for in other Union acts, to provide all information necessary in order to carry out its duties under this Regulation and other Union acts.

2. When sending a simple request for information under paragraph 1, the Authority shall refer to this Article as the legal basis for the request, state the purpose of the request, specify the information required, and set a time-limit within which the information is to be provided and inform about the possible fines in case of incorrect or misleading replies.

3. When requesting the information under paragraph 1 by a decision, the Authority shall:

(a) refer to this Article as the legal basis for the 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 possible periodic penalty payments for the provision of incomplete information;

(f) inform about the possible fines in case of incorrect or misleading replies;

(g) inform of the addressees rights of appeal under this Regulation.

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 or mandate, shall supply the information requested.

5. The Authority shall, without delay, send a copy of the decision referred to in paragraph 3 to the relevant competent authority of the Member State where the persons referred to in paragraph 1 and who are concerned by the request for information are domiciled or established.

Article 39c

Investigations

1. For the purpose of exercising its tasks, the Authority may conduct all necessary investigations of persons referred to in Article 39b(1). Before initiating an investigation under this Article, the Authority shall adopt a decision to conduct an investigation. The decision shall specify the subject matter and purpose of the investigation, the date on which it is to begin, and the periodic penalty payments provided for under this Regulation and other Union acts where the persons concerned do not submit to the investigation, the legal remedies available under this Regulation and the right to have the decision reviewed by the Court of Justice of the European Union.

2. The Authority shall be empowered to:

(a) examine records, data, procedures and 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 39b(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 telephone and data traffic records.

3. The Authority may authorise its officials and other persons to conduct the investigations referred to in paragraph 1. They 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 39g 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 39b(1) are not provided or are incomplete, and the fines provided for under this Regulation and other Union acts, where the answers to questions asked of the persons referred to in Article 39b(1) are incorrect or misleading.

4. In good time before the investigation, the Authority shall inform the relevant competent authority of the Member State where the investigation is to be carried. Officials of the competent authority concerned shall, upon the request of the Authority, assist the Authority in carrying out its duties. Officials of the competent authority concerned may also attend the investigations upon its 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 authorisation as referred to in paragraph 5 is applied for, the national judicial authority shall verify that the decision of the Authority is authentic and assess that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the investigations. In its assessment of the proportionality of the coercive measures, the national judicial authority may ask the Authority for detailed explanations, in particular relating to the grounds the Authority has for suspecting that an infringement of this Regulation or other Union acts under its competence 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 require that it be provided with the information on the Authority 's file. The lawfulness of the Authority 's decision shall be subject to review only by the Court of Justice following the procedure set out in this Regulation.

Article 39d

On-site inspections

1. For the purpose of exercising its tasks, the Authority may conduct on-site inspections at the premises of persons referred to in Article 39b(1). Before initiating the on-site inspection, the Authority shall adopt a decision to conduct on-site inspection. The decision shall specify the subject matter and purpose of the inspection, the date on

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which it is to begin and the periodic penalty payments provided for under this Regulation and other Union acts for persons not submitting to the inspection, the legal remedies available under this Regulation and the right to have the decision reviewed by the Court of Justice. Where the proper conduct and efficiency of the inspection so require, the Authority may carry out the on-site inspection without prior notice to the persons subject to the inspection.

2. The officials of and other persons authorised by the Authority to conduct an on-site inspection may enter any business premises and land of the legal persons subject to an investigation decision referred to paragraph 1 and shall have all the powers stipulated in Article 39c. 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. The officials of and other persons authorised by the Authority 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 39g for not submitting to the inspection.

4. In good time before the inspection the Authority shall inform the relevant competent authority of the Member State where investigation is to be conducted and financial market participants under the Authority's supervision_about the decision to conduct the on-site inspection.

5. The relevant competent authority of the Member State where the inspection is to be conducted shall, upon the request of the Authority, actively assist the Authority. To that end, the competent authority of the Member State concerned shall enjoy the powers set out in paragraph 2. The competent authority of the Member State concerned may also attend the on-site inspections upon its request.

6. The Authority may also require the relevant competent authority of the Member State to carry out specific investigatory tasks and on-site inspections as provided for in this Article and in Article 39c on its behalf. To that end, the competent authority of the Member State concerned shall enjoy the same powers as the Authority as set out in this Article and in Article 39c.

7. Where the Authority finds that the the person subject to the inspection opposes an inspection ordered pursuant to this Article, the competent authority of the Member State concerned shall provide it the necessary assistance of the Authority, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, so as to enable it to conduct on-site inspection.

8. 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 rules, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

9. Where the authorisation referred to in paragraph 8 is applied for, the national judicial authority shall verify that the decision of the Authority is authentic and assess that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its assessment of the proportionality of the coercive measures, the national judicial authority may ask the Authority for detailed explanations, in particular relating to the grounds the Authority has for suspecting that an infringement of this Regulation or other Union acts under its competence has taken place and the seriousness of the suspected infringement and the nature of the

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involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the inspection or demand to be provided with the information on the Authority 's file. The lawfulness of the Authority's decision shall be subject to review only by the Court of Justice following the procedure set out in this Regulation.

Article 39e

Procedural rules for supervisory measures and fines

1. Where the Authority finds that there are serious indications of the existence of facts liable to constitute one or more infringements of this Regulation or other Union acts under its competence, it shall launch an investigation in accordance with Article 39c and appoint an independent investigating officer within the Authority to investigate the matter. The investigating officer shall not be involved or shall not have been involved in the direct or indirect supervision of the financial market participant under the Authority's supervision concerned and shall perform his functions independently from the Executive Board.

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 the findings to the Executive Board. In order to carry out the tasks, the investigating officer may exercise the power to request information in accordance with Article 39b and to conduct investigations and on-site inspections in accordance with Articles 39c and 39d. When using those powers, the investigating officer shall comply with Article 39a.

   During the investigation, the investigating officer shall have access to all documents and information gathered by the Authority in its supervisory activities.

3. Upon completion of the investigation and before submitting the file with the findings to the Executive Board, 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 the findings only on facts on which the persons subject to investigation have had the opportunity to comment.

   The rights of defense of the persons concerned shall be fully respected during investigations under this Article.

4. When submitting the file with the findings to the Executive Board, the investigating officer shall notify that fact to the persons subject to investigation. The persons subject to investigation 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.

5. On the basis of the file containing the investigating officer's findings and, when requested by the persons concerned, after having heard the persons subject to investigation, the Executive Board shall decide if one or more of the infringements under investigation has been committed by the persons who have been subject to investigation, and in such case, take a supervisory measure in accordance with this Regulation and relevant Union acts and impose a fine in accordance with this Regulation and relevant Union acts.

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6. The investigating officer shall not participate in deliberations of the Executive Board or in any other way intervene in the decision-making process of the Executive Board.

7. The Commission shall adopt by means of delegated acts in accordance with Article 75a further rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on rights of defense, temporal provisions, and the collection of fines or periodic penalty payments, and shall adopt detailed rules on the limitation periods for the imposition and enforcement of penalties.

8. The Authority shall refer matters for criminal prosecution to the relevant national authorities where, in carrying out its duties under this Regulation or other Union acts, 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 final judgement in a case arising from identical facts, or from facts which are substantially the same, has been rendered as the result of criminal proceedings under national law.

Article 39f

Fines

1. Where, in accordance with Article 39e(5), the Executive Board finds that financial market participant under the Authority's supervision has, intentionally or negligently, infringed this Regulation or other relevant Union act under the Authority's competence, it shall adopt a decision imposing a fine in accordance with paragraph 2.

   An infringement shall be considered to have been committed intentionally if the Authority finds objective factors which demonstrate that the financial market participant under the Authority's supervision acted deliberately to commit the infringement.

2. Unless otherwise provided for in other Union acts applicable to a specific sector or area, the fine shall not exceed:

   (a) 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 according to euro foreign exchange reference rate published by the European Central Bank applying on the date when the fine is imposed.

   (b) or 10% of the annual turnover of the financial market participant under the Authority's supervision subject to investigation concerned in the preceding business year whichever is higher;

   (c) 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 according to euro foreign exchange reference rate published by the European Central Bank applying on the date when the fine was imposed.

3. When determining the level of a fine pursuant to paragraph 1, the Authority shall take into account the criteria set out in Article 39g(2).

4. Notwithstanding paragraph 3, 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.

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Article 39g

Periodic penalty payments

1. The Executive Board may by decision impose a periodic penalty payment in order to compel:

   (a) financial market participants under the Authority's supervision to put an end to an infringement, in accordance with a decision taken pursuant to point (d) of Article 39h(1);

   (b) a person referred to in Article 39b(1) to supply complete information which has been required by a decision pursuant to Article 39b;

   (c) a person referred to in Article 39b(1) to submit to an investigation, to produce complete records, data, procedures or any other material required or to complete and correct other information provided in an investigation launched by a decision taken pursuant to Article 39c;

   (d) a person referred to in Article 39b(1) to submit to an on-site inspection ordered by a decision taken pursuant to Article 39d.

2. A periodic penalty payment shall be effective and proportionate and dissuasive. The periodic penalty payment shall be imposed on a daily basis until the financial market participant under the Authority's supervision or person 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 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 may be imposed for a period of no more than six months following the notification of the Executive Board's decision.

Article 39h

Supervisory measures

1. Where, in accordance with Article 39e(4), the Authority finds that a financial market participant under the Authority's supervision has committed an infringement of this Regulation or other relevant Union acts under its competence, including where listed in an Annex of other relevant Union acts under its competence, it shall adopt a decision to take one or more of the following actions as appropriate to the relevant sector or area pursuant to this Regulation or, where provided for, within the limits of its powers under the applicable Union legislation:

   (a) withdraw, depending on the sector in which the financial market participant under the Authority's supervision operates, the registration, the recognition or the authorisation of the financial market participant under the Authority's supervision;

   (b) prohibit the financial market participant under the Authority's supervision from pursuing the activities under this Regulation or other relevant Union acts throughout the Union, until the infringement has been brought to an end;

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(c) require the temporary or permanent cessation of any practice or conduct that the Authority considers to be contrary to the provisions of this Regulation and other relevant Union acts;

(d) suspend the registration, the recognition or the authorisation of financial market participant under the Authority's supervision;

(e) require the financial market participant under the Authority's supervision to bring the infringement to an end;

(f) impose fines pursuant to Article 39f;

(g) impose periodic penalty payments pursuant to Article 39g;

(h) issue a public notice;

(i) require the removal of a natural person from the management board of a financial market participant under the Authority's supervision;

(j) require the freezing or the sequestration of assets, or both;

(k) require that auditors or experts carry out verifications or investigations;

(l) to adopt any type of measure to ensure that the financial market participant under the Authority's supervision, continue to comply with legal requirements.

2. The Authority shall withdraw the registration, authorisation or the recognition of financial market participant under the Authority's supervision in any of the following circumstances unless otherwise specified in other Union acts which shall take precedence:

(a) the financial market participant under the Authority's supervision has expressly renounced the registration, authorisation or recognition or has not made use of the registration, authorisation or recognition within 36 months of the registration, authorisation or recognition being granted;

(b) the financial market participant under the Authority's supervision has obtained the registration, authorisation or recognition by making false statements or by any other irregular means;

(c) the financial market participant under the Authority's supervision no longer meets the conditions under which it was registered, authorised or recognised.

Where the Authority withdraws the registration, authorisation or recognition of the financial market participant under the Authority's supervision, it shall provide full reasons in its decision.

The withdrawal shall have immediate effect.

For the purposes of paragraph 1, the measure shall be effective, proportionate and dissuasive and the Authority 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 or facilitated by or is otherwise attributable to, the infringement;

(c) whether the infringement has been committed by intent or negligence;

(d) the degree of responsibility for the infringement;

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(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 the interests of investors;

(g) the importance of the profits gained or losses avoided by financial market participant under the Authority's supervision responsible for the infringement or the losses for third parties caused by the infringement, to the extent that they can be determined;

(h) the level of cooperation with the Authority of the financial market participant under the Authority's supervision responsible for the infringement, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(i) previous infringements of this Regulation or other relevant Union acts by financial market participant under the Authority's supervision responsible for the infringement;

(j) any measures taken after the infringement by the financial market participant under the Authority's supervision responsible for the infringement to prevent its repetition.

3. Where the Authority has reasonable grounds to suspect that a financial market participant under its supervision may be engaging, or may be about to engage, in conduct that could amount to an infringement under this Regulation or other relevant Union acts under its competence, it may adopt by decision any of the measures referred to in points (b), (h), (j), (k) and (l) of paragraph 1, as appropriately adjusted for use in situations involving only suspected, not yet established, infringements.

4. Without undue delay, the Authority shall notify any action taken pursuant to paragraphs 1 and 4 to the financial market participant under the Authority's supervision responsible for the infringement and shall communicate it to the relevant competent authorities of the Member State and to the Commission. It shall publicly disclose any such action on its website within 10 working days from the date of adoption of the decision referred to in paragraph 1 or 4.

The disclosure to the public referred to in the first subparagraph shall include the following:

(a) a statement affirming the right of the financial market participant under the Authority's supervision 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 the Authority's Board of Appeal to suspend the application of the decision in accordance with Article 60(3) of this Regulation.

Article 39i

Administrative sanctions and measures against natural persons

1. This Article shall apply to natural persons who:

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(a) are members of the management body, senior managers, or key function holders of financial market participants under the Authority's supervision in accordance with the relevant legislative acts referred to in Article 1(2);

(b) exercise significant influence over the decision-making or risk profile of such financial market participants; or

(c) are otherwise engaged in regulated activities subject to the Authority's supervision.

2. Following the procedure set out in Article 39h, the Authority shall impose administrative sanctions or other measures on a person referred to in paragraph 1 where it is established that that person has:

(a) failed to comply with professional standards, including those relating to integrity, competence, and due diligence; or

(b) engaged in conduct that undermines the sound and prudent management of the supervised entity.

3. The sanctions and measures referred to in paragraph 2 may include:

(a) administrative fines in accordance with Article 39f;

(b) temporary or permanent prohibition from exercising management functions in financial market participants under the Authority's supervision in accordance with the relevant legislative acts referred to in Article 1(2);

(c) suspension or withdrawal of authorisation to perform regulated activities;

(d) public statements identifying the person responsible and the nature of the breach, where this publication is deemed necessary by the Authority to protect the stability of the financial markets or to ensure the effective enforcement of this Regulation or other Union acts referred to in Article 1(2), provided that the publication is limited to what is strictly necessary to ensure those objectives and properly justified.

Article 39j

Hearing of the persons concerned

1. Before taking any decision under Articles 39k, 39h and 39i, the Executive Board shall give the financial market participant under the Authority's supervision or the person subject to the proceedings the opportunity to be heard on the Authority's findings. The Executive Board shall base its decisions only on findings on which the financial market participant under the Authority's supervision or the person subject to the proceedings had the opportunity to comment.

2. The first paragraph shall not apply if urgent action is needed in order to prevent significant and imminent damage to the financial system. In such case, the Executive Board may adopt an interim decision and shall give the financial market participant under the Authority's supervision or the person concerned the opportunity to be heard as soon as possible after taking its decision.

3. The rights of defence of the financial market participant under the Authority's supervision or persons subject to the proceedings shall be fully respected during the proceedings. They shall be entitled to have access to the Authority's file, subject to the legitimate interest of other persons in the protection of their business secrets. The

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right of access to the file shall not extend to confidential information or the Authority preparatory documents.

Article 39k

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

1. The Authority shall disclose to the public every fine and periodic penalty payment that has been imposed pursuant to Articles 39f 39g and 39i, 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 (EU) 2018/1725 of the European Parliament and of the Council.

2. Fines and periodic penalty payments imposed pursuant to Articles 39f, 39g and 39i shall be of an administrative nature.

3. Decisions on fines, periodic penalty payments imposed pursuant to Articles 39f, 39g and 39i shall be enforceable.

   The enforcement shall be governed by the rules of civil procedure in force in the Member State in the territory of which the enforcement is carried out. The order for the enforcement of the decision to impose fines or periodic penalty payments shall be appended to that decision without the need for other formality than verification of the authenticity of the decision by the authority designated by each Member State for that purpose and made known to the Authority and to the Court of Justice.

   When that formality has been completed, the authority designated by the Member State may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent body.

   Enforcement may be suspended only by a decision of the Court of Justice. However, the courts of the Member State concerned shall have jurisdiction over complaints that enforcement is being carried out in an unlawful manner.

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

Article 39l

Settlement

1. When the Authority takes a decision pursuant to Article 39e(5) may conclude enforcement proceedings by settlement with the financial market participant under the Authority's supervision, natural or legal persons, subject to terms ensuring effectiveness, proportionality and deterrence.

2. The Commission may adopt delegated acts in accordance with Article 75a specifying the settlement procedure, including the rights of defence, publication and effects of settlements.

3. During his or her investigation, the independent investigating officer may explore the possibility of a settlement with the financial market participant under the Authority's supervision or person subject to investigation, if the officer considers that the case may be suitable for settlement. If the financial market participant under the Authority's supervision or person subject to investigation agrees to settle, the original fine considered to be imposed by the Authority may be reduced.

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4. A financial market participant under the Authority's supervision or any person subject to investigation may request that the possibility of a settlement be considered. Such a request shall not oblige the Authority to enter into settlement discussions or to reach a settlement. The independent investigating officer shall assess the request in light of the circumstances of the case, including the seriousness and nature of the alleged infringement, and may initiate settlement discussions where he or she considers that the case may be suitable for settlement.

Article 39m

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 according to this Regulation or other Union acts where applicable. It may annul, reduce or increase the fine or periodic penalty payment imposed.

Article 39n

Supervisory fees

1. The Authority shall charge fees to financial market participants under the Authority's supervision for any costs that the Authority will incur in carrying out its tasks under this Regulation and the relevant Union acts referred to in Article 1(2).
2. The fees referred to in paragraph 1 shall cover the administrative costs that will be incurred by the Authority in its activities in relation to the registration, authorisation, certification, recognition, enforcement, supervision, and other supervision-related activities, in particular supervisory convergence and development and maintenance of tools, including depreciated cost, for those purposes as applicable to financial market participants under the Authority's supervision.
3. Where the Authority has requested assistance or support in carrying out supervisory tasks to a competent authority in accordance with this Regulation and other Union acts, the fees shall also cover the reimbursement of any costs that the competent authorities may incur in carrying out those tasks.
4. Supervisory fees shall be proportionate to the annual turnover of the financial market participant under the Authority's supervision concerned.
5. By way of derogation from paragraph 4, financial market participants under the Authority's supervision may be exempted from the obligation to pay a fee or may be subject to a reduced, fixed, capped, or temporary fee, as appropriate.
6. The Authority shall provide each financial market participant under the Authority's supervision with the information explaining how the fee referred to in paragraph 1 was calculated.
7. The Authority shall on an annual basis publish on its website a fee transparency report setting out the categories of financial market participants under the Authority's supervision and the methodology applied for the allocation of cost.
8. The Commission is empowered to adopt a delegated act in accordance with Article 75a by further specifying 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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9. This Article shall also apply to financial market participants referred to in Article 4(1) as specified in other Union acts.';

(28) Article 40 is amended as follows:

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

'(ba) 5 independent members of the Executive Board;';

(b) paragraph 3 is replaced by the following:

'3. Each of the authorities referred to in paragraph 1 shall be responsible for nominating a high-level alternate from its authority, who may replace the member of the Board of Supervisors referred to in paragraph 1(b), where that person is prevented from attending.';

(29) Article 41 is replaced by the following:

'The Board of Supervisors on its own initiative or at the request of the Chairperson 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, the Executive Director or to the Chairperson.

Where an internal committee discusses matters in relation to a central counterparty or central securities depository, the European Central Bank and the other relevant central banks of issue of the Union currencies shall have the right to be non-voting members .';

(30) Article 43 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The Board of Supervisors shall give guidance to the work of the Authority and shall be in charge of taking the decisions in accordance with Articles 9a to 16a of this Regulation. The Board of Supervisors shall adopt all decisions of the Authority, including those specifically attributed to it in the other Union acts, with the exception of the decisions that are to be taken by the Executive Board in accordance with Article 46a. If applicable, 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 of the relevant internal committee, the Chairperson, or of the Executive Board, as applicable.';

(b) 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.';

(c) 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, and shall transmit that report to the European Parliament, to the Council, to the Commission, to the Court of Auditors and to the European Economic and Social Committee by 15 June each year. The report shall be made public.';

(31) Article 44 is amended as follows:

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(a) paragraph 1 is amended as follows:

(1) the third subparagraph is replaced by the following:

'The Chairperson and the 5 independent members of the Executive Board shall not vote on the decisions referred to in the second subparagraph.';

(2) the fourth and fifth subparagraphs are deleted;

(3) the following subparagraph is added:

'With regard to decisions specified in Article 44b(2) , by way of derogation of the first sub-paragraph of this paragraph, the Board of Supervisors shall decide with a two thirds majority of its voting members.';

(b) in paragraph 4, the first subparagraph is deleted.

(32) the title of Section 2 is replaced by the following:

'Executive Board'

(33) the following Article 44a is inserted:

'Article 44a

Composition and appointment of the Executive Board

1. The Executive Board shall be composed of:

(a) the Chair of the Authority

(b) 5 independent, full-time members

Where the Executive Board carries out the tasks referred to in Article [46a (8)], a representative of the Commission shall be entitled to participate in the debates and shall have access to the documents pertaining to those tasks.

The Executive Director and the Vice-Chair of the Authority shall participate in meetings of the Executive Board without the right to vote.

2. Where the decisions referred to in Article 8 paragraph 1, point l in relation to a directly supervised entity are deliberated upon, the member of the Board of Supervisors from the Member State where the relevant entity is established may participate in the deliberations during the relevant meetings of the Executive Board.

Where supervisory matters in relation to a central counterparty or central securities depository are discussed, a representative of the ECB shall have the right to attend the discussion.

The observers specified in subparagraphs 1 and 2 shall not be present during the vote following such deliberations.

The Executive Board may decide to admit other observers to the deliberations.

3. The Executive Board members referred to in paragraph 1, point (b), shall be selected on the basis of merit, skills, knowledge, integrity, recognised experience in the area of supervision of financial markets, and other relevant qualifications, following an open selection procedure which shall be published in the Official Journal of the European Union. The Commission shall prepare a shortlist of candidates for the position of the Executive Board members referred to in paragraph 1, point (b). The European Parliament may conduct hearings of the candidates on that shortlist.

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The Board of Supervisors shall submit a proposal for the appointment of the Executive Board members referred to in paragraph 1, point (b), to the European Parliament, based on the shortlist prepared by the Commission. Following the European Parliament's approval of that proposal, the Council shall adopt an implementing decision to appoint those Executive Board members. The Council shall act by qualified majority.

4. Throughout the appointment process, the principles of gender and geographical balance shall be taken into account to the extent possible. The Executive Board members should represent different types of supervisory experiences, including in prudential supervision, and, to the extent possible, should have collectively an appropriate understanding of the sectors in which the Authority exercises direct supervisory tasks.

5. The term of office of the Executive Board members referred to in paragraph 1, point (b), shall be five years. In the course of the 12 months preceding the end of their five-year term of office, the Board of Supervisors or a smaller committee selected among Board of Supervisors members, including a Commission representative, shall carry out an assessment of those Executive Board members. The assessment shall take into account an evaluation of each Executive Board member's performance and the Authority's future tasks and challenges. Based on the assessment, the Board of Supervisors may propose to the European Parliament to extend their term of office for two years. Such extension may be granted only once. Following the European Parliament's approval of the Board's proposal, the Council shall adopt an implementing decision to extend the term of office of the Executive Board member or members concerned.

6. No individual may serve more than seven years in which ever role of Chair, Executive Director, or independent member of the Executive Board. Prior office in one role shall count toward the term limit for another role regardless of the order of the positions held.

(34) the following Article 44b is inserted:

Article 44b

Decision-making

1. Decisions by the Executive Board shall be adopted by simple majority of its members whilst striving for consensus. Each member shall have one vote. Where votes are tied, the Chairperson shall have the casting vote.

2. Decision in accordance with Articles 17 (3) and (6), 17aa, 17aaa, 18(3) and (4), 22(4), Article 30 (4) and (8), Article 39h (a), (b, (f), (g), (i), Article 39i, and Article 65 and any decisions based on sectoral legislation referring to this paragraph, shall be deemed adopted unless the Board of Supervisors objects within a period to be defined in the rules of procedure but not exceeding a maximum period of ten working days, unless duly justified by the complexity of the decision and agreed by the two Boards. In emergency situations the aforementioned period shall not exceed 48 hours.

3. The representative of the Commission shall have the right to vote on matters referred to in Article 63. In the event that the Commission raises serious concerns on a

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decision proposal presented to the Executive Board on matters related to the Financial Framework Regulation and the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union, the Executive Board shall postpone the adoption of the decision. Within 15 days, the Executive Board shall re-examine and adopt it, possibly amended, in second reading with a two-thirds majority, including the Commission representative where applicable. The Executive Board shall adopt and make public its rules of procedure.';

(35) Article 45 and Article 45a are deleted;

(36) in Article 45b paragraphs 1, 2 and 3 are replaced by the following:

'1. The Executive Board may set up coordination groups on its own initiative or upon the request of a competent authority on defined topics for which there may be a need to coordinate having regard to specific market developments. The Executive Board shall set up coordination groups on defined topics at the request of five members of the Board of Supervisors.

2. All relevant competent authorities shall participate in the coordination groups and shall provide, in accordance with Article 35, to the coordination groups the information necessary in order to allow the coordination groups to conduct their coordinating tasks in accordance with their mandate. The work of the coordination groups shall be based on information provided by the relevant competent authorities and any findings identified by the Authority.

3. The groups shall be chaired by a member of the Executive Board. Each year, the respective member of the Executive Board in charge of the coordination group shall report to the Board of Supervisors on the main elements of the discussions and findings and, where relevant, make a suggestion for a regulatory follow-up or a peer review in the respective area. Competent authorities shall notify the Authority as to how they have taken into account the work of coordination groups in their activities.';

(37) the following Article 45c is inserted:

'Article 45c

Internal committees

1. The Executive Board, on its own initiative, at the request of the Chairperson or where specified in other Union acts, may establish internal committees for specific tasks attributed to it. The Executive Board may provide for the delegation of certain clearly defined tasks and decisions to internal committees, to the Executive Director or to the Chairperson.

Where an internal committee discusses supervisory matters in relation to a central counterparty or central securities depository, the European Central Bank and the other relevant central banks of issue of the Union currencies shall have the right to be non-voting members.';

(38) Article 46 is replaced by the following:

'Article 46

Independence of the Executive Board

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1. 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 or from any other public or private body.

Member States, Union institutions or bodies and any other public or private body shall not seek to influence the members of the Executive Board in the performance of their tasks.

2. If an Executive Board member referred to in Article 40, paragraph 1, point (ba), no longer fulfils the conditions required for the performance of that member's duties or has been guilty of serious misconduct, the Council may, acting on its own initiative or following a proposal by the European Parliament, adopt an implementing decision to remove that member of the Executive Board from office. The Council shall act by qualified majority.

3. During a period of 18 months after ceasing to hold office, the former Executive Board members, including the Chair of the Authority, shall be prohibited from engaging in a gainful occupational activity with:

(a) an entity directly supervised by the Authority;

(b) any other entity, where doing so would or could lead to a conflict with the legitimate interests of the Authority.

In its rules for the prevention and management of conflicts of interest in respect of its members, in accordance with Article 46a(8), point d), the Executive Board shall specify the circumstances under which such a conflict of interest exists or could be perceived to exist.'

(39) Article 46a is added:

'*Article 46a*

Tasks of the Executive Board

1. The Executive Board shall be responsible for the overall planning and execution of the tasks conferred on the Authority in accordance with this Regulation.

2. The Executive Board may examine, give an opinion and make a proposal on all matters to be decided by the Board of Supervisors.

3. The Executive Board may ask the Board of Supervisors for an opinion on all supervisory matters. The Board of Supervisors shall provide its opinion at its next meeting following the request or as agreed with the Executive Board.

4. The Executive Board shall adopt decisions in accordance with Chapter IIa and carry out supervisory tasks in relation to individual financial market participants under the Authority's supervision pursuant to this Regulation and other Union acts.

5. The Executive Board shall adopt the decisions pursuant to Article 9(5), Article 17(3) and (6), Article 17aa, Article 17aaa, Article18(3) and (4), Article19, Article 19a (1) and (4), Article 22(4), and Article 30. In addition, the Executive Board shall carry out tasks or take measures in relation to individual national competent authorities and individual financial market participants which are not under the Authority's supervision, where specified in this Regulation or other Union acts. .

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By derogation to the first sub-paragraph in cases set out in Regulation (EU) 2021/23 the decisions based on Article 19 shall be taken by the Board of Supervisors.

6. The Executive Board shall adopt the working arrangements in accordance with Article 8a(4).

7. The Executive Board shall present to the Board of Supervisors a biannual briefing on supervisory matters.

8. In addition, the Executive Board shall have the following tasks:

(a) the Executive Board shall propose, for adoption by the Board of Supervisors, an annual and multi-annual work programme;

(b) the Executive Board shall exercise its budgetary powers in accordance with Articles 63 and 64;

(c) 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 (hereinafter the Staff Regulations');

(d) the Executive Board shall adopt rules for the prevention and management of conflicts of interest in respect of its members;

(e) the Executive Board shall adopt the special provisions on right of access to the documents of the Authority, in accordance with Article 72;

(f) the Executive Board shall adopt and make public its rules of procedure;

(g) the Executive Board shall appoint and remove the members of the Board of Appeal in accordance with Article 58(3) and (5), taking duly into account a proposal by the Board of Supervisors.

9. 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.';

(40) Article 47 is deleted;

(41) Article 48 is amended as follows:

(a) in paragraph 1, the third and fourth subparagraphs are replaced by the following:

'The Chairperson shall be responsible for setting the agenda of the Executive Board, to be adopted by the Executive Board, and shall chair the meetings of the Executive Board.

The Chairperson may invite the Executive Board to consider setting up a coordination group in accordance with Article 45b.'

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

'The Executive Board shall also elect, from among its members, a Vice-Chairperson who shall carry out the functions of the Chairperson in the absence of the Chairperson.'

(c) paragraph 3 is replaced by the following:

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

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(d) in paragraph 4 the last sentence is replaced by the following:

'The Council, acting on a proposal from the Board of Supervisors and with the assistance of the Commission, and taking into account the evaluation referred to in the first subparagraph, may extend the term of office of the Chairperson once for two years.';

(e) the following paragraph 6 is added:

'6. No individual may serve more than 7 years in which ever role of Chair, Executive Director, or independent member of the Executive Board. Prior office in one role shall count toward the term limit for another role regardless of the order of the positions held.'

(42) Article 51 is amended as follows:

(a) paragraph 3 is replaced by the following:

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

(b) in paragraph 4 the last sentence is replaced by the following:

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

(c) the following paragraph 6 is added:

'6. No individual may serve more than 7 years in which ever role of Chair, Executive Director, or independent member of the Executive Board. Prior office in one role shall count toward the term limit for another role regardless of the order of the positions held.';

(43) in Article 52, the first subparagraph is replaced by the following:

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

(44) in Article 53, paragraphs 1 and 2 are replaced by the following:

'1. The Executive Director shall be in charge of overseeing day-to-day operations of the Authority and ensuring its objectives and decisions are duly implemented. It shall assist the Executive Board and the Board of Supervisors in setting the strategic direction for the Authority. The Executive Director shall prepare the work of the Executive Board on matters specified in Article 46a(7).

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

(45) in Article 57, paragraph 3 is replaced by the following:

'3. Each sub-committee shall have a chairperson. Unless otherwise provided for in other Union acts, the chairperson shall be one of the individuals referred to in Article 55(1) or one of the representatives of the relevant competent authorities, who shall also be an observer in the Joint Committee.';

(46) Article 58 is amended as follows:

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

'Two members of the Board of Appeal and two alternates shall be appointed by the Executive Board of the Authority from a shortlist 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.';

(b) 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.'

(47) in Article 59 the 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.';

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

'1. Any natural or legal person, including competent authorities, may appeal against any decision taken by the Authority in accordance with this Regulation or other 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.';

(49) in Article 62 paragraph 1 is amended as follows:

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

'(c) any fees paid to the Authority in the cases specified in this Regulation and relevant instruments of Union law;';

(b) the following point (f) is added:

'(f) possible Union funding in the form of contribution agreements or ad hoc grants in accordance with the Authority's financial rules referred to in Article 65 and with the provisions of the relevant instruments supporting the policies of the Union.';

(50) Article 63 is amended as follows:

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

'1. Each year, the Executive Director 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.

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

3. The single programming document shall be transmitted by the Executive Board to the Commission, the European Parliament and the Council and to the European Court of Auditors by 31 January.';

(b) paragraph 7 is replaced by the following:

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‘7. The Executive Board shall, without undue delay, notify the European Parliament and the Council 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.’

(51) in Article 64 paragraph 8 is replaced by the following:

‘8. The Executive Director shall send the Court of Auditors a reply to the latter’s observations by 30 September and shall also send a copy of that reply to the Board of Supervisors, the Executive Board and to the Commission.’;

(52) in Article 65 the first sentence is replaced by the following:

‘The financial rules applicable to the Authority shall be adopted by the Executive Board after consulting the Commission.’;

(53) Article 68 is amended as follows:

(a) paragraph 1 is 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 its Executive Director, its Chairperson and the members of the Executive Board.’;

(b) paragraph 2 is replaced by the following:

‘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.’;

(c) 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.’;

(54) in Article 70 paragraph 2a is replaced by the following:

‘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 paragraphs 1 and 2.

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

(55) 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.’;

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

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

(57) in Article 74 the first subparagraph 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 which they concluded after obtaining the approval of the Executive Board.’

(58) The following chapter VIIa is inserted:

‘CHAPTER VIIa

DELEGATED ACTS

Article 75a

Exercise of 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 Articles 39e and 39n of this Regulation shall be conferred on the Commission for an indeterminate period of time from [date of entry into force of the basic legislative act].

3. The delegation of power referred to in this Regulation 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 of 13 April 2016 on Better Law-Making.

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 this Regulation shall enter into force only if no objection has been expressed either by the European Parliament or 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.’;

(59) Article 81 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. By [OP please insert the date: 5 years after date of entry into force], and every five years thereafter, the Commission shall publish a report on the experience acquired as a result of the operation of the Authority and the procedures and tasks laid down in this Regulation. That report shall evaluate, inter alia:

(a) the level of accountability and transparency of the Authority including on the use of its resources;

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(b) the effectiveness and convergence in supervisory practices;

(c) the allocation of responsibilities in the area of direct supervision including the appropriateness of entrusting the Authority with further supervisory responsibilities;

(d) the governance model;

(e) whether the resources of the Authority to carry out its responsibilities are adequate;

(f) the functioning of the Joint Committee;

(g) the application of the safeguard clause established in Article 38;

(h) the role of the Authority as regards systemic risk;

(i) whether it is appropriate to simplify and reinforce the architecture of the ESFS in order to increase the coherence between the macro and the micro levels and between the ESAs.

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

(b) paragraphs 2 to 3 are deleted.

Article 2

Amendments to Regulation (EU) No 648/2012

Regulation (EU) No 648/2012 is amended as follows:

(1) Article 2 is amended as follows:

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

'(1a) 'significant CCP' means a CCP authorised under Article 14 that qualifies as significant pursuant to Article 22a(1);

(1b) 'less significant CCP' means a CCP authorised under Article 14 that is not a significant CCP;';

(b) point (13) is replaced by the following:

'(13) 'competent authority' means the competent authority referred to in the legislation referred to in point (8) of this Article, the competent authority referred to in Article 10(5), the national competent authority or, the CCP's competent authority;';

(c) the following points (13a), (13b) and (13c) are inserted:

'(13a) 'CCP's competent authority' means the national competent authority for less significant CCPs or ESMA for significant CCPs;

(13b) 'national competent authority' means the national authority of the Member State in which a CCP is established, designated pursuant to Article 22(1);

(13c) 'relevant authority' means any authority referred to in Article 22d;';

(d) point (31) is replaced by the following:

'(31) 'covered bond entity' means the covered bond issuer or cover pool of a covered bond;',

(e) the following point (32) is added:

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‘(32) central database’ means the central database established by ESMA pursuant to Article 17c.’;

(f) the following subparagraph is added:

For the purpose of Article 5(1), Article 6(1) point (f), Article 14(4), Article 17(3a), Article 17(3b), third subparagraph, (4) and (5), Article 21(3), first subparagraph, (4) third subparagraph, (4a) and (5), Article 27(3), Article 28 (1), (4) and (5), Article 29 (1) and (3), Article 30 (1) to (5), Article 31(1) to (8), Article 32(1) except for the last two references in the third subparagraph, Article 32(2) to (6), Article 32(7) except for the second to last reference, Article 35(1), (2) and (3), Article 37(1a) and (2), Article 38(1), (3) and (5), Article 41(2), Article 45a(1) and (2), Article 48 (3), Article 49(1), (1d) and (1g), the term “competent authority” shall be read as “CCP’s competent authority”.’;

(2) Article 6a is amended as follows:

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

‘For the purposes of point (c) of the first subparagraph, before the request referred to in the first subparagraph, ESMA shall consult the ESRB and the CCP’s competent authorities.’;

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

‘Under the conditions set out in paragraph 1 of this Article, the competent authorities responsible for the supervision of clearing members and the CCP’s competent authorities may request that ESMA submit a request for a suspension of the clearing obligation to the Commission.’;

(c) in paragraph 8, third subparagraph, the second sentence is replaced by the following:

‘For the purposes of point (c) of the first subparagraph of paragraph 1 of this Article, ESMA shall consult the ESRB and the CCP’s competent authorities.’;

(3) in Article 6b(1), first subparagraph, the introductory wording is replaced by the following:

‘Where a CCP meets the conditions laid down in Article 22 of Regulation (EU) 2021/23 of the European Parliament and of the Council[31], the resolution authority of the CCP designated under Article 3(1) of that Regulation or the CCP’s competent authority may, on their own initiative or at the request of a competent authority responsible for the supervision of a clearing member of the CCP under resolution, request that the Commission suspend the clearing obligation referred to in Article 4(1) of this Regulation for specific classes of OTC derivatives or for a specific type of counterparty where the following conditions are met:’;

(4) Article 7 is amended as follows:

(a) in paragraph 1, the first sentence is replaced by the following:

[31] Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 (OJ L 22, 22.1.2021, p. 1, ELI: http://data.europa.eu/eli/reg/2021/23/oj).’

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‘1. A CCP that has been authorised to clear OTC derivative contracts shall accept clearing such contracts on a non-discriminatory and transparent basis, including as regards collateral requirements, and initial connectivity and access fees, regardless of the trading venue on which a transaction is executed.’;

(b) paragraphs 2 to 6 are replaced by the following:

‘2. A trading venue seeking to access a CCP’s service related to the clearing of OTC derivative contracts shall submit its request to the CCP. The request shall specify the OTC derivative contracts for which the clearing is requested. The trading venue shall inform ESMA, the CCP’s competent authority and the competent authority of the trading venue of such a request.

3. The CCP shall provide a written response to the trading venue within three months of the receipt of the request referred to in paragraph 2, either permitting or denying access.

4. The CCP may deny a request for access only where such access would affect the smooth and orderly functioning of the markets or cause systemic risk, based on a comprehensive risk assessment subject to the conditions laid down in paragraph 7.

The CCP shall not deny a request on a possible loss of revenue in respect of itself or another entity belonging to the same group.

Where the CCP fails to provide a written response to the trading venue within the time limit referred to in paragraph 3, ESMA may notify the CCP and request additional information from the CCP.

Where there is no indication that the conditions for denial of request as referred to in paragraph 7 are met, ESMA may issue a decision requiring that CCP to grant access to its services within one month of the notification of that decision.

Where the CCP denies access to the trading venue, the written response shall provide a detailed explanation of the reasons for denied access, based on the comprehensive risk assessment referred to in the first subparagraph. The CCP shall immediately after providing the written response to the trading venue, and in writing, inform ESMA and the competent authorities referred to in paragraph 2 of that decision.

5. Where the CCP has denied access, the trading venue may submit a complaint to ESMA.

ESMA shall assess the reasons for denied access and, within one month of the date of the complaint, provide the trading venue with a reasoned reply. ESMA may consult the competent authorities referred to in paragraph 2. Where ESMA concludes that the refusal by the CCP to grant access is unjustified, where there is no indication that the conditions for denial of request as referred to in paragraph 7 are met, ESMA shall issue a decision requiring the CCP to grant access to its services within one month of the notification of that decision.

6. A CCP that grants access to the trading venue shall ensure that such access is fully operational within three months of the date of the positive response to the request for access.’;

(c) the following paragraph 7 is added:

‘7. The conditions laid down in paragraph 1 regarding non-discriminatory treatment in terms of how contracts traded on that trading venue are treated in terms of collateral requirements and netting of economically equivalent contracts and cross-

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margining with correlated contracts cleared by the same CCP, and the specific risks to be taken into account by CCPs when carrying out a comprehensive risk assessment as referred to in paragraph 4, shall be further specified by the delegated acts adopted pursuant to Article 36(6) of Regulation (EU) No 600/2014.

When carrying out a comprehensive risk assessment as referred to in paragraph 4 and 5 of this Article, the CCP and ESMA, respectively, shall take account of the relevant conditions set out by the delegated acts adopted pursuant to Article 36(4) of Regulation (EU) No 600/2014.';

(5) Article 8 is replaced by the following:

Article 8

Access to a trading venue

'1. A trading venue shall, upon request, provide trade feeds on a non-discriminatory and transparent basis to any CCP that has been authorised to clear OTC derivative contracts traded on that trading venue, including as regards initial connectivity and access fees.';

2. A CCP that intends to access the service of a trading venue related to the OTC derivative contracts shall formally submit its request to the trading venue. The CCP shall inform ESMA, the competent authorities of the trading venue and the CCP's competent authority of such request.

3. The trading venue shall provide a written response to the CCP within three months of the receipt of the request referred to in paragraph 2, either permitting or denying access.

4. The trading venue may deny a request for access only where such access would affect the smooth and orderly functioning of the markets or cause systemic risk, based on a comprehensive risk assessment subject to the conditions laid down in paragraph 7.

The trading venue shall not deny a request on a possible loss of revenue in respect of itself or another entity belonging to the same group.

The trading venue shall not restrict access to specific trade feeds on the ground that the counterparties to a specific transaction have not chosen the same CCP, where the CCPs of their choice have already entered into an interoperability arrangement pursuant to Article 51.

Where the trading venue fails to provide a written response to the CCP within the time limit referred to in paragraph 3, ESMA may notify the trading venue and request additional information.

Where there is no indication that the conditions for denial of request as referred to in paragraph 7 are met, ESMA may issue a decision requiring that trading venue to grant access to its services within one month of the notification of the decision.

Where the trading venue denies access, the written response shall provide a detailed explanation of the reasons for denied access, based on the comprehensive risk assessment referred to in the first subparagraph. The trading venue shall immediately after providing the written response to the CCP, and in writing, inform ESMA and the competent authorities referred to in paragraph 2 of that decision.

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5. Where the trading venue has denied access, the CCP may submit a complaint to ESMA.

ESMA shall assess the reasons for denied access and, within one month from the date of the complaint, provide the CCP with a reasoned reply. ESMA may consult the competent authorities referred to in paragraph 2 when preparing its reply. Where ESMA concludes that the trading venue's refusal to grant access is unjustified, where there is no indication that the conditions for denial of request as referred to in paragraph 7 are met, ESMA shall issue a decision requiring the trading venue to grant access to its trade feeds within one month of the date of the notification of that decision.

6. A trading venue that grants access to the CCP shall ensure that the access is fully operational within three months of the receipt of the positive response to the request for access.

7. When carrying out a comprehensive risk assessment as referred to in paragraph 4 and 5 of this Article, the trading venue and ESMA, respectively, shall take into account the relevant conditions set out by the delegated acts adopted pursuant to Article 36(6) of Regulation (EU) No 600/2014.';

(6) in Article 12, the following paragraph 1b is inserted:

'1b. ESMA shall have the power to impose fines and periodic penalty payments applicable to significant CCPs that infringed the rules under this Title in accordance with Chapter IIa of Regulation (EU) No 1095/2010 and shall take all measures necessary to ensure that those rules are implemented. In addition, ESMA shall, impose fines or periodic penalty payments on the significant CCPs subject to the reporting obligation pursuant to Article 9 where the details reported repeatedly contain systematic manifest errors.';

(7) in Article 14, paragraph 1 is replaced by the following:

'1. Where a legal person established in the Union intends to provide clearing services as a CCP, it shall apply for authorisation to the CCP's competent authority, in accordance with the procedure set out in Article 17.';

(8) Article 17 is amended as follows:

(a) in paragraph 1, first subparagraph, the first sentence is replaced by the following:

'Without prejudice to Article 22a(6), the applicant CCP shall submit an application for authorisation as referred to in Article 14(1) or an application for an extension of an existing authorisation as referred to in Article 15(1).';

(b) in paragraph 3c, third subparagraph, the first sentence is replaced by the following:

'Where the CCP's competent authority does not comply or does not intend to comply with an opinion of ESMA or with any conditions or recommendations included therein, the Executive Board shall inform the Board of Supervisors.';

(9) Article 17b is amended as follows:

(a) in paragraph 1, the first subparagraph is replaced by the following:

'A CCP's competent authority shall submit a request for an opinion:

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(a) by ESMA, pursuant to Article 23a(2), where the CCP's competent authority intends to adopt a decision, report or other measure in relation to Articles 7, 8, 20, 21, 29 to 33, 35, 36, 37 and 41;

(b) by the college referred to in Article 18, pursuant to Article 19, where the CCP's competent authority intends to adopt a decision, report or other measure in relation to Articles 20, 21, 30, 31, 32, 35, 37, 41, 49 and 51.';

(b) in paragraph 3, point (b) is replaced by the following:

'(b) ESMA may, with respect to Articles 7, 8, 29 to 33, 35, 36 and 41, adopt an opinion in accordance with Article 23a and Article 24a(7), first subparagraph, point (bc), on that draft decision, report or other measure where such opinion is necessary to promote a consistent and coherent application of a relevant article; and';

(c) in paragraph 4, third subparagraph, the first sentence is replaced by the following:

'For the purpose of paragraph 3, first subparagraph, points (a) and (b), of this Article, where the CCP's competent authority does not comply or does not intend to comply with the opinion of ESMA or with any conditions or recommendations included therein, the Executive Board shall inform the Board of Supervisors.';

(10) Article 17c is amended as follows:

(a) in paragraph 1, the first subparagraph is replaced by the following:

'ESMA shall establish and maintain a central database in accordance with Article 35c of Regulation (EU) No 1095/2010. Separately for each CCP, the CCP's competent authority, the relevant authorities of the CCP and ESMA as well as the members of the CCP's college referred to in Article 18, where required under a relevant article ('registered recipients'), shall have access to all information and documents referred to in paragraph 2 registered within the central database for that CCP where relevant or necessary for the performance of their duties. A CCP shall have access to the central database as regards the information and documents it submitted to that central database or the documents transmitted to it through that central database by any of the registered recipients. Other recipients shall also submit and have access to certain specific documents or information, where specified under this Regulation, that is registered in the central database. ESMA shall ensure that the central database performs the functions under this Article. ESMA shall make available the information shared via the central database under this Regulation to any authority relevant for the purpose of Regulation (EU) No 909/2014 and Regulation (EU) […/… on settlement finality], where relevant or necessary for the performance of their duties.';

(b) paragraph 2 is replaced by the following:

'CCPs and registered recipients shall upload to the central database, in electronic format, all information and documents, including applications, decisions, recommendations, information, requests, questions, answers and notifications, referred to in this Regulation, unless stated otherwise.

An acknowledgement of receipt shall be sent via the central database within two working days of submission of information or documents.

ESMA shall ensure the database enables DLT recorded data, including on-chain data reading and access to such data.';

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(c) paragraphs 3, 4, 5 and 7 are deleted;

(11) Article 18 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Without prejudice to Article 22a(6), within 30 calendar days of the submission of the notification referred to in Article 17(2), second subparagraph, point (a), or before the end of the adaptation period as referred to in Article 22a(7), the CCP’s competent authority shall establish a college to facilitate the exercise of the tasks referred to in Articles 15, 17, 17a, 20, 21, 30, 31, 32, 35, 37, 41, 49 and 51. That college shall be chaired and managed by ESMA (the ‘chair’).’;

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

‘(a) ESMA’;

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

‘The chair shall decide the dates of the college meetings and establish the agenda of such meetings.’;

(d) in paragraph 5, third subparagraph, the last sentence is deleted;

(12) in Article 20, paragraphs 3 and 4 are replaced by the following:

‘3. Before the CCP’s competent authority takes a decision to withdraw the authorisation of the CCP in full or in part, including for one or more clearing services or activities in one or more classes of derivatives, securities, other financial instruments or non-financial instruments under paragraph 1, it shall take one of the following steps:

(a) for a less significant CCP, it shall, in accordance with Article 17b, request the opinion of ESMA and of the college referred to in Article 18 on the necessity of withdrawing the authorisation, in full or in part, of the CCP;

(b) for a significant CCP, it shall consult the relevant authorities of that CCP on the necessity of withdrawing the CCP’s authorisation, in full or in part.

The first subparagraph shall not apply where a decision is required urgently.

4. For less significant CCPs, ESMA, or any member of the college referred to in Article 18, and for significant CCPs, any of the relevant authorities, may, at any time, request that the CCP’s competent authority examine whether the CCP remains in compliance with the conditions under which the authorisation was granted.’;

(13) in Article 21(1), the introductory wording is replaced by the following:

‘The CCP’s competent authority shall do at least all of the following in relation to a CCP:’;

(14) Article 22 is amended as follows:

(a) the title is replaced by the following:

‘**Competent authorities designated by the Member States**’;

(b) paragraph 1 is replaced by the following:

‘1. Each Member State shall designate one or more national competent authorities to carry out the tasks and duties laid down under this Regulation for the authorisation and supervision of less significant CCPs established or to be established in its

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territory and the support and assistance functions referred to in Article 23(3). Each Member State shall inform the Commission and ESMA thereof.
Where a Member State designates more than one national competent authority in accordance with the first subparagraph, it shall determine the respective roles and shall designate a single authority to be responsible for coordinating cooperation and the exchange of information with the Commission, ESMA, other Member States' competent authorities, EBA and the relevant members of the ESCB, where specifically referred to in this Regulation.';

(c) the following paragraph 1a is inserted:

'1a. Without prejudice to Article 22a(1), a Member State may designate ESMA as the competent authority for one or more less significant CCPs established in its territory. Where it exercises this option, the Member State shall notify the Commission, ESMA and the national competent authority thereof via the central database.';

(d) paragraph 2 is replaced by the following:

'2. Each Member State shall ensure that the national competent authority has the supervisory and investigatory powers necessary for the exercise of its functions.';

(e) paragraph 4 is replaced by the following:

'4. ESMA shall publish on its website a list of the CCP's competent authorities for each CCP, designated in accordance with this Article or identified in accordance with Article 22a(1).';

(15) the following Articles 22a to 22e are inserted:

'*Article 22a*

Competent authority of significant CCPs

1. ESMA shall be the CCP's competent authority of significant CCPs and carry out the supervisory tasks and duties laid down in this Regulation for their authorisation and supervision.

2. A CCP shall be considered significant where it fulfils at least one of the following conditions:

(a) the average open interest of securities transactions, including securities financing transactions, exchange traded derivatives or non-financial instruments cleared by the CCP over a period of one year prior to the assessment is more than EUR 100 billion;

(b) the average gross notional outstanding of OTC derivatives transactions cleared by the CCP over a period of one year prior to the assessment is more than EUR 500 billion;

(c) the average aggregated initial margin requirement and default fund contributions for accounts held by the CCP's clearing members, calculated on a net basis at clearing member account level, over a period of one year prior to the assessment, is more than EUR 25 billion;

(d) it belongs to the same group as any of the following:

(i) a CCP authorised under Article 14 or a Tier 2 CCP;

(ii) a CSD or a trading venue for which ESMA is the competent authority.

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(e) the Member State where the CCP is established has designated ESMA as the CCP's competent authority in accordance with paragraph 1a of Article 22, where this designation applies to that CCP.

ESMA shall determine whether a CCP meets the conditions for qualifying as significant in accordance with this Article.

3. ESMA shall assess, at least every 12 months, whether any authorised CCP fulfils at least one of the conditions set out in paragraph 2.

4. Where ESMA has determined that a CCP authorised under Article 14 of this Regulation fulfils at least one of the conditions laid down in paragraph 2 of this Article, that CCP shall qualify as significant CCP. Where the CCP is not yet supervised by ESMA, ESMA may set a potential adaptation period that shall not exceed 6 months, after which the CCP shall become supervised by ESMA.

5. ESMA shall notify the CCP concerned, its national competent authority, the relevant authorities, the ECB, where a CCP clears financial and non-financial instruments denominated in euro, and the central banks of issue of the most relevant other Union currencies, where a CCP clears financial and non-financial instruments denominated in a currency other than euro, of the outcome of the determination and any adaptation period referred to in paragraph 4 within 2 working days of the date of that determination.

6. Before a legal person established in the Union applies for authorisation in accordance with Article 17, it shall request ESMA via the central database to determine whether it fulfils any of the conditions laid down in paragraph 2 of this Article.

ESMA may request further information from that legal person for that purpose. The legal person shall provide the requested information within the deadline set by ESMA. ESMA shall, within 20 working days from the receipt of all the relevant information, determine whether such legal person fulfils any of the conditions referred in the first subparagraph.

Where ESMA has determined that the legal person fulfils at least one of the conditions laid down in paragraph 2 of this Article, that legal person shall qualify as significant and shall be supervised by ESMA, which shall be responsible for the authorisation of this entity in accordance with Article 17.

Where ESMA has determined that the legal person does not fulfil any of the conditions laid down in paragraph 2 of this Article, it shall qualify as less significant and shall be supervised by the national competent authorities of the Member State, as referred to in Article 22(1), where the legal person is established. Those national competent authorities shall be responsible for the authorisation of the CCP in accordance with Article 17. ESMA shall inform, via the central database, the legal person, the national competent authority of the Member State in which the legal person is established and the ECB where the legal entity intends to clear financial and non-financial instruments denominated in euro, or the central banks of issue of the most relevant Union currencies, other than euro, of the financial and non-financial instruments that the legal person intends to clear, of the outcome of its determination within 2 working days from the date of that determination.

7. Where ESMA determines that a CCP that was previously determined to be significant has not fulfilled any of the conditions set out in paragraph 2 for the past 36 months, it shall determine that the CCP shall no longer qualify as a significant CCP. ESMA shall immediately notify the CCP concerned, its national competent

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authorities, the ECB, where a CCP clears financial and non-financial instruments denominated in euro, and the central banks of issue of the most relevant other Union currencies, where a CCP clears financial and non-financial instruments denominated in a currency other than euro, of that determination. That determination shall take effect after an adaptation period to be determined by ESMA, which shall not exceed 24 months. The national competent authority shall establish a college pursuant to Article 18 before the end of the adaptation period.

8. ESMA shall, without undue delay, establish and publish on its website the list of significant CCPs and keep it updated.

9. ESMA shall charge fees to significant CCPs for performing its supervisory tasks and duties laid down in this Regulation for the authorisation and supervision of significant CCPs and in accordance with the delegated act adopted pursuant to paragraph 10.

10. The Commission shall be empowered to adopt a delegated act in accordance with Article 82 in order to supplement this Regulation by specifying the fees referred to in paragraph 9, by setting out:

(a) the types of fees;

(b) the matters for which fees are due;

(c) the method of calculation of the fees; and

(d) the manner in which fees are to be paid.

Article 22b

Specific provisions for significant CCPs

1. By way of derogation from Article 18, no college shall be established for significant CCPs. Where for a CCP that becomes significant, a college had been established pursuant to Article 18, such college shall be dissolved at the latest within a year after the CCP qualified as a significant CCP.

In relation to a significant CCP, the procedures referred to in Articles 7e, 15a, 17, 17a, 17c, 20, 21, 24, 30, 31, 32, 35, 37, 41 and 49 shall apply without including the college.

2. By way of derogation from Articles 6a, 6b, 17, 17a, 17c, 20, 21, 24, 28, 29, 31, 32, 35, 38, 41, 48, 49 and 49a, any requirement for a CCP or a CCP's competent authority to interact with ESMA or ESMA to interact with a CCP or a CCP's competent authority referred to in those articles shall not apply with respect to significant CCPs.

3. Article 17b shall not apply with respect to significant CCPs.

Article 22c

Powers of ESMA over significant CCPs under this Regulation

1. ESMA shall be responsible for carrying out its duties under this Regulation for the authorisation and supervision of significant CCPs.

2. ESMA shall ensure on an ongoing basis the compliance by significant CCPs with Articles 7, Article 7e, Article 8, Articles 14 to 17c, Article 20, Article 21, and Article 24 and Titles IV and V.

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3. ESMA shall be conferred with the powers necessary for the exercise of its functions over significant CCPs under this Regulation and under Regulation (EU) No 1095/2010.

ESMA shall use these powers, over significant CCPs and where specified under this Regulation, over related parties, including to:

(a) supervise the significant CCPs' compliance with the requirements laid down in this Regulation;

(b) adopt decisions and conduct supervisory assessments and take measures in relation to Articles 7, Article 7e, Article 8, Articles 14 to 17c, Article 20, Article 21, Article 24 and Titles IV and V;

(c) request significant CCPs, and related third parties to whom those CCPs have outsourced operational functions or activities, to provide, within the time limit provided for in the request, all relevant information or data to enable ESMA to monitor those CCPs' provision of clearing services and activities and to carry out ESMA's tasks and duties under this Regulation. The recipient of such a request shall provide ESMA, with all the information requested by ESMA within the provided time limit. The information request may be of a periodic or one-off nature;

(d) require the auditors of significant CCPs to provide information or data;

(e) adopt a decision imposing fines, where a significant CCP has, intentionally or negligently, committed one of the infringements listed in Annex V. Such fines shall be up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined, or up to 10% of the total annual turnover, of a legal person in the preceding business year and can take into account aggravating or mitigation factors in accordance with the relevant coefficients set out in Annex IV;

(f) adopt a decision requiring a significant CCP to bring an infringement listed in Annex V to an end.

4. In addition, for the purpose of carrying out its tasks regarding significant CCPs, ESMA shall have the powers to take the temporary measures set out in the second subparagraph in any of the following circumstances:

(a) ESMA has obtained evidence suggesting that the entity infringes, or is likely to infringe the requirements governing its operations within the next three months;

(b) ESMA has evidence that the arrangements, strategies, processes and mechanisms implemented by the entity do not ensure a sound management and coverage of its risks.

For the purposes of the first subparagraph, ESMA shall have, in particular, the powers to take the following temporary measures:

(a) require that the entity's arrangements, processes, mechanisms and strategies are properly adjusted to ensure the sound management and coverage of its risks;

(b) require the significant CCP to convene a meeting of its shareholders or, if the significant CCP fails to comply with that requirement, convene the meeting

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itself. In both cases ESMA shall set the agenda, including the decisions to be considered for adoption by the shareholders;

(c) require entities to present a plan to restore compliance with supervisory requirements and set a deadline for its implementation, including improvements to the scope and deadline of that plan;

(d) restrict or limit the business, operations or network of the entity, or request the divestment of activities that pose excessive risks to its soundness;

(e) require the CCP to mitigate the risk related to the infringement or likely infringement of the requirements under this Regulation and the inherent related risks in the activities, products and systems of the entity;

(f) impose additional or more frequent reporting requirements;

(g) require additional disclosures;

(h) require the suspension of members from the management body of entities who do not fulfil the requirements governing their operations set out in this Regulation.

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

5. ESMA shall refuse or subsequently withdraw the appointment of the person or persons referred to in Article 27 if it is not satisfied that the person is of sufficiently good repute, or if there are objective and demonstrable grounds for believing that the appointment or proposed changes would pose a threat to the sound and prudent management of the entity, the adequate consideration of the clients' interest and integrity of the market.

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 82 to amend the list of infringements under Annex V where needed to take account of amendments to the requirements on CCPs under this Regulation and in particular as laid down in Article 7, Article 9, Article 16 and Titles IV and V or where needed to ensure that the infringements under Annex III correspond to the requirements under this Regulation and in particular as laid down in Article 7, Article 9, Article 16 and Titles IV and V.

Article 22d

Relevant authorities for significant CCPs

The following entities shall be involved in the authorisation and supervision carried out by the CCP's competent authority of a significant CCP and be referred to as relevant authorities for such CCP:

(a) the national competent authority of the Member State in which the significant CCP is established;

(b) the competent authorities responsible for the supervision of the clearing members, of the significant CCP, which are established in the three Member States with the largest contributions to the default fund referred to in Article 42 of this Regulation on an aggregate basis over a one-year period, including, where relevant, the ECB in the framework of the tasks concerning the prudential supervision of credit institutions within the single supervisory mechanism conferred upon it in accordance with Council Regulation (EU) No 1024/2013;

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(c) the competent authorities responsible for the supervision of trading venues served by the significant CCP;

(d) the competent authorities supervising central securities depositories to which the significant CCP is linked;

(e) the ECB where the significant CCP clears or intends to clear financial and non-financial instruments denominated in euro;

(f) the central banks of issue of the most relevant Union currencies other than euro, of the financial and non-financial instruments cleared or to be cleared by the significant CCP.

Article 22e

Consultation of central banks of issue regarding significant CCPs

1. With regard to supervisory assessments conducted in relation to, and decisions to be taken pursuant to, Articles 41, 44, 46, 49, 50 and 54 in relation to significant CCPs, the Executive Board shall consult the central banks of issue referred to in Article 22d, points (e) and (f), before finalising its assessment. Each central bank of issue may respond. Where the central bank of issue decides to respond, it shall do so within 10 working days of receipt of the draft decision. In emergency situations, that period shall not exceed 24 hours. Where a central bank of issue proposes amendments or objects to assessments related to, or draft decisions pursuant to Articles 41, 44, 46, 49, 50 and 54, it shall provide full and detailed reasons, in writing. Upon conclusion of the period for consultation, the Executive Board shall duly consider the response and any amendments proposed by the central banks of issue and provide its assessment to the central bank of issue.

2. Where the Executive Board does not reflect in its decision the amendments proposed by a central bank of issue, the Executive Board shall inform that central bank of issue in writing stating its full reasons for not taking into account the amendments proposed by that central bank of issue, providing an explanation for any deviations from those amendments.';

(16) in Article 23, the following paragraph 3 is added:

'3. For each significant CCP, ESMA and the relevant authorities shall establish cooperation arrangements as laid down in Article 8a of Regulation (EU) No 1095/2010, including in relation to ESMA's direct supervision of the CCP. Such arrangements shall reflect the distribution of competences and responsibilities pursuant to this Regulation and frame practical cooperation modalities in view of ESMA exercising its competencies and responsibilities with regard to significant CCPs. In particular, such arrangements may cover support and assistance by the relevant authorities, as relevant, in respect of all of the following:

(a) the carrying out of supervisory tasks over a significant CCP, including investigations and on-site inspections;

(b) the preparation of decisions, reports or other measures under this Regulation in relation to the significant CCP, including where specified under Articles 14, 15, 17, 17a, 20, 21, 24, 30, 31, 32, 35, 37, 41, 49, 49a and 51;

(c) any supervisory task to ensure the financial stability and monitor the operational resilience and market conduct of the significant CCP, including stress-testing;

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(d) addressing emergency situations in relation to the significant CCP.';

(17) Article 23a is amended as follows:

(a) the title is replaced by the following:

'**Supervisory cooperation between national competent authorities and ESMA with regards to less significant CCPs**';

(b) paragraph 2 is replaced by the following:

'2. Competent authorities shall submit their draft decisions, reports or other measures to ESMA for its opinion before adopting any act or measure pursuant to Articles 7, 8 and 14, Article 15(1), second subparagraph, Article 21, Articles 29 to 33, and Articles 35, 36, 37, 41 and, except where a decision is required urgently, pursuant to Article 20.

Competent authorities may also submit draft decisions to ESMA for its opinion before adopting any other act or measure in accordance with their duties under Article 22(1). Any opinion, decision, input, validations or other measure by ESMA shall be taken in accordance with Article 46a of Regulation (EU) No 1095/2010.';

(18) Article 24 is amended as follows:

(a) in paragraph 1, the introductory wording is replaced by the following:

'Any authority referred to in this Regulation which becomes aware of any emergency situation relating to a CCP shall inform the CCP's competent authority, ESMA, the college referred to in Article 18, the relevant members of the ESCB, the Commission and, the relevant authorities of the significant CCPs without undue delay of the emergency situation, including:';

(b) paragraphs 2 to 4 are replaced by the following:

'2. In an emergency situation, information shall be provided and updated without undue delay to enable the members of the college referred to in Article 18 or the relevant authorities of the significant CCPs, as applicable, to analyse the impact of that emergency situation in particular on their clearing members and their clients. The members of the college referred to in Article 18 or the relevant authorities of the significant CCPs, as applicable, may forward the information to the public bodies responsible for the financial stability of their markets, subject to the obligation of professional secrecy set out in Article 83. The obligation of professional secrecy in accordance with Article 83 shall apply to those bodies receiving that information.

3. In the event of an emergency situation at one or more CCPs that has or is likely to have destabilising effects on cross-border markets, the Executive Board shall coordinate competent authorities, the resolution authorities designated pursuant to Article 3(1) of Regulation (EU) 2021/23 and the colleges referred to in Article 18 of this Regulation or the relevant authorities of the significant CCPs, as applicable, to build a coordinated response to emergency situations relating to a CCP and ensure effective information sharing among competent authorities, the colleges referred to in Article 18 of this Regulation and resolution authorities.

4. In an emergency situation, except where a resolution authority is taking or has taken a resolution action in relation to a CCP pursuant to Article 21 of Regulation (EU) 2021/23, the following ad hoc meetings, may be convened to coordinate the responses of competent authorities:

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(a) ad hoc meetings of the Executive Board, convened by its Chair at his or her own initiative or at the request of two members of the Executive Board or the Board of Supervisors;

(b) ad hoc meetings with the relevant authorities for significant CCPs, convened by the Executive Board.;'

(c) paragraph 5 is amended as follows:

(i) point (f) is replaced by the following:

'(f) any member of the college referred to in Article 18 that is not already covered by points (a) to (d) of this paragraph;'

(ii) the following point (g) is added:

'any of the relevant authorities of significant CCPs, that is not already covered by points (a) to (e).';

(c) paragraph 6 is replaced by the following:

'6. Where an ad hoc meeting is convened pursuant to paragraph 4, the Executive Board shall inform EBA, EIOPA, the ESRB, the Single Resolution Board established under Regulation (EU) No 806/2014 of the European Parliament and of the Council and the Commission thereof who shall also be invited to participate in that meeting upon their request.

Where a meeting is held following an emergency situation as specified in paragraph 1, point (c), the Executive Board shall invite the relevant central banks of issue to participate in that meeting.';

(d) paragraph 8 is replaced by the following:

'8. ESMA may issue recommendations pursuant to Article 16 of Regulation (EU) No 1095/2010 addressed to one or more competent authorities recommending them to adopt temporary or permanent supervisory decisions in line with the requirements set out in Article 16 and in Titles IV and V of this Regulation to avoid or mitigate significant adverse effects on the financial stability of the Union. ESMA may issue such recommendations only where more than one CCP authorised in accordance with Article 14 is affected or where Union-wide events are destabilising cross-border cleared markets.';

(19) in Chapter 3A, the title is replaced by the following:

'**Supervisory tasks in relation to CCPs**';

(20) Article 24a is amended as follows:

(a) the title is replaced by the following:

'**Supervisory tasks in relation to CCPs**';

(b) paragraph 1 is replaced by the following:

'1. ESMA in accordance with Article 46a of Regulation (EU) No 1095/2010 shall take any decision and carry out any task entrusted to it under this Regulation, and in particular as set out in paragraphs 10 and 11 of this Article.';

(c) paragraphs 2 to 6 are deleted;

(d) paragraph 7 is amended as follows:

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(i) the introductory wording is replaced by the following;

'In relation to CCPs, ESMA shall:';

(ii) points (a), (b), (ba) are deleted;

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

'(bc) in relation to less significant CCPs, adopt opinions in accordance with Articles 17 and 17b, undertake validations in accordance with Article 49 and adopt decisions in accordance with Article 49a and, in relation to significant CCPs, take any decision or other measure in accordance with Article 22c;';

(iv) point (be) is deleted;

(e) paragraphs 8 and 9 are deleted;

(f) paragraphs 10 and 11 are replaced by the following:

'10. The Executive Board shall, in relation to third-country CCPs, take decisions and carry out the tasks entrusted to ESMA in Articles 25, 25a, 25b, 25f to 25q and 85(6).

11. The Executive Board shall, in relation to third-country CCPs, share with the third-country CCP college referred to in Article 25c the agendas of its meetings before those meetings take place, the minutes of its meetings, the complete draft decisions it plans to adopt and the final decisions it has adopted';

(g) paragraphs 12 and 13 are deleted;

(21) in Article 24b, paragraphs 2 and 3 are replaced by the following:

'2. Where the Executive Board does not reflect in its decision the amendments proposed by a central bank of issue, the Executive Board shall inform that central bank of issue in writing stating its full reasons for not taking into account the amendments proposed by that central bank of issue, providing an explanation for any deviations from those amendments.

3. With regard to decisions to be taken pursuant to Articles 25(2c) and 85(6), the Executive Board shall seek the agreement of the central banks of issue referred to in Article 25(3), point (f), for matters relating to the currencies they issue. The agreement of each central bank of issue shall be deemed to be given, unless the central bank of issue proposes amendments or objects within 10 working days of the transmission of the draft decision. Where a central bank of issue proposes amendments or objects to a draft decision, it shall provide full and detailed reasons, in writing. Where a central bank of issue proposes amendments with respect to matters relating to the currency it issues, the decision shall be amended with respect to those matters. Where a central bank of issue objects with respect to matters relating to the currency it issues, those matters shall not be included in the decision.';

(22) Article 24c is deleted;

(23) Article 24d is replaced by the following:

'Article 24d

Decision making within the Executive Board in relation to third-country CCPs

Where the Executive Board takes decisions or other measures pursuant to Articles 25(2), 25(2a), 25(2b), 25(2c), 25(5), 25p, 85(6), 89(3b) and, for Tier 2 CCPs, also in accordance with Articles 25a, 25b, 25f to 25o, 25q, 41, 44, 46, 50 and 54, the Executive Board shall take such decisions and measures within 10 working days.

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Where the Executive Board takes decisions or undertakes other measures pursuant to Articles other than those referred to in the first subparagraph, including Article 22c, it shall take such decisions and measures within three working days.';

(24) Article 24e is deleted;

(25) Article 25c is amended as follows:

(a) in paragraph 2, point (a) is replaced by the following:

'(a) the Chair of the Executive Board, who shall chair the college';

(b) in paragraph 2, point (b) is deleted;

(c) paragraph 3 is replaced by the following;

'3. The college members may request that the Executive Board discusses specific matters in relation to a CCP established in a third country. Such request shall be made in writing and shall include detailed reasoning for the request. The Executive Board shall duly consider such requests and provide an appropriate response.';

(26) Article 54 is amended as follows:

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

'1. An interoperability arrangement, or any material change to an approved interoperability arrangement under Title V shall be subject to the prior approval of ESMA.

2. ESMA shall grant approval of the interoperability arrangement only where the CCPs involved have been authorised to clear under Article 17 or recognised under Article 25 or authorised under a pre-existing national authorisation regime for a period of at least three years, the requirements laid down in Article 52 are met and the technical conditions for clearing transactions under the terms of the arrangement allow for a smooth and orderly functioning of financial markets and the arrangement does not undermine the effectiveness of supervision.

3. Where ESMA considers that the requirements laid down in paragraph 2 are not met, it shall provide explanations in writing regarding its risk considerations to the other competent authorities and the CCPs involved.';

(b) paragraph 4 is deleted;

(c) in paragraph 5, the first subparagraph is replaced by the following:

'ESMA, after consulting the members of the ESCB and the ESRB, shall develop draft regulatory technical standards to further specify the requirements for CCPs to adequately manage the risks arising from interoperability arrangements. For that purpose, ESMA shall assess whether the provisions included therein are appropriate in the case of interoperability arrangements covering all types of products or contracts, including derivative contracts and non-financial instruments.';

(27) Articles 60 to 63 are deleted;

(28) Article 64 is replaced by the following:

'Article 64

Supervisory measures

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

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of the infringements listed in Annex I, ESMA shall, take actions in accordance with Article 39e of Regulation (EU) No 1095/2010.';

(29) in Article 65, paragraph 1 is replaced by the following:

'1. Where ESMA finds that a trade repository has, intentionally or negligently, committed one of the infringements listed in Annex I, it shall take actions in accordance with Article 39f of Regulation (EU) No 1095/2010 by adopting a decision imposing a fine in accordance with paragraph 2 of this Article and with Regulation (EU) No 1095/2010.';

(30) Articles 66 to 69 are deleted;

(31) in Article 72, paragraphs 1 and 2 are replaced by the following:

'1. ESMA shall charge fees to the trade repositories in accordance with this Regulation, with Article 39n of Regulation (EU) No 1095/2010 and in accordance with the delegated acts adopted pursuant to paragraph 3.

2. The amount of any fee charged to a trade repository shall be proportionate to the turnover of the trade repository concerned and the type of registration and supervision exercised by ESMA.';

(32) Article 73 is replaced by the following:

'Article 73

Supervisory measures by ESMA

Where ESMA finds that a trade repository has committed one of the infringements listed in Annex I, it shall take one or more of the decisions mentioned in Article 39h of Regulation (EU) No 1095/2010.';

(33) in Article 74(1), the second sentence is replaced by the following:

'Such specific supervisory tasks may, in particular, include the power to carry out requests for information and to conduct investigations and on-site inspections in accordance with Articles 39b to 39d of Regulation (EU) No 1095/2010.';

(34) Article 82 is amended as follows:

(a) the following paragraph 2a is inserted:

'2a. The power to adopt delegated acts referred to in Article 22a(10) and Article 22c(6) shall be conferred on the Commission for an indeterminate period of time from [OP insert date = date of entry into force of this amending Regulation].';

(b) paragraph 3 is replaced by the following:

'3. The delegation of power referred to in Article 1(6), Article 3(5), Article 4(3a), Article 7a(7), Article 11(3a), Article 11(12a), Article 22a(10), Article 22c(6), Article 25(2a), Article 25(6a), Article 25a(3), Article 25d(3), Article 25i(7), Article 25o, Article 70 and Article 72(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.';

(c) paragraph 6 is replaced by the following:

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‘6. A delegated act adopted pursuant to Article 1(6), Article 3(5), Article 4(3a), Article 7a(7), Article 11(3a), Article 11(12a), Article 22a(10), Article 22c(6), Article 25(2a), Article 25(6a), Article 25a(3), Article 25d(3), Article 25i(7), Article 25o, Article 70 or Article 72(3) 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 of the Council.’;

(35) in Article 84, paragraphs 1 and 2 are replaced by the following:

‘1. Competent authorities, ESMA, and other appropriate authorities shall, without undue delay, provide one another with the information required for the purposes of carrying out their duties.

2. Competent authorities, ESMA, other authorities and other bodies or natural and legal persons receiving confidential information in the exercise of their duties under this Regulation shall use it only in the course of their duties.’;

(36) in Article 88(1), point (c) is replaced by the following:

‘(c) CCPs authorised to offer services or activities in the Union that are established in the Union, and the services or activities which they are authorised to provide or perform, including the classes of financial instruments or non-financial instruments covered by their authorisation;’;

(37) in Article 89, the following paragraph 14 is added:

‘14. Following the entry into force of the amendments to Article 24a, the Chair of the CCP Supervisory Committee and the independent members appointed in accordance with Regulation (EU) 2019/2099 shall continue to contribute to ESMA’s work related to CCP supervision and regulation until the end of their term in office or until they decide to step down voluntarily, whichever date is earlier.’;

(38) Article 90 is deleted;

(39) Annex IV to Regulation (EU) No 648/2012 is amended in accordance with Annex II to this Regulation;

(40) Annex V to Regulation (EU) No 648/2012 is replaced by Annex III to this Regulation.

Article 3

Amendments to Regulation (EU) No 600/2014

Regulation (EU) No 600/2014 is amended as follows:

(1) Article 1 is amended as follows:

(a) in paragraph 1, the following points (h) to (j) are added:

‘(h) the authorisation, operation and supervision of trading venues, including significant trading venues;

(i) the authorisation and supervision of Pan-European Market Operators (‘PEMO’);

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(j) position management controls and position reporting for trading venues.';

(b) paragraph 2 is replaced by the following:

'2. This Regulation applies to investment firms, authorised under Directive 2014/65/EU and credit institutions authorised under Directive 2013/36/EU of the European Parliament and of the Council* when providing investment services and/or performing investment activities, to market operators and to PEMOs, including any trading venues they operate.';

(c) paragraph 4 is replaced by the following:

'4. Title VI of this Regulation also applies to CSDs, CCPs, other clearing facilities and persons with proprietary rights to benchmarks.';

(d) paragraph 5b is replaced by the following:

'5b. All multilateral systems shall operate either in accordance with the provisions of Title Ia, Chapter 1, of this Regulation concerning regulated markets or in accordance with the provisions of Title Ia, Chapter 2, of this Regulation concerning MTFs or OTFs.

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* Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338. ELI: http://data.europa.eu/eli/dir/2013/36/oj).';

(2) Article 2 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (8a) is replaced by the following:

'(8a) SME growth market' means an MTF that is registered as an SME growth market in accordance with Article 2y;';

(ii) the following point (8b) is inserted:

'(8b) 'small and medium-sized enterprises' or 'SME' means companies that had an average market capitalisation of less than EUR 200 000 000 on the basis of end-year quotes for the previous three calendar years;';

(iii) point (10) is replaced by the following:

'(10) 'market operator' means a person or persons who manages and/or operates the business of a regulated market;';

(iv) the following point (10a) is inserted:

'(10a) 'pan-European market operator' or 'PEMO' means a person or persons who manages and/or operates more than one trading venue in more than one Member State, and which is authorised and functions in accordance with Chapter 3 of Title Ia of this Regulation;';

(v) points (13) to (16) are replaced by the following:

'(13) 'regulated market' means a multilateral system operated and/or managed by a market operator or a PEMO, which brings

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together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems;

(14) 'multilateral trading facility' or 'MTF' means a multilateral system, operated by an investment firm or a market operator or a PEMO, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract;

(15) 'organised trading facility' or 'OTF' means a multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract;

(16) 'trading venue' means a regulated market, an MTF or an OTF;';

(vi) the following points (16b) to (16d) are inserted:

'(16b) 'significant trading venue' means a trading venue considered significant in accordance with Article 38fa;

(16c) 'group' means a group as defined in point (34) of Article 4(1) of Directive 2014/65/EU;

(16d) 'direct electronic access' means direct electronic access as defined in point (41) of Article 4(1) of Directive 2014/65/EU;';

(vii) point (18) is replaced by the following:

'(18) 'competent authority' means any of the following:

(a) a competent authority as defined in Article 4(1), point (26), of Directive 2014/65/EU;

(b) ESMA, in the cases set out in Article 38fa and in Articles 2q(1), 2r(1), and 2t(1);

(c) ESMA, for the authorisation and supervision of data reporting services providers, with the exception of those approved reporting mechanisms (ARMs) and approved publication arrangements (APAs) with a derogation in accordance with paragraph 3 of this Article;';

(viii) the following point (18a) is inserted:

'(18a) 'national surveillance authority' means the authority designated pursuant to Article 67 of Directive 2014/65/EU of the Member State where a trading venue is situated or operated, and where ESMA is the competent authority pursuant to Article 38fa;';

(ix) point (20) is replaced by the following:

'(20) 'branch' means a place of business other than the head office which is a part of an investment firm or a regulated market, which has no legal

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personality and which provides the services or activity for which the investment firm or regulated market has been authorised; all the places of business set up in the same Member State by an investment firm or a regulated market with headquarters in another Member State shall be regarded as a single branch;';

(x) the following point (20a) is inserted:

'(20a) 'qualifying holding' means a direct or indirect holding in a market operator which represents 10 % or more of the capital or of the voting rights, as set out in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council*, taking into account the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, or which makes it possible to exercise a significant influence over the management of the market operator in which that holding subsists;';

(xi) point (31) is replaced by the following:

'(31) 'CCP' means a CCP as defined in of Article 2, point (1), of Regulation (EU) No 648/2012;';

(xii) the following point (31a) is inserted:

'(31a) 'central securities depository' or 'CSD' means a central securities depository as defined of Article 2(1), point (1), of Regulation (EU) No 909/2014;';

(xiii) point (36b) is replaced by the following:

'(36b) 'core market data' means:

(a) all of the following data on a given share or ETF at any given timestamp:

(i) for continuous order books, the five best bids and offers with their corresponding volume;

(ii) for auction trading systems, the price at which the trading algorithm would be best satisfied and the volume potentially executed at that price by participants in that system;

(iia) for systematic internalisers, the five best bid and offer quotes published pursuant to Article 14 with their corresponding volume;

(iii) the transaction price and volume executed at that price;

(iiia) the volume-weighted closing price resulting from all closing auctions operated by trading venues that are data contributors;

(iv) for transactions, the type of trading system and the applicable waivers and deferrals;

(v) the market identifier code uniquely identifying the trading venue and, for other execution

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venues, the identifier code identifying the type of execution venue;

(vi) the standardised instrument identifier that applies across execution venues;

(vii) the timestamp information on the following, as applicable:

(1) the execution of the transaction and any amendment thereto;

(2) the entry of the five best bids and offers into the order book;

(3) the indication, in an auction trading system, of the prices or volumes,

(4) the publication by the trading venues of the elements listed in points (1), (2) and (3);

(5) the entry of the five best bid and offer quotes by the systematic internaliser;

(6) the dissemination of core market data;

(b) all of the following data on a given bond or OTC derivative at any given timestamp:

(i) the transaction price and quantity or size executed at that price;

(ii) the market identifier code uniquely identifying the trading venue and, for other execution venues, the identifier code identifying the type of execution venue;

(iii) for bonds, the standardised instrument identifier that applies across execution venues;

(iv) for OTC derivatives, the identifying reference data as referred to in Article 27(1), second subparagraph;

(v) the timestamp information on the following:

(1) the execution of the transaction and any amendment thereto;

(2) the publication of the transaction by the trading venues;

(3) the dissemination of core market data;

(vi) the type of trading system and the applicable waivers and deferrals;';

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(xiv) the following points (51) to (54) are added:

‘(51) ‘outsourcing’ means an arrangement of any form between an entity that is an investment firm, a market operator or a PEMO operating a trading venue and a service provider by which that service provider performs a process, a service or an activity in relation to that trading venue that would otherwise be undertaken by that entity itself;

(52) ‘matched principal trading’ means a transaction where the facilitator interposes itself between the buyer and the seller to the transaction in such a way that it is never exposed to market risk throughout the execution of the transaction, with both sides executed simultaneously, and where the transaction is concluded at a price where the facilitator makes no profit or loss, other than a previously disclosed commission, fee or charge for the transaction;

(53) ‘algorithmic trading’ means algorithmic trading as defined in Article 4(1), point (39), of Directive 2014/65/EU;

(54) ‘high-frequency algorithmic trading’ means high-frequency algorithmic trading as defined in Article 4(1), point (40), of Directive 2014/65/EU.’;

(b) the following paragraph 4 is added:

‘4. ESMA shall issue recommendations to specify the methodology to calculate the volume-weighted closing price as referred to in paragraph 1, point 36b(a)(iiia), in accordance with the procedure laid down in Article 16 of Regulation (EU) No 1095/2010.

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* Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38, ELI: http://data.europa.eu/eli/dir/2004/109/oj).’;

(3) the following Title Ia is inserted:

‘TITLE Ia

TRADING VENUES

CHAPTER 1

Requirements for regulated markets

Article 2a

Authorisation of a regulated market and applicable law

1. Any system that falls within the definition of regulated market shall obtain an authorisation before commencing its activities from the competent authority of the Member State where it is situated or operated, or ESMA in the cases referred to in Article 38fa.

2. A regulated market shall be authorised by the competent authority where:

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(a) both the market operator and the regulated market that the market operator intends to operate comply with the requirements laid down in this Chapter;

(b) the market operator is a legal person established in the Union.

3. The market operator shall perform tasks relating to the organisation and operation of the regulated market under the supervision of the competent authority of the Member State where the regulated market is situated or operated, or ESMA in the cases referred to in Article 38fa, and, where expressly provided for by this Regulation, of the national surveillance authority. The market operator may perform ancillary activities that are linked to the operation of a regulated market.

Member States shall not impose any additional requirements on the authorisation and operation of regulated markets than those set out in this Regulation.

4. The market operator shall be responsible for ensuring that it and the regulated market that it operates comply at all times with the requirements laid down in this Regulation.

5. The market operator shall be entitled to exercise the rights that correspond to the regulated market that it operates by virtue of this Regulation.

6. A market operator shall, without undue delay, inform the competent authority of any substantive changes affecting the compliance with the conditions for authorisation laid down in this Chapter.

7. Without prejudice to any relevant provisions of Regulation (EU) No 596/2014 or of Directive 2014/57/EU, the public law governing the trading conducted under the systems of the regulated market shall be that of the Member State where the regulated market is situated or operated.

Article 2b

Procedures for granting and refusing applications for authorisation of regulated markets

1. The applicant market operator shall submit an application providing all information necessary to enable the competent authority to confirm that the market operator has put in place, at the time of initial authorisation of the regulated market, all the necessary arrangements to ensure that both the market operator and the systems of the regulated market that the market operator intends to operate meet the requirements laid down in this Chapter, including a programme of operations setting out, inter alia, the types of services envisaged and the organisational structure.

2. The competent authority shall assess whether the application for authorisation is complete within 20 working days of receipt of the application.

Where the application is not complete, the competent authority shall inform in writing the applicant of the additional information to be provided and set a deadline by which the market operator is to provide additional information.

After assessing the application as complete, the competent authority shall notify the market operator accordingly.

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3. The competent authority shall, within six months of receipt of a complete application, assess the compliance with this Chapter of the market operator and of the systems of the regulated market that the market operator intends to operate. It shall adopt a reasoned decision granting or refusing authorisation and shall notify the applicant market operator accordingly within five working days of adoption. It shall also notify the national surveillance authority.

Article 2c

Withdrawal of authorisation

1. The competent authority may withdraw the authorisation issued to a regulated market, where it:

(a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has not operated for the preceding six months;

(b) has obtained the authorisation by making false statements or by any other irregular means;

(c) no longer meets the conditions under which authorisation was granted;

(d) has seriously and systematically infringed this Regulation.

2. Where ESMA is the competent authority, it shall, without undue delay, notify the national surveillance authority of a decision to withdraw the authorisation of a regulated market.

Article 2d

Requirements for the management body of a market operator

1. All members of the management body of a market operator shall at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience to perform their duties. The overall composition of the management body shall reflect an adequately broad range of experience.

2. Members of the management body shall fulfil the following requirements:

(a) all members of the management body shall commit sufficient time to perform their functions in the market operator. The number of directorships a member of the management body can hold, in any legal entity, at the same time shall take into account individual circumstances and the nature, scale and complexity of the market operator's activities.

Unless representing the Member State in which the market operator is established, members of the management body of market operators that are significant in terms of their size, internal organisation and the nature, the scope and the complexity of their activities shall not at the same time hold positions exceeding more than one of the following combinations:

(i) one executive directorship with two non-executive directorships;

(ii) four non-executive directorships.

Executive or non-executive directorships held within the same group or undertakings where the market operator owns a qualifying holding shall be considered to be one single directorship.

The competent authority may authorise members of the management body to hold one additional non-executive directorship. Where ESMA is

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not the competent authority, competent authorities shall regularly inform ESMA of such authorisations.

Directorships in organisations which do not pursue predominantly commercial objectives shall be exempt from the limitation on the number of directorships a member of a management body can hold.

(b) The management body shall possess adequate collective knowledge, skills and experience to be able to understand the market operator's activities, including the main risks.

(c) Each member of the management body shall act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management where necessary and to effectively oversee and monitor decision-making.

3. Market operators shall devote adequate human and financial resources to the induction and training of members of the management body.

4. Where, under national law, the management body has competence in the process of selection and appointment of any of its members, the competent authority shall assess whether, taking into account the size and the internal organisation of the market operator, as well as the nature, scope and complexity of its activities, the market operator shall establish a nomination committee composed of members of the management body who do not perform any executive function in the market operator concerned.

Where established, the nomination committee shall carry out the following:

(a) identify and recommend, for the approval of the management body or for approval of the general meeting, candidates to fill management body vacancies. In doing so, the nomination committee shall evaluate the balance of knowledge, skills, diversity and experience of the management body. Further, the committee shall prepare a description of the roles and capabilities for a particular appointment, and assess the time commitment expected. Furthermore, the nomination committee shall decide on a target for the representation of the underrepresented gender in the management body and prepare a policy on how to increase the number of the underrepresented gender in the management body in order to meet that target;

(b) periodically, and at least annually, assess the structure, size, composition and performance of the management body, and make recommendations to the management body with regard to any changes;

(c) periodically, and at least annually, assess the knowledge, skills and experience of individual members of the management body and of the management body collectively, and report to the management body accordingly;

(d) periodically review the policy of the management body for selection and appointment of senior management and make recommendations to the management body.

In performing its duties, the nomination committee shall, to the extent possible and on an ongoing basis, take account of the need to ensure that the management body's decision making is not dominated by any one individual or

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small group of individuals in a manner that is detrimental to the interests of the market operator as a whole.

In performing its duties, the nomination committee shall be able to use any forms of resources it deems appropriate, including external advice.

5. Market operators and their respective nomination committees shall engage a broad set of qualities and competences when recruiting members to the management body and, for that purpose, shall put in place a policy promoting diversity on the management body.

6. The management body of a market operator 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.

The management body shall monitor and periodically assess the effectiveness of the market operator's governance arrangements and take appropriate steps to address any deficiencies.

Members of the management body shall have adequate access to information and documents which are needed to oversee and monitor management decision-making.

7. The competent authority shall refuse authorisation where it is not satisfied that the members of the management body of the market operator are of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their functions, or where there are objective and demonstrable grounds for believing that the management body of the market operator may pose a threat to its effective, sound and prudent management and to the adequate consideration of the integrity of the market.

In the process of authorisation of a regulated market, the person or persons who effectively direct the business and the operations of another regulated market already authorised in the Union are deemed to comply with the requirements laid down in paragraph 1.

Where the conduct of a member of the management body of a market operator is likely to be prejudicial to its effective, sound and prudent management and to the adequate consideration of the integrity of the market, the competent authority shall take appropriate measures, which may include removing that member from the management body.

8. A market operator shall notify the competent authority of the names of all members of its management body and of any changes to its membership, along with all information needed to assess whether the market operator complies with paragraphs 1 to 6.

9. ESMA shall issue guidelines on the following:

(a) the notion of sufficient time commitment of a member of the management body to perform that member's functions, in relation to the individual circumstances and the nature, scale and complexity of activities of the market operator;

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(b) the notion of adequate collective knowledge, skills and experience of the management body as referred to in paragraph 2, point (b);

(c) the notions of honesty, integrity and independence of mind of a member of the management body as referred to in paragraph 2, point (c);

(d) the notion of adequate human and financial resources devoted to the induction and training of members of the management body as referred to in paragraph 3;

(e) the notion of diversity to be taken into account for the selection of members of the management body as referred to in paragraph 5.

Article 2e

Requirements relating to persons exercising significant influence over the management of the regulated market

1. The persons who are in a position to exercise, directly or indirectly, significant influence over the management of the regulated market shall be suitable.

2. The market operator of the regulated market shall:

(a) provide the competent authority with, and make public, information regarding the ownership of market operator, and, where relevant, for regulated markets authorised pursuant to Directive 2014/65/EU as applicable before [OP: please insert date of entry into application of this Regulation], the ownership of the regulated market, and in particular, the identity and scale of interests of any parties in a position to exercise significant influence over the management;

(b) inform the competent authority of and make public any transfer of ownership which gives rise to a change in the identity of the persons exercising significant influence over the operation of the regulated market.

3. The competent authority shall refuse to approve proposed changes to the controlling interests of the market operator and, where relevant, of the regulated market, where there are objective and demonstrable grounds for believing that they would pose a threat to the sound and prudent management of the regulated market.

If changes to the controlling interests of the market operator and, where relevant, of the regulated market, take place despite the opposition of the competent authority, that competent authority shall be able to order the annulment of the corresponding votes cast.

4. Where the persons referred to in paragraph 1 exercise an influence which is likely to be prejudicial to the sound and prudent management of a regulated market, the competent authority shall take appropriate measures to put an end to that situation. Such measures may include applications for judicial orders, the imposition of sanctions against directors and those responsible for management, and the suspension of the exercise of the voting rights attached to the shares held by the shareholders or members in question.

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5. Member States shall not impose any additional requirements for transfers of ownership which give rise to changes to the controlling interests of the market operator and, where relevant, of the regulated market.

Article 2f

Organisational requirements

1. Market operators shall ensure that a regulated market that they operate:

(a) has arrangements to identify clearly and manage the potential adverse consequences, for the operation of the regulated market or for its members or participants, of any conflict of interest between the interest of the regulated market, the market operator and its owners, and the sound functioning of the regulated market, and in particular where such conflicts of interest might prove prejudicial to the accomplishment of any functions delegated to the regulated market by the competent authority;

(b) is adequately equipped to manage the risks to which it is exposed, including to manage ICT risk in accordance with Chapter II of Regulation (EU) 2022/2554, to implement appropriate arrangements and systems for identifying significant risks to its operation, and to put in place effective measures to mitigate those risks;

(c) has transparent and non-discretionary rules and procedures that provide for fair and orderly trading and establish objective criteria for the efficient execution of orders;

(d) has effective arrangements to facilitate the efficient and timely finalisation of the transactions executed under its systems;

(e) has available, at the time of authorisation and on an ongoing basis, sufficient financial resources to facilitate its orderly functioning, having regard to the nature and extent of the transactions concluded on the market and the range and degree of the risks to which it is exposed;

(f) has arrangements in place to ensure that it meets data quality standards pursuant to Article 22b;

(g) has at least three materially active members or users, each having the opportunity to interact with all the others in respect of price formation.

Where, for the purposes of compliance with the requirements under the first subparagraph, points (a), (b), (d), and (f), a market operator deploys resources of or relies on the performance of functions by another entity located in the Union that belongs to the same group as that market operator, reliance on that entity shall not constitute outsourcing for the purposes of this Regulation, provided that the conditions set out in paragraph 1a are met. The location within the Union of the entity that deploys resources or performs functions for the compliance by a market operator with the requirements referred to in the first subparagraph, points (a), (b), (d), and (f), shall not be relevant in the assessment of that compliance by the competent authority.

1a. The reliance of a market operator on another entity located in the Union and that belongs to the same group as that market operator shall not constitute outsourcing pursuant to paragraph 1, provided that the following conditions are fulfilled:

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(a) the market operator and another entity in the group that will deploy its resources or will perform functions for that regulated market have put in place arrangements to ensure that that entity within the same group cooperates with the competent authority and, where relevant, the national surveillance authority of the regulated market in connection with that deployment of resources or with that performance of functions;

(b) the market operator has put in place adequate mechanisms to identify clearly and manage the potential adverse consequences, for the operation of the regulated market or for its members or participants, of any conflict of interest between the regulated market, the market operator and another entity in the group that will deploy its resources or will perform functions for that regulated market.

When deploying resources of or relying on the performance of functions by another entity within the same group, market operators shall remain fully responsible for discharging all of their obligations under this Regulation and under Directive 2014/65/EU.

Member States shall not impose any additional requirements for the deployment of resources or reliance on the performance of functions, pursuant to paragraph 1, by another entity located in the Union within the same group as the market operator.

2. Market operators shall not execute client orders against proprietary capital, or engage in matched principal trading on any of the regulated markets they operate.

Article 2g

Systems resilience, circuit breakers and electronic trading

1. The market operator of a regulated market shall ensure that the regulated market establishes and maintains its operational resilience in accordance with the requirements laid down in Chapter II of Regulation (EU) 2022/2554 to ensure its trading systems are resilient, have sufficient capacity to deal with peak order and message volumes, are able to ensure orderly trading under conditions of severe market stress, are fully tested to ensure such conditions are met and are subject to effective business continuity arrangements, including ICT business continuity policy and plans and ICT response and recovery plans established in accordance with Article 11 of Regulation (EU) 2022/2554, to ensure continuity of its services if there is any failure of its trading systems.

2. The market operator of a regulated market shall ensure that the regulated market has in place:

(a) written agreements with all investment firms pursuing a market making strategy on the regulated market;

(b) schemes to ensure that a sufficient number of investment firms participate in such agreements which require them to post firm quotes at competitive prices with the result of providing liquidity to the market on a regular and predictable basis, where such a requirement is appropriate to the nature and scale of the trading on that regulated market.

3. The written agreement referred to in paragraph 2 shall at least specify:

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(a) the obligations of the investment firm in relation to the provision of liquidity and where applicable any other obligation arising from participation in the scheme referred to in paragraph 2, point (b);

(b) without prejudice to Article 39a, any incentives in terms of rebates or otherwise offered by the regulated market to an investment firm so as to provide liquidity to the market on a regular and predictable basis and, where applicable, any other rights accruing to the investment firm as a result of participation in the scheme referred to in paragraph 2, point (b).

The market operator of the regulated market shall monitor and enforce compliance by investment firms with the requirements of such binding written agreements. The market operator of the regulated market shall inform the competent authority about the content of the binding written agreement and shall, upon request, provide all further information to the competent authority necessary to enable the competent authority to satisfy itself of compliance by the regulated market with this paragraph. Where ESMA is the competent authority, the national surveillance authority may request ESMA to share the content of the binding written agreements relevant to the supervisory activity of that national surveillance authority.

4. The market operator of a regulated market shall ensure that the regulated market has in place effective systems, procedures and arrangements to reject orders that exceed pre-determined volume and price thresholds or are clearly erroneous.

5. The market operator of a regulated market shall ensure that the regulated market is able to temporarily halt or constrain trading in emergency situations or in the event of a significant price movement in a financial instrument on that market or a related market during a short period and, in exceptional cases, to be able to cancel, vary or correct any transaction. The market operator of a regulated market shall ensure that the regulated market sets the parameters for halting or constraining trading that are appropriately calibrated in a way which takes into account the liquidity of different asset classes and sub-classes, the nature of the market model and the types of users, and is sufficient to avoid significant disruptions to the orderliness of trading.

The market operator of a regulated market shall ensure that the regulated market reports the parameters for halting trading and any material changes to those parameters to the competent authority in a consistent and comparable manner. Where the competent authority is not ESMA, the competent authority shall report those parameters to ESMA. Where a regulated market which is material in terms of liquidity in that financial instrument halts trading, in any Member State, the market operator of that regulated market shall ensure that the regulated market has the necessary systems and procedures in place to notify its competent authority, its national surveillance authority and ESMA, where ESMA is not its competent authority. The competent authority and, where ESMA is the competent authority, the national surveillance authority shall then notify all other competent authorities and, where relevant, national surveillance authorities in the Union in order for them to coordinate a market-wide response and determine whether it is appropriate to halt trading on other venues on which the financial instrument is traded until trading resumes on the original market.

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The market operator of a regulated market shall ensure that the regulated market discloses publicly on its website information about the circumstances leading to the halting or constraining of trading and on the principles for establishing the main technical parameters used to do so.

Where a regulated market does not halt or constrain trading as referred to in the first subparagraph, despite the fact that a significant price movement in a financial instrument or related financial instruments has led to disorderly trading conditions on one or several markets, the competent authority or, where ESMA is the competent authority, the national surveillance authority shall be able to take appropriate measures to re-establish the normal functioning of the markets, including using the supervisory powers referred to in Article 69(2), points (m) to (p) of Directive 2014/65/EU. The national surveillance authority shall notify ESMA of the measures taken without undue delay.

6. The market operator of a regulated market shall ensure that the regulated market has in place effective systems, procedures and arrangements, including requiring members or participants to carry out appropriate testing of algorithms and providing environments to facilitate such testing in accordance with the requirements laid down in Chapters II and IV of Regulation (EU) 2022/2554, to ensure that algorithmic trading systems cannot create or contribute to disorderly trading conditions on the market and to manage any disorderly trading conditions which do arise from such algorithmic trading systems, including systems to limit the ratio of unexecuted orders to transactions that may be entered into the system by a member or participant, to be able to slow down the flow of orders if there is a risk of its system capacity being reached and to limit and enforce the minimum tick size that may be executed on the market.

7. The market operator of a regulated market that permits direct electronic access shall ensure that the regulated market has in place effective systems procedures and arrangements to ensure that members or participants are only permitted to provide direct electronic access if they are investment firms authorised under Directive 2014/65/EU or credit institutions authorised under Directive 2013/36/EU, that appropriate criteria are set and applied regarding the suitability of persons to whom such access may be provided and that the member or participant retains responsibility for orders and trades executed using that service in relation to the requirements of this Regulation.

The market operator of a regulated market shall ensure that the regulated market sets appropriate standards regarding risk controls and thresholds on trading through such access and shall be able to distinguish and if necessary to stop orders or trading by a person using direct electronic access separately from other orders or trading by the member or participant.

The market operator of a regulated market shall ensure that the regulated market has arrangements in place to suspend or terminate the provision of direct electronic access by a member or participant to a client in the case of non-compliance with this paragraph.

8. The market operator of a regulated market shall ensure that the rules of the regulated market on co-location services are transparent, fair and non-discriminatory.

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9. The market operator of a regulated market shall ensure that the regulated market has fee structures including execution fees, ancillary fees and any rebates that are transparent, fair and non-discriminatory and that they do not create incentives to place, modify or cancel orders or to execute transactions in a way which contributes to disorderly trading conditions or market abuse. In particular, the market operator of a regulated market shall ensure that the regulated market imposes market making obligations in individual shares or a suitable basket of shares in exchange for any rebates that are granted.

A regulated market may adjust its fees for cancelled orders according to the length of time for which the order was maintained and calibrate the fees to each financial instrument to which they apply.

A regulated market may impose a higher fee for placing an order that is subsequently cancelled than an order which is executed and impose a higher fee on participants placing a high ratio of cancelled orders to executed orders and on those operating a high-frequency algorithmic trading technique in order to reflect the additional burden on system capacity.

10. The market operator of a regulated market shall ensure that the regulated market be able to identify, by means of flagging from members or participants, orders generated by algorithmic trading, the different algorithms used for the creation of orders and the relevant persons initiating those orders. That information shall be available upon request to competent authorities and, where ESMA is the competent authority, to national surveillance authorities

The market operator of a regulated market shall ensure that the regulated market makes available to the competent authority or, where ESMA is the competent authority, to the national surveillance authority data relating to the order book or give the competent authority or, where relevant to the national surveillance authority access to the order book, upon request, so that it is able to monitor trading. The national surveillance authority shall, in turn, report that data to ESMA, upon request.

Article 2h

Tick sizes

1. The market operator of a regulated market shall ensure that the regulated market adopts tick-size regimes in shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and in any other financial instrument for which regulatory technical standards are developed in accordance with Article 2zg(3), point (k). The application of tick sizes shall not prevent regulated markets from matching orders large in scale at mid-point within the current bid and offer prices.

2. The tick size regimes referred to in paragraph 1 shall:

(a) be calibrated to reflect the liquidity profile of the financial instrument in different markets and the average bid-ask spread, taking into account the desirability of enabling reasonably stable prices without unduly constraining further narrowing of spreads;

(b) adapt the tick size for each financial instrument appropriately.

In respect of shares with an International Securities Identification Number (ISIN) issued outside the European Economic Area (EEA), or shares which

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have an EEA ISIN and which are traded on a third-country venue in the local currency or in a non-EEA currency, as referred to in Article 23(1), point (a), for which the venue that is the most relevant market in terms of liquidity is in a third country, regulated markets may provide for the same tick size that applies on that venue.

Article 2i

Admission of financial instruments to trading

1. The market operator of a regulated market shall ensure that the regulated market has clear and transparent rules regarding the admission of financial instruments to trading.

Those rules shall ensure that any financial instruments admitted to trading on a regulated market are capable of being traded in a fair, orderly and efficient manner and, in the case of transferable securities, are freely negotiable.

Member States shall not restrict the scope of financial instruments that can be admitted to trading on a regulated market on the ground that such instruments shall not be made available to non-professional investors in their jurisdiction.

2. In the case of derivatives, the rules referred to in paragraph 1 shall ensure in particular that the design of the derivative contract allows for its orderly pricing as well as for the existence of effective settlement conditions.

3. In addition to the obligations set out in paragraphs 1 and 2, the market operator of a regulated market shall ensure that the regulated market establishes and maintains effective arrangements to verify that issuers of transferable securities that are admitted to trading on the regulated market comply with their obligations under Union law in respect of initial, ongoing or ad hoc disclosure obligations.

The market operator of a regulated market shall ensure that the regulated market establishes arrangements which facilitate their members or participants in obtaining access to information which has been made public under Union law.

4. The market operator of a regulated market shall ensure that the regulated market establishes the necessary arrangements to review regularly the compliance with the admission requirements of the financial instruments which it admits to trading.

5. A transferable security that has been admitted to trading on a regulated market can subsequently be admitted to trading on other regulated markets, even without the consent of the issuer and in compliance with the relevant provisions of Regulation (EU) 2017/1129. The issuer shall be informed by the regulated market of the fact that its securities are traded on that regulated market. The issuer shall not be subject to any obligation to provide information required under paragraph 3 directly to any regulated market which has admitted the issuer's securities to trading without its consent.

Article 2j

Specific conditions for the admission to trading of shares

1. The market operator of a regulated market shall ensure that the regulated market requires that the foreseeable market capitalisation of the company for whose shares admission to trading is sought, or if that cannot be assessed, that

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company's capital and reserves, including profit and loss, from the last financial year, shall be at least EUR 1 000 000 or an equivalent amount in a national currency other than the euro.

2. Paragraph 1 shall not apply to the admission to trading of shares fungible with shares already admitted to trading.

3. Where, as a result of an adjustment of the equivalent amount in a national currency other than the euro, the market capitalisation expressed in the national currency remains for a period of one year at least 10 % more, or at least 10 % less, than EUR 1 000 000, the market operator shall, within the 12 months following the expiry of that period, ensure that the regulated market adjusts its rules to comply with paragraph 1.

4. The market operator of a regulated market shall ensure that the regulated market requires that at least 10 % of the subscribed capital represented by the class of shares concerned by the application for admission to trading is held by the public at the time of admission to trading.

5. By way of derogation from paragraph 4, Member States may require that regulated markets establish, at the time of admission, at least one of the following requirements for an application for admission to trading of shares:

(a) a sufficient number of shares is held by the public;

(b) the shares are held by a sufficient number of shareholders;

(c) the market value of the shares held by the public represents a sufficient level of subscribed capital in the class of shares concerned.

6. Where admission to trading is sought for shares fungible with shares already admitted to trading, regulated markets shall assess, to fulfil the requirement laid down in paragraph 4, whether a sufficient number of shares has been distributed to the public in relation to all shares issued and not only in relation to the shares fungible with shares already admitted to trading.

Article 2k

Suspension and removal of financial instruments from trading on a regulated market

1. Without prejudice to the right of the competent authority or, where ESMA is the competent authority, the national surveillance authority under Article 69(2) of Directive 2014/65/EU to demand suspension or removal of a financial instrument from trading, a market operator may suspend or remove from trading a financial instrument which no longer complies with the rules of the regulated market unless such suspension or removal would be likely to cause significant damage to the investors' interests or the orderly functioning of the market.

2. A market operator that suspends or removes from trading a financial instrument shall also suspend or remove the derivatives as referred to in points (4) to (10) of Section C of Annex I to Directive 2014/65/EC that relate or are referenced to that financial instrument where necessary to support the objectives of the suspension or removal of the underlying financial instrument. The market operator shall make public the suspension or removal of the financial instrument and of any related derivative and communicate it to its

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competent authority and, where ESMA is the competent authority, its national surveillance authority.

Market operators operating other regulated markets, and market operators and investment firms operating MTFs, OTFs and systematic internalisers, which trade the same financial instrument as referred to in paragraph 1 or derivatives as referred to in points (4) to (10) of Section C of Annex I to Directive 2014/65/EC that relate or are referenced to the financial instrument referred to in paragraph 1, shall upon gaining knowledge of such suspension or removal and without undue delay also suspend or remove that financial instrument or derivatives from trading, where the suspension or removal is due to suspected market abuse, a take-over bid or the non-disclosure of inside information about the issuer or financial instrument infringing Articles 7 and 17 of Regulation (EU) No. 596/2014, unless the competent authority or, where ESMA is the competent authority, the national surveillance authority deems that the suspension or removal could cause significant damage to the investors' interests or the orderly functioning of the market.

The market operators, investment firms and systematic internalisers referred to in the previous subparagraph shall make public the suspension or removal of the financial instrument and of any related derivative. This paragraph applies also when the suspension from trading of a financial instrument or derivatives as referred to in points (4) to (10) of Section C of Annex I to Directive 2014/65/EC that relate or are referenced to that financial instrument is lifted.

This paragraph shall also apply in the case where the decision to suspend or remove from trading a financial instrument or derivatives as referred to in points (4) to (10) of Section C of Annex I to Directive 2014/65/EC that relate or are referenced to that financial instrument is taken by the competent authority or, where ESMA is the competent authority, the national surveillance authority pursuant to Article 69(2), points (m) and (n), of Directive 2014/65/EU.

Article 2l

Access to a regulated market

1. The market operator of a regulated market shall ensure that the regulated market establishes, implements and maintains transparent and non-discriminatory rules, based on objective criteria, governing access to or membership of the regulated market.

2. The rules referred to in paragraph 1 shall specify any obligations for the members or participants arising from:

(a) the constitution and administration of the regulated market;

(b) rules relating to transactions on the market;

(c) professional standards imposed on the staff of the investment firms or credit institutions that are operating on the market;

(d) the conditions established, for members or participants other than investment firms and credit institutions, under paragraph 3;

(e) the rules and procedures for the clearing and settlement of transactions concluded on the regulated market.

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3. Regulated markets may admit as members or participants investment firms, credit institutions authorised under Directive 2013/36/EU, and other persons who:

(a) are of sufficient good repute;

(b) have a sufficient level of trading ability, competence and experience;

(c) have, where applicable, adequate organisational arrangements;

(d) have sufficient resources for the role they are to perform, taking into account the different financial arrangements that the regulated market may have established in order to guarantee the adequate settlement of transactions.

3a. When admitting as members or participants persons that are already members or participants of another regulated market, regulated markets shall deem that those persons comply with paragraph 3, point (a), without any further assessment. Regulated markets shall also deem that those persons comply with paragraph 2, point (c), or paragraph 3, points (b) and (c), as applicable, without any further assessment, where they request to become members or participants with respect to trading in a class of financial instruments for which they are already members or participants of another regulated market.

4. For the transactions concluded on a regulated market, members and participants are not obliged to apply to each other the obligations laid down in Articles 24, 25, 27 and 28 of Directive 2014/65/EU. However, the members or participants of the regulated market shall apply the obligations provided for in Articles 24, 25, 27 and 28 of Directive 2014/65/EU with respect to their clients when they, acting on behalf of their clients, execute their orders on a regulated market.

5. The rules on access to or membership of or participation in a regulated market shall provide for the direct or remote participation of investment firms and credit institutions. Those rules shall not discriminate between direct or remote participation or impose any additional restrictions on either form of participation.

6. Market operators shall communicate, on a regular basis, to the competent authority and, where ESMA is the competent authority, to the national surveillance authority, the list of the members or participants of the regulated markets they operate.

Article 2m

Notification of amendments to the rules of the regulated market

1. A market operator shall notify the competent authority of any amendment to the rules of the regulated market it operates at least 30 days before that amendment takes effect.

2. The competent authority shall have the power to require a market operator to amend the rules of the regulated market it operates where it finds that those rules do not comply with the requirements under this Regulation.

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Article 2n

Monitoring of compliance with the rules of the regulated market and with other legal obligations

1. The market operator of a regulated market shall ensure that the regulated market establishes and maintains effective arrangements and procedures including the necessary resources for the regular monitoring of the compliance by their members or participants with their rules. Regulated markets shall monitor orders sent including cancellations and the transactions undertaken by their members or participants under their systems in order to identify infringements of those rules, disorderly trading conditions or conduct that may indicate behaviour that is prohibited under Regulation (EU) No 596/2014 or system disruptions in relation to a financial instrument and shall deploy the resources necessary to ensure that such monitoring is effective.

2. The market operator of a regulated market shall immediately inform its competent authority and, where ESMA is the competent authority, the national surveillance authority, of significant infringements of their rules or disorderly trading conditions or conduct that may indicate behaviour that is prohibited under Regulation (EU) No 596/2014 or system disruptions in relation to a financial instrument.

The competent authority or, where ESMA is the competent authority, the national surveillance authority shall communicate the information referred to in the first subparagraph to ESMA and to the authorities designated in accordance with Article 67(1) of Directive 2014/65/EU of the other Member States.

In relation to conduct that may indicate behaviour that is prohibited under Regulation (EU) No 596/2014, the competent authority or, where ESMA is the competent authority, the national surveillance authority shall be convinced that such behaviour is being or has been carried out before it notifies the authorities designated in accordance with Article 67(1) of Directive 2014/65/EU of the other Member States.

Where ESMA is the competent authority, ESMA shall take due consideration of the information received pursuant to this paragraph, in particular when assessing a potential infringement of paragraph 1 by the regulated market. ESMA may require the national surveillance authority to submit any additional information necessary for the purpose of this assessment.

Where ESMA is the competent authority, in cases where a national surveillance authority considers that the information referred to in this paragraph has not been provided or has not been provided in a timely manner by the market operator, that authority shall inform ESMA. ESMA shall assess, within 20 working days, whether the market operator has breached its obligations under the first subparagraph, and take the appropriate measures.

3. The market operator shall supply the relevant information without undue delay to the authority competent for the investigation and prosecution of market abuse on the regulated market and provide full assistance to the latter in investigating and prosecuting market abuse occurring on or through the systems of the regulated market.

Where ESMA is the competent authority of the regulated market, in cases where an authority competent for the investigation and prosecution of market

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abuse on such a regulated market considers that the information or the assistance referred to in this paragraph has not been provided or has not been provided in a timely manner, that authority shall inform ESMA. ESMA shall assess, within 20 working days, whether the market operator has breached its obligations under the first subparagraph, and take the appropriate measures.

Article 2o

Cross-border activity of regulated markets

1. An authorised regulated market may freely perform its activity within the Union, through the freedom to provide services or through setting up a branch. Those activities shall include at least:

(a) the provision of appropriate arrangements so as to facilitate access to and trading on that regulated market by remote members or participants established in any Member State;

(b) activities relating to the admission of members or participants on that regulated market;

(c) activities relating to the admission of financial instruments to trading on that regulated market.

2. The market operator of an authorised regulated market, or of a regulated market that has applied for authorisation pursuant to Article 2b that intends to perform its activity within the territory of another Member State, shall ensure that the regulated market communicates to its competent authority the Member State in which it intends to perform its activity. The competent authority shall communicate that information to the authority designated pursuant to Article 67 of Directive 2014/65/EU of the Member State where the regulated market intends to perform its activity, within seven working days. Where ESMA is not the competent authority, ESMA may request access to that information in accordance with the procedure and under the conditions set out in Article 35 of Regulation (EU) No 1095/2010.

The competent authority of the regulated market shall, on the request of the authority designated pursuant to Article 67 of Directive 2014/65/EU of the Member State where the regulated market intends to perform or performs its activity, and, without undue delay, communicate the identity of the members or participants of the regulated market that are established in that Member State.

Where the regulated market sets up a branch, the information referred to in the first subparagraph shall include:

(a) the tasks that will be carried out by the branch;

(b) the organisational structure of the branch;

(c) the address in the Member State where the regulated market intends to set up a branch;

(d) the names of those responsible for the management of the branch.

3. In the event of a change in any of the particulars communicated in accordance with paragraph 2, the market operator of a regulated market shall ensure that the regulated market gives written notice of that change to its competent authority at least seven working days before implementing the change. That competent authority shall notify that change to the authority

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designated pursuant to Article 67 of Directive 2014/65/EU of the Member State where the regulated market performs its activity.

4. Member States shall not impose any further legal or administrative requirements in relation to the cross-border activity of regulated markets in their territory.

CHAPTER 2

Requirements for MTFs and OTFs

Article 2p

Requirement for authorisation for MTFs and OTFs operated by a market operator

A competent authority shall authorise a market operator to operate an MTF or OTF subject to the prior verification of its compliance with the provisions set out in this Chapter.

Article 2q

Authorisation, ongoing supervision and withdrawal of authorisation of investment firms to operate MTFs or OTFs

1. Where ESMA is the competent authority pursuant to Article 38fa for an investment firm or a market operator operating a significant trading venue, and where an applicant investment firm belongs to the same group as that investment firm or that market operator operating a significant trading venue, ESMA shall be empowered to authorise that applicant investment firm where it intends to exclusively perform the operation of an MTF or an OTF, or both.

2. ESMA shall keep under regular review the compliance of the investment firm authorised in accordance with paragraph 1 with the requirements set out in this Regulation and Title II of Directive 2014/65/EU.

3. ESMA may withdraw the authorisation issued to an investment firm in accordance with paragraph 1 where the conditions for withdrawal set out in Article 8 of Directive 2014/65/EU are met.

4. For the purposes of carrying out the tasks conferred on it by this Article, ESMA shall apply the national provisions transposing Directive 2014/65/EU of the home Member State of that investment firm, interpreted in a manner consistent with Union law.

5. Where ESMA is the competent authority pursuant to Article 38fa for an investment firm or a market operator operating a significant trading venue, an applicant investment firm that belongs to the same group as that investment firm or that market operator operating a significant trading venue and that seeks authorisation to provide investment services or perform investment activities, including but not limited to the operation of an MTF or an OTF, shall submit a request for authorisation to the competent authority of its home Member State.

The competent authority of the home Member State shall without undue delay transmit to ESMA that request and any information provided by the investment firm for the purpose of seeking authorisation to operate an MTF or OTF.

ESMA shall assess whether the application for authorisation to operate an MTF or OTF is complete within 10 working days of receipt of the application.

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Where the application is not complete, ESMA shall set a deadline by which the investment firm is to provide additional information.

After assessing the application as complete, ESMA shall notify the investment firm accordingly.

ESMA shall, within 60 working days of receipt of the complete application, issue an opinion on the authorisation to operate an MTF or OTF and transmit that opinion without undue delay to the competent authority of the home Member State.

The competent authority of the home Member State shall adopt a reasoned decision granting or refusing the authorisation on the basis of the opinion transmitted by ESMA and shall notify the investment firm accordingly within five working days of adoption. The competent authority shall refuse the authorisation to operate an MTF or OTF where ESMA gives a negative opinion.

6. The competent authority of the home Member State may withdraw the authorisation referred to in the previous paragraph, where ESMA notifies it that any of the conditions set out in Article 8 of Directive 2014/65/EU is met in relation to the operation of an MTF or an OTF. Where the competent authority withdraws the authorisation, it shall inform the investment firm accordingly.

7. Paragraphs 1 to 6 shall also apply to an investment firm that belongs to the same group as a CCP or CSD that is subject to supervision by ESMA.

8. Paragraphs 1 to 7 shall apply as of when ESMA becomes the competent authority pursuant to Article 38fa.

Article 2r

Extension of authorisation for investment firms that already operate MTFs or OTFs

1. An investment firm authorised by ESMA pursuant to Article 2q(1) and seeking authorisation to extend its business to additional investment services or activities or ancillary services not foreseen at the time of initial authorisation shall submit a request for extension of its authorisation to ESMA.

2. Where the request referred to in paragraph 1 concerns investment services or activities other than the operation of an MTF or an OTF, ESMA shall without undue delay transmit that request and any information provided by the investment firm for that purpose to the competent authority of the home Member State of the investment firm.

The competent authority referred to in subparagraph 1 shall assess whether the application for authorisation is complete within 10 working days of receipt of the application.

Where the application is not complete, the competent authority shall set a deadline by which the investment firm is to provide additional information.

After assessing the application as complete, the competent authority shall notify the investment firm accordingly.

The competent authority shall, within 60 working days of receipt of the complete application, issue an opinion on the extension of the authorisation and transmit that opinion without undue delay to ESMA.

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ESMA shall adopt a reasoned decision granting or refusing the authorisation on the basis of the opinion transmitted by the competent authority and shall notify the investment firm accordingly within five working days of adoption. ESMA shall refuse the extension of the authorisation where the competent authority gives a negative opinion.

3. Without prejudice to Article 2q(3), ESMA shall withdraw the authorisation referred to in Article 2q in relation to services or activities referred to in paragraph 1, where the competent authority of the home Member State of the investment firm provides a reasoned opinion concluding that any of the conditions set out in Article 8 of Directive 2014/65/EU is met in relation to the investment services or activities referred to in paragraph 1. Where ESMA withdraws the authorisation, it shall inform the investment firm accordingly.

4. When carrying out the tasks conferred on it by this Article, ESMA shall apply the national provisions transposing Directive 2014/65/EU of the home Member State of that investment firm, interpreted in a manner consistent with Union law.

5. Paragraphs 1 to 4 shall apply as of when ESMA becomes the competent authority pursuant to Article 38fa.

Article 2s

Extension of authorisation for investment firms that intend to operate MTFs or OTFs

1. Where ESMA is the competent authority pursuant to Article 38fa for an investment firm or a market operator operating a significant trading venue, an applicant investment firm that belongs to the same group as that investment firm or that market operator operating a significant trading venue and that seeks an extension of its authorisation for the purpose of the operation of an MTF or an OTF, shall submit a request for extension to the competent authority of its home Member State.

The competent authority of the home Member State shall without undue delay transmit to ESMA that request and any information provided by the investment firm for that purpose.

ESMA shall assess whether the application for authorisation is complete within 10 working days of receipt of the application.

Where the application is not complete, ESMA shall set a deadline by which the investment firm is to provide additional information.

After assessing the application as complete, ESMA shall notify the investment firm accordingly.

ESMA shall, within 60 working days of receipt of the complete application, issue an opinion on the extension of the authorisation and transmit that opinion without undue delay to the competent authority of the home Member State.

The competent authority of the home Member State shall adopt a reasoned decision granting or refusing the authorisation on the basis of the opinion transmitted by ESMA and shall notify the investment firm accordingly within five working days of adoption. The competent authority shall refuse the extension of the authorisation where ESMA gives a negative opinion.

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2. Without prejudice to Article 8 of Directive 2014/65/EU, the competent authority of the home Member State shall withdraw the authorisation in relation to the operation of an MTF or an OTF, where ESMA provides a reasoned opinion concluding that any of the conditions set out in Article 8 of Directive 2014/65/EU is met in relation to the operation of an MTF or an OTF. Where the competent authority withdraws the authorisation, it shall inform the investment firm accordingly.

3. Paragraphs 1 and 2 shall also apply to an investment firm that belongs to the same group as a CCP or CSD that is subject to supervision by ESMA, where that investment firm seeks an extension of its authorisation for the purpose of the operation of an MTF or an OTF.

4. Paragraphs 1 to 3 shall apply as of when ESMA becomes the competent authority pursuant to Article 38fa.

Article 2t

Ongoing supervision

1. For investment firms authorised in accordance with Article 2q(5), Article 2r and Article 2s, ESMA shall keep under regular review the compliance of the investment firm with requirements set out in this Title and, for aspects that are relevant to the operation of an MTF or OTF, with the national provisions transposing Article 16 of Directive 2014/65/EU of the home Member State of that investment firm interpreted in a manner consistent with Union law.

2. For investment firms authorised in accordance with Article 2q(5), Article 2r and Article 2s, the competent authority of the home Member State of the investment firm shall keep under regular review the compliance of the investment firm with requirements set out in the national provisions adopted in the implementation of Title II of Directive 2014/65/EU by the home Member State of that investment firm.

3. For the purposes of ensuring an effective and efficient authorisation and ongoing supervision of investment firms in accordance with Article 2q(5), Article 2r, and Article 2s, ESMA and the competent authority of the home Member State of the investment firm shall set up a cooperation arrangement.

4. Paragraphs 1 to 3 shall apply as of when ESMA becomes the competent authority pursuant to Article 38fa.

Article 2u

Compliance with the rules of the MTF or the OTF and with other legal obligations

1. Investment firms and market operators operating an MTF or an OTF shall establish transparent rules and procedures for fair and orderly trading and establish objective criteria for the efficient execution of orders. They shall have arrangements for the sound management of the technical operations of the facility, including the establishment of effective contingency arrangements to cope with risks of systems disruption.

2. Investment firms and market operators operating an MTF or an OTF shall establish transparent rules regarding the criteria for determining the financial instruments that can be traded under its systems.

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Where applicable, investment firms and market operators operating an MTF or an OTF shall provide, or shall be satisfied that there is access to, sufficient publicly available information to enable its users to form an investment judgement, taking into account both the nature of the users and the types of instruments traded.

3. Investment firms and market operators operating an MTF or an OTF shall comply with Article 2f(1), points (a), (f) and (g), Article 2g, Article 2h, Article 2l(1), Article 2m(1), Article 2n(1), Article 2n(2), first subparagraph, and Article 2n(3), first subparagraph, and shall have in place all the necessary effective systems, procedures and arrangements to do so.

4. Article 2m(2), Article 2n(2), second, third, fourth and fifth subparagraphs, and Article 2n(3), second subparagraph, shall apply *mutatis mutandis* with respect to investment firms and market operators operating an MTF or OTF.

5. Investment firms and market operators operating an MTF or an OTF shall clearly inform its members or participants of their respective responsibilities for the settlement of the transactions executed in that facility. Investment firms and market operators operating an MTF or an OTF shall put in place the necessary arrangements to facilitate the efficient settlement of the transactions concluded under the systems of that MTF or OTF.

6. Where a transferable security that has been admitted to trading on a regulated market is also traded on an MTF or an OTF without the consent of the issuer, the issuer shall not be subject to any obligation relating to initial, ongoing or ad hoc financial disclosure with regard to that MTF or OTF.

7. Any investment firm and market operator operating an MTF or an OTF shall comply immediately with any instruction from its competent authority or, where ESMA is the competent authority, its national surveillance authority pursuant to Article 69(2) of Directive 2014/65/EU to suspend or remove a financial instrument from trading.

8. Investment firms and market operators operating an MTF or an OTF shall provide the competent authority with a detailed description of the functioning of the MTF or OTF, including, without prejudice to Article 2z(1), (4) and (5), any links to or participation by a regulated market, an MTF, an OTF or a systematic internaliser owned by the same investment firm or market operator, and a list of their members, participants and/or users. Competent authorities shall make that information available to ESMA and, where ESMA is the competent authority, to national surveillance authorities on request.

Article 2v

Suspension and removal of financial instruments from trading on an MTF or an OTF

1. Without prejudice to the right of the competent authority or, where ESMA is the competent authority, the national surveillance authority to demand suspension or removal of a financial instrument from trading pursuant to Article 69(2) of Directive 2014/65/EU, an investment firm or a market operator operating an MTF or an OTF may suspend or remove from trading a financial instrument under the circumstances set out in Article 2k(1).

2. Article 2k(2) shall apply *mutatis mutandis* in the case where an investment firm or a market operator operating an MTF or an OTF suspends or removes

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from trading a financial instrument and the derivatives as referred to in points (4) to (10) of Section C of Annex I to Directive 2014/65/EC that relate or are referenced to that financial instrument.

Article 2w

Cross-border activity of MTFs and OTFs

Article 2o shall apply *mutatis mutandis* with respect to an investment firm or a market operator operating an MTF or an OTF.

Article 2x

Specific requirements for MTFs

1. Investment firms and market operators operating an MTF, in addition to meeting the requirements laid down in Articles 16 of Directive 2014/65/EU and of this Regulation, shall establish and implement non-discretionary rules for the execution of orders in the system.

2. When complying with Article 2l(1), investment firms and market operators operating an MTF shall ensure that the rules governing access to an MTF comply with the conditions established in Article 2l(3).

When admitting as members or participants persons that are already members or participants of another regulated market or MTF, investment firms and market operators operating an MTF shall deem that those persons comply with Article 2l(3), point (a), without any further assessment. Investment firms and market operators operating an MTF shall also deem that those persons comply with points Article 2l(3), points (b) and (c), without any further assessment, where they request to become members or participants with respect to trading in a class of financial instruments for which they are already members or participants of another regulated market or MTF.

3. Investment firms and market operators operating an MTF shall:

(a) have arrangements to be adequately equipped to manage the risks to which it is exposed, to implement appropriate arrangements and systems to identify all significant risks to its operation, and to put in place effective measures to mitigate those risks;

(b) have arrangements to facilitate the efficient and timely finalisation of the transactions executed under its systems; and

(c) have available, at the time of authorisation and on an ongoing basis, sufficient financial resources to facilitate its orderly functioning, having regard to the nature and extent of the transactions concluded on the market and the range and degree of the risks to which it is exposed.

Where, for the purposes of compliance with the requirements under points (a), and (b) of the first subparagraph of this paragraph, an investment firm or a market operator operating an MTF deploys resources of or relies on the performance of functions by another entity located in the Union that belongs to the same group as that investment firm or market operator, reliance on that entity shall not constitute outsourcing for the purpose of this Regulation, provided that the conditions set out in paragraph 3a are met. The location within the Union of the entity that deploys resources or performs functions for the compliance by a market operator with the requirements under points (a),

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and (b), of the first subparagraph of this paragraph shall not be relevant in the assessment of that compliance by the competent authority.

3a. The reliance of an investment firm or a market operator operating an MTF on another entity located in the Union and that belongs to the same group as that investment firm or market operator shall not constitute outsourcing pursuant to paragraph 3, provided that the following conditions are fulfilled:

(a) the investment firm or the market operator operating an MTF and another entity in the group that will deploy its resources or will perform functions for that investment firm or that market operator have put in place arrangements to ensure that that entity within the same group cooperates with the competent authority of the investment firm or the market operator operating an MTF in connection with that deployment of resources or with that performance of functions;

(b) the investment firm or the market operator operating an MTF has put in place adequate mechanisms to identify clearly and manage the potential adverse consequences, for the operation of the MTF or for its members or participants, of any conflict of interest between the investment firm or the market operator operating an MTF and another entity in the group that will deploy its resources or will perform functions for that MTF.

When deploying resources of or relying on the performance of functions by another entity within the same group, the investment firm or the market operator operating an MTF shall remain fully responsible for discharging all of their obligations under this Regulation and under Directive 2014/65/EU.

Member States shall not impose any additional requirements for the deployment of resources or reliance on the performance of functions, pursuant to paragraph 3, by another entity located in the Union within the same group as the investment firm or the market operator operating an MTF.

4. Articles 24, 25, Article 27(1), (2) and (4) to (10) and Article 28 of Directive 2014/65/EU shall not apply to the transactions concluded under the rules governing an MTF between its members or participants or between the MTF and its members or participants in relation to the use of the MTF. However, the members of or participants in the MTF shall comply with the obligations provided for in Articles 24, 25, 27 and 28 of Directive 2014/65/EU with respect to their clients when, acting on behalf of their clients, they execute their orders through the systems of an MTF.

5. Investment firms and market operators operating an MTF shall not execute client orders against proprietary capital, or engage in matched principal trading.

Article 2y

SME growth markets

1. The operator of an MTF may apply to its competent authority to have the MTF, or a segment thereof, registered as an SME growth market.

2. The competent authority may register the MTF, or a segment thereof, as an SME growth market if the competent authority receives an application as referred to in paragraph 1 and is satisfied that the conditions set out in paragraph 3 are complied with in relation to the MTF, or that the conditions in paragraph 3a are complied with in relation to a segment of the MTF.

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3. MTFs shall ensure that:

(a) at least 50 % of the issuers whose financial instruments are admitted to trading on the MTF are SMEs at the time when the MTF is registered as an SME growth market and in any calendar year thereafter;

(b) appropriate criteria are set for initial and ongoing admission to trading of financial instruments of issuers on the market;

(c) on initial admission to trading of financial instruments on the market there is sufficient information published to enable investors to make an informed judgment about whether or not to invest in the financial instruments, either through an appropriate admission document or a prospectus if the requirements laid down in Regulation (EU) 2017/1129are applicable in respect of a public offer being made in conjunction with the initial admission to trading of the financial instrument on the MTF;

(d) there is appropriate ongoing periodic financial reporting by or on behalf of an issuer on the market, for example audited annual reports;

(e) issuers on the market as defined in Article 3(1), point (21), of Regulation (EU) No 596/2014, persons discharging managerial responsibilities as defined in point Article 3(1), point (25), of Regulation (EU) No 596/2014 and persons closely associated with them as defined in Article 3(1), point (26), of Regulation (EU) No 596/2014 comply with relevant requirements applicable to them under Regulation (EU) No 596/2014;

(f) regulatory information concerning the issuers on the market is stored and disseminated to the public;

(g) there are effective systems and controls aiming to prevent and detect market abuse on that market as required under the Regulation (EU) No 596/2014.

3a. The relevant segment of the MTF shall be subject to effective rules, systems and procedures which ensure that the conditions set out in paragraph 3 and all of the following conditions have been complied with:

(a) the segment of the MTF registered as “SME growth market” is clearly separated from the other market segments operated by the investment firm or market operator operating the MTF, which is, inter alia, indicated by a different name, different rulebook, different marketing strategy, and different publicity, as well as a specific allocation of the market identification code to the segment registered as SME growth market segment;

(b) the transactions made on the SME growth market segment concerned are clearly distinguished from other market activity within the other segments of the MTF;

(c) upon the request of the competent authority of the MTF, the MTF shall provide a comprehensive list of the instruments listed on the SME growth market segment concerned, as well as any information on the operation of the SME growth market segment that the competent authority may request.

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4. Compliance by the investment firm or market operator operating the MTF, or a segment thereof, with the conditions laid down in paragraphs 3 and 3a is without prejudice to compliance by that investment firm or market operator with other obligations under this Regulation and under Directive 2014/65/EU relevant to the operation of MTFs. Without prejudice to paragraph 7, the investment firm or market operator operating the MTF, or a segment thereof, may impose additional conditions.

5. The competent authority of an MTF may deregister an MTF, or a segment thereof, as an SME growth market in any of the following cases:

(a) the investment firm or market operator operating the MTF, or a segment thereof, applies for its deregistration;

(b) the conditions in paragraph 3 or 3a are no longer complied with in relation to the MTF, or a segment thereof.

6. If a competent authority of an MTF registers or deregisters an MTF, or a segment thereof, as an SME growth market under this Article, that authority, where different from ESMA, shall as soon as possible notify ESMA of that registration or deregistration. ESMA shall publish on its website a list of SME growth markets and shall keep that list up to date.

7. Where a financial instrument of an issuer is admitted to trading on one SME growth market, that financial instrument may also be traded on another trading venue only where the issuer has been informed and has not objected. Where the other trading venue is another SME growth market or a segment of an SME growth market, the issuer shall not be subject to any obligation relating to corporate governance, or initial, ongoing or ad hoc disclosure, with regard to that other SME growth market. Where the other trading venue is not an SME growth market, the issuer shall be informed of any obligation to which the issuer will be subject that relates to corporate governance, or initial, ongoing or ad hoc disclosure, with regard to the other trading venue.

Article 2z

Specific requirements for OTFs

1. Investment firms and market operators operating an OTF shall establish arrangements preventing the execution of client orders in an OTF against the proprietary capital of the investment firm or market operator operating the OTF or of any entity that is part of the same group or legal person as the investment firm or market operator.

2. Investment firms and market operators operating an OTF may engage in matched principal trading in bonds, structured finance products, emission allowances and certain derivatives only where the client has consented to the process.

Investment firms and market operators operating an OTF shall not use matched principal trading to execute client orders in an OTF in derivatives pertaining to a class of derivatives that has been declared subject to the clearing obligation in accordance with Article 5 of Regulation (EU) No 648/2012.

Investment firms and market operators operating an OTF shall establish arrangements ensuring compliance with the definition of matched principal trading in Article 4(1), point (38), of Directive 2014/65/EU.

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3. Investment firms and market operators operating an OTF may engage in dealing on own account other than matched principal trading only with regard to sovereign debt instruments for which there is not a liquid market.

4. The operation of an OTF and of a systematic internaliser shall not take place within the same legal entity. An OTF shall not connect with a systematic internaliser in a way which enables orders in an OTF and orders or quotes in a systematic internaliser to interact. An OTF shall not connect with another OTF in a way which enables orders in different OTFs to interact.

5. An investment firm or a market operator operating an OTF may engage another investment firm to carry out market making on that OTF on an independent basis.

For the purposes of this Article, an investment firm shall not be deemed to be carrying out market making on an OTF on an independent basis if it has close links with the investment firm or market operator operating the OTF.

6. The execution of orders on an OTF shall be carried out on a discretionary basis.

An investment firm or market operator operating an OTF shall exercise discretion only in either or both of the following circumstances:

(a) when deciding to place or retract an order on the OTF they operate;

(b) when deciding not to match a specific client order with other orders available in the systems at a given time, provided it is in compliance with specific instructions received from a client and with its obligations in accordance with Article 27.

For the system that crosses client orders the investment firm or market operator operating the OTF may decide if, when and how much of two or more orders it wants to match within the system. In accordance with paragraphs 1, 2, 4 and 5 and without prejudice to paragraph 3, with regard to a system that arranges transactions in non-equities, the investment firm or market operator operating the OTF may facilitate negotiation between clients so as to bring together two or more potentially compatible trading interest in a transaction.

That obligation shall be without prejudice to Article 2u and 27 of Directive 2014/65/EU.

7. The competent authority may require from an investment firm or a market operator, either when that investment firm or that market operator requests to be authorised for the operation of an OTF or on ad-hoc basis, a detailed explanation why the system does not correspond to and cannot operate as a regulated market, MTF, or systematic internaliser, a detailed description as to how discretion will be exercised, in particular when an order to the OTF may be retracted and when and how two or more client orders will be matched within the OTF. In addition, the investment firm or market operator of an OTF shall provide the competent authority with information explaining its use of matched principal trading. The competent authority shall monitor an investment firm's or market operator's engagement in matched principal trading to ensure that it continues to fall within the definition of such trading and that its engagement in matched principal trading does not give rise to

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conflicts of interest between the investment firm or market operator and its clients.

8. Articles 24, 25, 27 and 28 of Directive 2014/65/EU shall apply to the transactions concluded on an OTF.

CHAPTER 3
Pan-European Market Operators

Article 2za
Authorisation of Pan-European Market Operators

1. Any legal person intending to operate more than one trading venue in more than one Member State may apply with ESMA for authorisation as pan-European market operator ('PEMO') as of [PO: please insert the date as of when ESMA becomes the competent authority pursuant to Article 38fa].

2. A PEMO shall be authorised by ESMA for the purposes of this Title where:

(a) the PEMO is a legal person established in the Union; and

(b) both the PEMO and the trading venues that it intends to operate meet the requirements laid down in this Title.

3. The authorisation referred to in paragraph 2 shall specify the trading venues which the PEMO is authorised to operate and the Member States where those are situated or operated. Where an authorised PEMO seeks to extend its business to operate additional trading venues, it shall submit a request to ESMA for extension of that authorisation.

4. A PEMO shall comply at all times with the conditions for authorisation referred to in this Title. A PEMO shall, without undue delay, notify ESMA of any material changes to the conditions for authorisation, including to the list of trading venues it intends to operate.

5. ESMA shall establish a register of all PEMOs in the Union. The register shall be publicly accessible and shall contain the list of all trading venues operated by a PEMO and the Member States where those trading venues are situated or operated. It shall be updated on a regular basis.

Article 2zb
Procedures for granting authorisation as PEMO

1. An applicant seeking authorisation as PEMO shall submit an application to ESMA. That application shall contain all information necessary to enable ESMA to assess whether the PEMO has put in place, at the time of initial authorisation, all the necessary arrangements to meet its obligations pursuant to this Title.

2. ESMA shall assess whether the application for authorisation is complete within 20 working days of receipt of the application.

3. Where the application is not complete, ESMA shall set a deadline by which the applicant PEMO is to provide additional information.

After assessing the application as complete, ESMA shall notify the PEMO accordingly. It shall also notify the relevant national surveillance authorities.

4. ESMA shall, within six months of receipt of a complete application, assess the compliance of the PEMO and of the trading venues that the PEMO intends

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to operate with this Title. It shall adopt a reasoned decision granting or refusing authorisation and shall notify the applicant PEMO accordingly within five working days of adoption. It shall also notify the relevant national surveillance authorities.

5. By way of derogation from Articles 2b and 2p, trading venues operated by a PEMO shall not seek authorisation in the Member State where they are situated or operated pursuant to Chapter 1 and Chapter 2 of this Title.

6. In cases where a PEMO intends to become the operator of a trading venue that is operated by a market operator or investment firm that is a different legal entity and that does not belong to the group to which the PEMO belongs, the PEMO shall submit, as part of its application for authorisation or its request to extend its business to operate additional trading venues, a statement by that market operator or investment firm confirming its intention to transfer the operation of the trading venue that it operates to the PEMO. The authorisation referred in Article 2za(2) shall be amended accordingly.

7. The authorisation granted to a regulated market pursuant to Article 2a or to a market operator or investment firm to operate an MTF or OTF pursuant to Article 2p of this Regulation or to Article 7 of Directive 2014/65/EU shall be considered to be revoked upon entry into effect of the authorisation or of the amended plan of operations of a PEMO that covers the operation of that trading venue, in accordance with paragraph 6. A PEMO authorisation may not be combined with other authorisations for the operation of a regulated market, MTF or OTF within the same group.

Article 2zc

Withdrawal of authorisation

1. ESMA may withdraw the authorisation of a PEMO in the cases referred to in Article 2c(1).

2. Upon withdrawal of the authorisation, ESMA shall notify the relevant national surveillance authorities as well as, where relevant, the authority designated pursuant to Article 67 of Directive 2014/65/EU of the Member State where the trading venues operated by the PEMO provide their activities.

Article 2zd

Requirements for the PEMO

1. The PEMO shall comply with all requirements that apply to a market operator, pursuant to this Regulation.

2. The PEMO shall be responsible, under the supervision of ESMA and, where expressly provided for by this Regulation, of the national surveillance authorities, for ensuring that the trading venues that it operates comply with the requirements laid down in in this Regulation.

The PEMO is entitled to exercise the rights that correspond to the regulated markets that it operates by virtue of this Regulation.

For trading venues operated by a PEMO, all references made in this regulation to the competent authority of the trading venue shall be understood as a reference to ESMA.

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Article 2ze

Operation of trading venues in another Member State and applicable law

1. Member States shall, without further legal or administrative requirements, allow a PEMO that is authorised pursuant to Article 2za to operate trading venues on their territory, through the freedom to provide services or through setting up a branch, provided that the operation of those trading venues is covered by the authorisation of the PEMO.

2. The PEMO shall determine, in the application for authorisation pursuant to Article 2zb, or in the request for extension of the authorisation pursuant to Article 2za(3), for each trading venue that it intends to operate, the Member State in the territory of which the trading venue shall be deemed to be situated or operated. In cases where a PEMO becomes the operator of a trading venue that is already authorised, that trading venue shall be deemed to be situated or operated in the territory of the Member State where that trading venue was initially authorised.

For matters not covered by directly applicable Union law, the national law governing the trading conducted under the systems of a trading venue operated by a PEMO shall be that of the Member State where the trading venue is deemed to be situated or operated.

3. A PEMO may make use of passporting rights under Articles 2o and 2w with respect to each trading venue that it operates.

CHAPTER 4

List of trading venues and empowerments

Article 2zf

List of trading venues

Competent authorities shall communicate to ESMA the list of trading venues authorised in their jurisdiction, including any changes thereof. ESMA shall publish and keep up-to-date a list of all trading venues, including trading venues for which ESMA is the competent authority, on its website.

Article 2zg

Regulatory technical standards and delegation

1. ESMA shall develop draft regulatory technical standards to:

(a) further specify the ancillary activities referred to in Article 2a(3);

(b) determine the information to be provided under Article 2b(1), the information to be included in the notifications referred to in Article 2d(8), as well as the standard forms, templates and procedures for the submission of that information;

(c) further specify the situation in which a person shall be deemed to be in a position to exercise, directly or indirectly, a significant influence over the management of the regulated market, in accordance with Article 2e;

(d) further specify requirements to ensure that a market operator has sufficient financial resources to facilitate the orderly functioning of the regulated market that it operates, in accordance with Article 2f;

(e) specify the information to be provided pursuant to Article 2zb (1).

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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.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 50 to:

(a) amend this Regulation by modifying the thresholds referred to in Article 2j(1) and (3) or the threshold referred to in paragraph 4 of that Article, or all of them, when the applicable thresholds impede liquidity on public markets taking into account financial developments;

(b) supplement this Regulation by specifying the list of circumstances constituting significant damage to the investors' interests and the orderly functioning of the market referred to in Article 2k(1) and (2);

(c) supplement this Regulation by determining circumstances that trigger an information requirement as referred to in Article 2n(2);

(d) supplement this Regulation by further specifying the conditions laid down in Article 2y(3) and (3a). Those conditions shall take into account the need to maintain high levels of investor protection in order to promote investor confidence in those markets, while minimising the administrative burdens for issuers on the market. They shall also take into account that deregistrations are not to occur nor are registrations to be refused merely because of a temporary failure to comply with the condition laid down in paragraph 3, point (a), of that Article.

3. ESMA may develop draft regulatory technical standards to:

(a) specify the requirements to ensure trading systems of regulated markets are resilient and have adequate capacity, except the requirements related to digital operational resilience;

(b) specify the ratio referred to in Article 2g(6), taking into account factors such as the value of unexecuted orders in relation to the value of executed transactions;

(c) specify the controls concerning direct electronic access in such a way as to ensure that the controls applied to sponsored access are at least equivalent to those applied to direct market access;

(d) specify the requirements to ensure that co-location services and fee structures are fair and non-discriminatory and that fee structures do not create incentives for disorderly trading conditions or market abuse;

(e) specify the determination of where a regulated market is material in terms of liquidity in a financial instrument;

(f) specify the requirements to ensure that market making schemes are fair and non-discriminatory and to establish minimum market making obligations that regulated markets must provide for when designing a market making scheme and the conditions under which the requirement to have in place a market making scheme is not appropriate, taking into account the nature and scale of the trading on that regulated market, including whether the regulated market allows for or enables algorithmic trading to take place through its systems;

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(g) specify the requirements to ensure appropriate testing of algorithms, other than digital operational resilience testing, so as to ensure that algorithmic trading systems including high-frequency algorithmic trading systems cannot create or contribute to disorderly trading conditions on the market;

(h) specify the principles that regulated markets are to consider when establishing their mechanisms to halt or constrain trading in accordance with Article 2g(5), taking into account the liquidity of different asset classes and sub-classes, the nature of the market model and the types of users, and without prejudice to the discretion of regulated markets in setting those mechanisms;

(i) specify the information that regulated markets are to disclose, including the parameters for halting trading that regulated markets are to report to competent authorities, pursuant to Article 2g(5);

(j) specify minimum tick sizes or tick size regimes for specific shares, depositary receipts, exchange-traded funds, certificates, and other similar financial instruments where necessary to ensure the orderly functioning of markets, in accordance with the factors in Article 2h(2) and the price, spreads and depth of liquidity of the financial instruments;

(k) specify minimum tick sizes or tick size regimes for specific financial instruments other than those listed in Article 2h(1) where necessary to ensure the orderly functioning of markets, in accordance with the factors in Article 2h(2) and the price, spreads and depth of liquidity of the financial instruments.

(l) specify the characteristics of different classes of financial instruments to be taken into account by a regulated market when assessing whether a financial instrument is issued in a manner consistent with the conditions laid down in the second subparagraph of Article 2i(1) for admission to trading on the different market segments which it operates;

(m) clarify the arrangements that a regulated market is required to implement so as to be considered to have fulfilled the obligation to verify that the issuer of a transferable security complies with its obligations under Union law in respect of initial, ongoing or ad hoc disclosure obligations;

(n) clarify the arrangements that a regulated market has to establish pursuant to Article 2i(3) in order to facilitate its members or participants in obtaining access to information which has been made public under the conditions established by Union law;

(o) specify the cases in which the connection between a derivative relating or referenced to a financial instrument suspended or removed from trading and the original financial instrument implies that the derivative are also to be suspended or removed from trading, in order to achieve the objective of the suspension or removal of the underlying financial instrument and to ensure that the obligation to suspend or remove from trading derivatives referred to in Articles 2k(2) and 2v(2) is applied proportionately;

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Power is delegated to the Commission to adopt the regulatory technical standards referred to in the previous subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

4. ESMA may develop draft implementing technical standards to determine:

(a) the format and timing of the communications and publications referred to in Articles 2k(2) and 2v(2);

(b) the content and format of the description and notification referred to in Article 2g(10).

Power is conferred on the Commission to adopt the implementing technical standards referred to in the previous subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.';

(4) in Article 4, paragraph 4 is replaced by the following:

'4. Before granting a waiver in accordance with paragraph 1, competent authorities shall notify ESMA and other competent authorities of the intended use of each individual waiver and provide an explanation regarding its functioning, including the details of the trading venue where the reference price is established as referred to in paragraph 1(a). Notification of the intention to grant a waiver shall be made not less than four months before the waiver is intended to take effect. Within two months following receipt of the notification, ESMA shall issue a non-binding opinion to the competent authority in question, where different from ESMA, assessing the compatibility of each waiver with the requirements established in paragraph 1 and specified in the regulatory technical standard adopted pursuant to paragraph 6. Where that competent authority grants a waiver and a competent authority of another Member State disagrees, that competent authority may refer the matter back to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010. ESMA shall monitor the application of the waivers and shall submit an annual report to the Commission on how they are applied in practice.';

(5) in Article 7(1), the fourth subparagraph is replaced by the following:

'Where a competent authority that is not ESMA authorises deferred publication and a competent authority of another Member State disagrees with the deferral or disagrees with the effective application of the authorisation granted, that competent authority may refer the matter back to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.';

(6) in Article 8a(2), the introductory wording is replaced by the following:

'When applying a central limit order book or a periodic auction trading system, market operators and investment firms operating an MTF or an OTF shall make public current bid and offer prices and the depth of trading interests at those prices which are advertised through their systems in respect of OTC derivatives that are denominated in euro, Japanese yen, US dollars or pounds sterling, that are not forward rate agreements or single currency interest rate basis swaps, and that:';

(7) Article 9 is amended as follows:

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(a) paragraph 2 is replaced by the following:

'2. Before granting a waiver in accordance with paragraph 1, competent authorities shall notify ESMA and other competent authorities of the intended use of each individual waiver and provide an explanation regarding their functioning. Notification of the intention to grant a waiver shall be made not less than four months before the waiver is intended to take effect. Within two months following receipt of the notification, ESMA shall issue an opinion to the competent authority in question, where different from ESMA, assessing the compatibility of the waiver with the requirements established in paragraph 1 and specified in the regulatory technical standards adopted pursuant to paragraph 5. Where a competent authority that is not ESMA grants a waiver and a competent authority of another Member State disagrees, that competent authority may refer the matter back to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010. ESMA shall monitor the application of the waivers and submit an annual report to the Commission on how they are applied in practice.';

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

'Before suspending, or renewing a temporary suspension of, the obligations referred to in Article 8, the relevant competent authority, where different from ESMA, shall notify ESMA of its intention and provide an explanation. ESMA shall issue an opinion to the competent authority as soon as practicable on whether in its view the suspension or the renewal of the temporary suspension is justified in accordance with the first and second subparagraphs of this paragraph.';

(8) in Article 11(2), the fifth subparagraph is replaced by the following:

'Before suspending or renewing the temporary suspension as referred to in the first subparagraph, the relevant competent authority, where different from ESMA, shall notify ESMA of its intention and provide an explanation. ESMA shall issue an opinion to the competent authority as soon as practicable on whether in its view the suspension or the renewal of the temporary suspension is justified in accordance with the first and fourth subparagraphs.';

(9) in Article 11a(2), the fifth subparagraph is replaced by the following:

'Before suspending or renewing the temporary suspension as referred to in the first subparagraph, the relevant competent authority, where different from ESMA, shall notify ESMA of its intention and provide an explanation. ESMA shall issue an opinion to the competent authority as soon as practicable on whether in its view the suspension or the renewal of the temporary suspension is justified in accordance with the first and fourth subparagraphs.';

(10) in Article 14, paragraph 7 is replaced by the following:

'7. In order to ensure the efficient valuation of shares, depositary receipts, ETFs, certificates and other similar financial instruments and maximise the possibility of investment firms to obtain the best deal for their clients, ESMA may develop draft regulatory technical standards to specify:

(a) the arrangements for the publication of a firm quote as referred to in paragraph 1;

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(b) the determination of the threshold referred to in paragraph 2, which shall take into account the international best practices, the competitiveness of Union firms, the significance of the market impact and the efficiency of price formation and which shall not be below twice the standard market size;

(c) the determination of the minimum quote size as referred to in paragraph 3, which shall not exceed 90 % of the threshold referred to in paragraph 2 and which shall not be below the standard market size;

(d) the determination of whether prices reflect prevailing market conditions as referred to in paragraph 3;

(e) the standard market size as referred to in paragraph 4;

(f) the arrangements for the identification of retail orders as referred to in Article 15(2).

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.';

(11) in Article 15, paragraph 2 is replaced by the following:

'2. Systematic internalisers shall, while complying with Article 27 of Directive 2014/65/EU, execute the orders they receive from their clients in relation to the shares, depositary receipts, ETFs, certificates and other similar financial instruments for which they are systematic internalisers at the quoted prices at the time of reception of the order.

However, in justified cases, they may execute those orders at a better price provided that:

(a) the price falls within a public range close to market conditions; and

(b) in case of retail orders, they immediately, and in any event before execution, update their public quotes to reflect the price improvement.

For the purpose of the second subparagraph, a retail order is an order originating from a retail client as defined in Article 4(1), point (11) of Directive 2014/65/EU and that has a size of up to and including the threshold referred to in Article 14(2).';

(12) Article 17a is replaced by the following:

'*Article 17a*

Tick sizes for systematic internalisers

1. Systematic internalisers' quotes, price improvements on those quotes and execution prices shall comply with the tick sizes set in accordance with Article 2h.

2. The requirements laid down in Article 2h and in Article 15(2) shall not prevent systematic internalisers from matching orders at midpoint within the current bid and offer prices.';

(13) in Article 21(1), the following subparagraphs are added:

'The first subparagraph shall not apply to investment firms which, either on own account or on behalf of clients, conclude transactions in OTC derivatives

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as referred to in Article 8a(2) on a third-country trading venue that meets all the following conditions:

(a) it operates a system or facility, in which multiple third-party buying and selling interests in financial instruments are able to interact;

(b) it is subject to authorisation in accordance with the legal and supervisory framework of the third-country;

(c) it is subject to supervision and enforcement on an ongoing basis in accordance with the legal and supervisory framework of the third-country by a competent authority that is a full signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information;

(d) it has a post-trade disclosure regime in place which ensures that transactions concluded on that trading venue are published as soon as possible after the transaction was executed or, in clearly defined situations, after a deferral period;

(e) it is included in the list published by ESMA, pursuant to the third subparagraph.

ESMA shall publish and regularly update a list of third-country trading venues that fulfil the conditions laid down in points (a) to (d) of the second subparagraph.';

(14) in Article 22, paragraph 1 is replaced by the following:

'In order to carry out calculations for determining the requirements for the pre- and post-trade transparency and the trading obligation regimes referred to in Articles 3 to 11a, 14 to 21 and 32 which are applicable to financial instruments, and in order to prepare reports to the Commission in accordance with Article 4(4), Article 7(1), Article 9(2), Article 11(3) and Article 11a(1), ESMA and other competent authorities may require information from:

(a) trading venues;

(b) APAs; and

(c) CTPs.';

(15) in Article 22a(1), the following sentence is added:

'Systematic internalisers shall, with regard to shares and ETFs that are traded on a trading venue, transmit to the data centre of the CTP, as close to real time as technically possible, the data required pursuant to Article 14(1), in accordance with the requirements specified in the regulatory technical standards adopted pursuant to Article 22b(3), point (d). Those data shall be transmitted in a harmonised format, through a high-quality transmission protocol.';

(16) in Article 22b, paragraph 1 is replaced by the following:

'1. The data transmitted to the CTP pursuant to Article 22a(1) and the data disseminated by the CTP pursuant to Article 27h(1), point (d), shall comply with the regulatory technical standards adopted pursuant to Article 4(6), point (a), Article 7(2), point (a), Article 11(4), point (a), Article 11a(3), point (a), and

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Article 14(7), unless provided otherwise in the regulatory technical standards adopted pursuant to paragraph 3, points (b) and (d), of this Article.';

(17) Article 23a is replaced by the following:

'*Article 23a*

Accessibility of information on the European single access point

1. From 10 January 2030, the information referred to in Article 2y(3) points (c), (d), and (f), Article 14(6), Article 15(1), second subparagraph, Articles 27(1), Article 34, Articles 40(5), 42(5), 44(2), 45(6) and Article 48 of this Regulation, shall be made accessible on the European single access point (ESAP) established under Regulation (EU) 2023/2859 of the European Parliament and of the Council*. The collection body as defined in Article 2, point (2), of Regulation (EU) 2023/2859 shall be ESMA.

That information shall comply with the following requirements:

(a) be submitted in a data extractable format as defined in Article 2, point (3), of Regulation (EU) 2023/2859;

(b) be accompanied by the following metadata:

(i) all the names of the investment firm, PEMO or market operator to which the information relates;

(ii) where available, the legal entity identifier of the investment firm, PEMO or market operator as specified pursuant to Article 7(4), point (b), of Regulation (EU) 2023/2859;

(iii) the type of information, as classified pursuant to Article 7(4), point (c), of that Regulation;

(iv) an indication of whether the information contains personal data.

2. For the purposes of paragraph 1, point (b)(ii), investment firms, PEMOs and market operators shall obtain a legal entity identifier.

3. By 9 January 2030, for the purpose of making the information referred to in Article 2y(3) points (c), (d), and (f) of this Regulation accessible on ESAP, investment firms, PEMOs and market operators shall designate at least one collection body as defined in Article 2, point (2), of Regulation (EU) 2023/2859 and notify ESMA thereof.

4. From 10 January 2030, the information referred to in Article 2v(2) shall be made accessible on ESAP. For that purpose, the collection body as defined in Article 2, point (2), of Regulation (EU) 2023/2859 shall be the competent authority.

That information shall comply with the following requirements:

(a) be submitted in a data extractable format, as defined in Article 2, point (3), of Regulation (EU) 2023/2859;

(b) be accompanied by the following metadata:

(i) all the names of the investment firm, PEMO or market operator to which the information relates;

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(ii) where available, the legal entity identifier of the investment firm, PEMO or market operator, as specified pursuant to Article 7(4), point (b), of Regulation (EU) 2023/2859;

(iii) the type of information, as classified pursuant to Article 7(4), point (c), of that Regulation;

(iv) an indication of whether the information contains personal data.

5. From 10 January 2030, the information referred to in Article 2u(8) and Article 34b(1) point (a) of this Regulation shall be made accessible on ESAP. For that purpose, the collection body as defined in Article 2, point (2), of Regulation (EU) 2023/2859 shall be ESMA.

That information shall comply with the following requirements:

(a) be submitted in a data extractable format as defined in Article 2, point (3), of Regulation (EU) 2023/2859;

(b) be accompanied by the following metadata:

(i) all the names of the investment firm, PEMO or market operator to which the information relates;

(ii) where available, the legal entity identifier of the investment firm, PEMO or market operator, as specified pursuant to Article 7(4), point (b), of Regulation (EU) 2023/2859;

(iii) the type of information, as classified pursuant to Article 7(4), point (c), of that Regulation;

(iv) an indication of whether the information contains personal data.

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* Regulation (EU) 2023/2859 of the European Parliament and of the Council of 13 December 2023 establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability (OJ L, 2023/2859, 20.12.2023, ELI: http://data.europa.eu/eli/reg/2023/2859/oj).';

(18) Article 25 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. The operator of a trading venue shall keep at the disposal of the competent authority or, where ESMA is the competent authority, the national surveillance authority, for at least five years, the relevant data relating to all orders in financial instruments which are advertised through their systems in a machine-readable format and using a common template. The competent authority of the trading venue or, where ESMA is the competent authority, the national surveillance authority of the trading venue may request those data on an ongoing basis. The records shall contain the relevant data that constitute the characteristics of the order, including those that link an order with the executed transactions that stem from that order and the details of which shall be reported in accordance with Article 26(1) and (3). ESMA shall perform a facilitation and coordination role in relation to the access by competent authorities and national surveillance authorities to information under this paragraph. Where ESMA is the competent authority of the trading venue, it shall have the ability

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to request to the national surveillance authority access to that information, in order to carry out its supervisory activities.';

(b) in paragraph 3, the third subparagraph is deleted;

(19) Article 26 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) in the second subparagraph, the introductory wording is replaced by the following:

'The competent authorities shall, in accordance with Article 85 of Directive 2014/65/EU, establish the necessary arrangements in order to ensure that the following authorities also receive that information:';

(ii) in the second subparagraph, point (a) is replaced by the following:

'(a) the competent authority of the most relevant market in terms of liquidity for those financial instruments or, where ESMA is the competent authority, the national surveillance authority;';

(iii) in the second subparagraph, point (d) is replaced by the following:

'(d) the competent authority responsible for the supervision of the trading venues used or, where ESMA is the competent authority, the national surveillance authority.';

(b) paragraph 5 is replaced by the following:

'5. The operator of a trading venue shall report to its competent authority or, where ESMA is the competent authority, to its national surveillance authority details of transactions in financial instruments traded on its platform which are executed through its systems by any member, participant or user not subject to this Regulation in accordance with paragraphs 1 and 3.';

(c) in paragraph 7, the fifth subparagraph is replaced by the following:

'The competent authority 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 competent authority 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.';

(d) in paragraph 9, the third subparagraph is deleted;

(20) Article 27 is amended as follows:

(a) in paragraph 1, fourth subparagraph, the last sentence is replaced by the following:

'ESMA shall give competent authorities and national surveillance authorities access without undue delay to those reference data.';

(b) in paragraph 2, the first subparagraph is amended as follows:

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

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‘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 consulting the competent authorities and the national surveillance authorities, establish the necessary arrangements in order to ensure that:’;

(ii) points (c) and (d) are replaced by the following:

‘(c) the financial instrument reference data received pursuant to paragraph 1 of this Article is efficiently and without undue delay transmitted to the relevant competent authorities and national surveillance authorities;

(d) there are effective mechanisms in place between ESMA and the competent authorities or, where relevant, the national surveillance authorities to resolve data delivery or data quality issues.’;

(c) in paragraph 4, the third subparagraph is replaced by the following:

‘Before deciding to take the measure referred to in the first subparagraph, ESMA shall notify the relevant competent authorities or, where relevant, national surveillance authorities.’;

(21) in Article 27h(1), the second subparagraph is deleted;

(22) in Article 27ha(2), the second subparagraph is deleted;

(23) in Article 31(3), the last sentence is replaced by the following:

‘Those investment firms and market operators shall make those records available to the relevant competent authority, relevant national surveillance authority or to ESMA promptly upon their request.’;

(24) the following Articles 34a and 34b are inserted:

‘*Article 34a*

Position management controls in commodity derivatives and derivatives of emission allowances

1. An investment firm or a market operator operating a trading venue which trades in commodity derivatives or derivatives of emission allowances shall apply position management controls, including powers for the trading venue to:

(a) monitor the open interest positions of persons;

(b) obtain information, including all relevant documentation, from persons about the size and purpose of a position or exposure entered into, information about beneficial or underlying owners, any concert arrangements, and any related assets or liabilities in the underlying market, including, where appropriate, positions held in derivatives of emission allowances or positions held in commodity derivatives that are based on the same underlying and that share the same characteristics on other trading venues and in economically equivalent contracts traded outside of a trading venue through members and participants;

(c) request a person to terminate or reduce a position, on a temporary or permanent basis, and to unilaterally take action to ensure the termination or reduction of the position where the person does not comply with such request; and

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(d) require a person to provide, on a temporary basis, liquidity back into the market at an agreed price and volume with the express intent of mitigating the effects of a large or dominant position.

ESMA may develop draft regulatory technical standards to specify the content of position management controls, thereby taking into account the characteristics of the trading venues concerned.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the second subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

2. The position management controls shall be transparent and non-discriminatory, specifying how they apply to persons and taking account of the nature and composition of market participants and of the use they make of the contracts submitted to trading.

3. The investment firm or market operator operating the trading venue shall inform its competent authority of the details of position management controls.

Where ESMA is not the competent authority, the competent authority shall communicate the same information to ESMA, which shall publish and maintain on its website a database with summaries of the position management controls.

Article 34b

Position reporting by trading venues by categories of position holders

1. An investment firm or a market operator operating a trading venue which trades in commodity derivatives or in derivatives of emission allowances shall:

(a) make public:

(i) for trading venues where options are traded, two weekly reports, one of which is to exclude options, with the aggregate positions held by the different categories of persons for the different commodity derivatives or derivatives of emission allowances traded on their trading venue, specifying the number of long and short positions by such categories, changes thereto since the previous report, the percentage of the total open interest represented by each category, and the number of persons holding a position in each category in accordance with paragraph 4;

(ii) for trading venues where options are not traded, a weekly report on the elements set out in point (i);

(b) provide the competent authority or, where ESMA is the competent authority, the national surveillance authority with a complete breakdown of the positions held by all persons, including the members or participants and the clients thereof, on that trading venue, at least on a daily basis.

The obligation laid down in point (a) shall only apply when both the number of persons and their open positions exceed minimum thresholds.

Position reporting shall not be applicable to any other securities as referred to in point (c) of point (44) of Article 4(1) of Directive 2014/65/EU that relate to a commodity or an underlying as referred to in Section C.10 of Annex I of that Directive.

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An investment firm or a market operator operating a trading venue which trades in commodity derivatives or in derivatives of emission allowances shall communicate the reports referred to in point (a) of the first subparagraph to the competent authority and, where ESMA is not the competent authority, to ESMA. ESMA shall proceed with a centralised publication of the information included in those reports.

2. Persons holding positions in a commodity derivative or in a derivative of emission allowance shall be classified by the investment firm or market operator operating that trading venue according to the nature of their main business, taking account of any applicable authorisation, as either:

(a) investment firms or credit institutions;

(b) investment funds, either an undertaking for collective investments in transferable securities (UCITS) as defined in Directive 2009/65/EC, or an alternative investment fund manager as defined in Directive 2011/61/EC;

(c) other financial institutions, including insurance undertakings and reinsurance undertakings as defined in Directive 2009/138/EC, and institutions for occupational retirement provision as defined in Directive (EU) 2016/2341;

(d) commercial undertakings;

(e) in the case of derivatives of emission allowances, operators with compliance obligations under Directive 2003/87/EC.

The reports referred to in paragraph 1, point (a), shall specify the number of long and short positions by category of persons, any changes thereto since the previous report, percent of total open interest represented by each category, and the number of persons in each category.

The reports referred to in paragraph 1, point (a), shall differentiate between:

(a) positions identified as positions which in an objectively measurable way reduce risks directly relating to commercial activities; and

(b) other positions.

3. ESMA may develop draft implementing technical standards to determine the format of the reports referred to in paragraph 1, point (a).

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.

In the case of derivatives of emission allowances, the reporting shall not prejudice the compliance obligations under Directive 2003/87/EC.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 50 to supplement this Regulation by specifying the thresholds referred to in the second subparagraph of paragraph 1 of this Article, having regard to the total number of open positions and their size and the total number of persons holding a position.

5. ESMA may develop draft implementing technical standards to specify the measures to require all reports referred to in paragraph 1, point (a), to be sent to ESMA at a specified weekly time, for their centralised publication by the latter.

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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.';

(25) the title of Title VI is amended as follows:

'**NON-DISCRIMINATORY ACCESS TO TRADING VENUES, CSDs AND CCPs**';

(26) the following Article 34c is inserted:

'*Article 34c*
Right to designate a CSD

Market operators and investment firms operating a trading venue shall offer all their members or participants the right to designate any CSD established in the Union for the settlement of transactions in financial instruments undertaken on that trading venue.';

(27) Articles 35 and 36 are replaced by the following:

'*Article 35*
Non-discriminatory access by a trading venue to a CCP

1. Without prejudice to Article 7 of Regulation (EU) No 648/2012, a CCP shall accept to clear financial instruments on a non-discriminatory and transparent basis, including as regards collateral requirements and initial connectivity and access fees, regardless of the trading venue on which a transaction is executed.

The requirement in the first subparagraph shall not apply to exchange-traded derivatives.

The CCP shall in particular ensure that a trading venue has the right to non-discriminatory treatment of contracts traded on that trading venue in terms of:

(a) collateral requirements and netting of economically equivalent contracts, where the inclusion of such contracts in the close-out and other netting procedures of a CCP based on the applicable insolvency law would not endanger the smooth and orderly functioning, the validity or enforceability of such procedures; and

(b) cross-margining with correlated contracts cleared by the same CCP under a risk model that complies with Article 41 of Regulation (EU) No 648/2012.

A CCP may require that the trading venue complies with the operational and technical requirements established by the CCP including the risk management requirements. The requirement in this paragraph does not apply to any derivative contract that is already subject to the access obligations under Article 7 of Regulation (EU) No 648/2012.

2. A trading venue seeking to access a CCP's services shall submit its request to the CCP. The request shall specify the financial instruments for which the clearing is requested. The trading venue shall inform ESMA and the competent authority of the CCP and of the trading venue, where different from ESMA, of such a request.

3. The CCP shall provide a written response to the trading venue within three months of the receipt of the request referred to in paragraph 2, either permitting or denying access.

4. The CCP may deny a request for access only where such access would affect the smooth and orderly functioning of the markets or cause systemic risk, based on a

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comprehensive risk assessment subject to the conditions laid down in the delegated act adopted pursuant to paragraph 6, point (a) of Article 36. The CCP shall not deny a request on grounds of a possible loss of revenue in respect of itself or of another entity that belongs to the same group.

Where the CCP fails to provide a written response to the trading venue within the time limit referred to in paragraph 3, ESMA may notify the CCP and request additional information from the CCP. Where there is no indication that the conditions for denial of request as laid down in the delegated act adopted pursuant to paragraph 6 of Article 36 are met, ESMA may issue a decision requiring that CCP to grant access to its services within one month of the notification of the decision.

Where the CCP denies access, the written response shall provide a detailed explanation of the reasons for denied access, based on the comprehensive risk assessment referred to in the first subparagraph. The CCP shall immediately after providing the written response to the trading venue, and in writing, inform ESMA and the competent authorities referred to in paragraph 2 of that decision.

5. Where the CCP has denied access, the trading venue may submit a complaint to ESMA.

ESMA shall assess the reasons for denied access and, within one month of the date of the complaint, provide the trading venue with a reasoned reply. ESMA may consult the competent authorities referred to in paragraph 2 when preparing its reply. Where ESMA concludes that the refusal by the CCP to grant access is unjustified, where there is no indication that the conditions for denial of request as laid down in the delegated act adopted pursuant to paragraph 6 of Article 36 are met, ESMA shall issue a decision requiring the CCP to grant access to its services within one month of the notification of that decision.

A CCP that grants access to a trading venue shall ensure that the access is fully operational within three months of the receipt of the positive response to the request for access.

Article 36

Non-discriminatory access to trading venues by CCPs

1. Without prejudice to Article 8 of Regulation (EU) No 648/2012, a trading venue shall, upon request, provide trade feeds on a non-discriminatory and transparent basis, including as regards initial connectivity and access fees, to any CCP authorised or recognised pursuant to that Regulation that wishes to clear transactions in financial instruments that are concluded on that trading venue. That requirement shall not apply to:

(a) any derivative contract that is already subject to the access obligations laid down in Article 8 of Regulation (EU) No 648/2012;

(b) exchange-traded derivatives.

2. A CCP seeking to access a trading venue shall submit its request to the trading venue. The CCP shall inform ESMA and the competent authority of the trading venue and of the CCP, where different from ESMA, of such a request.

3. The trading venue shall provide a written response to the CCP within three months of the receipt of the request referred to in paragraph 2, either permitting or denying access.

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4. The trading venue may deny a request for access only where such access would affect the smooth and orderly functioning of the markets or cause systemic risk, based on a comprehensive risk assessment subject to the conditions laid down in the delegated act adopted pursuant to paragraph 6, point (a). The trading venue shall not deny a request on grounds of a possible loss of revenue in respect of itself or of another entity that belongs to the same group. In addition, it shall not restrict access to specific trade feeds on the ground that the counterparties to a specific transaction have not chosen the same CCP, where the CCPs of their choice have already entered into an interoperability arrangement pursuant to Article 51 of Regulation (EU) No 648/2012.

Where the trading venue fails to provide a written response to the CCP within the time limit referred to in paragraph 3, ESMA may notify the trading venue and request additional information from the trading venue. Where there is no indication that the conditions for denial of request as laid down in the delegated act adopted pursuant to paragraph 6 of are met, ESMA may issue a decision requiring that trading venue to grant access to its services within one month of the notification of the decision.

Where the trading venue denies access, the written response shall provide a detailed explanation of the reasons for denied access, based on the comprehensive risk assessment referred to in the first subparagraph. The trading venue shall immediately after providing the written response to the CCP, and in writing, inform ESMA and the competent authorities referred to in paragraph 2 of that decision.

5. Where the trading venue has denied access, the CCP may submit a complaint to ESMA.

ESMA shall assess the reasons for denied access and, within one month of the complaint, provide the CCP with a reasoned reply. ESMA may consult the competent authorities referred to in paragraph 2 when preparing its reply. Where ESMA concludes that the refusal by the trading venue to grant access is unjustified, where there is no indication that the conditions for denial of request as laid down in the delegated act adopted pursuant to paragraph 6 are met, ESMA shall issue a decision requiring the trading venue to grant access to its trade feeds within one month of the notification of that decision.

A trading venue that grants access to a CCP shall ensure that access is fully operational within three months of the recepit of the positive response to the request for access.

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 50 to supplement this Regulation to specify:

(a) the specific risks to be taken into account by CCPs and trading venues when carrying out a comprehensive risk assessment as referred to in Article 35(3) and in paragraph 3 of this Article;

(b) the conditions under which access shall be granted by a CCP under Article 35, including the non-discriminatory and transparent basis as regards initial connectivity and access fees, clearing fees, collateral requirements and operational requirements regarding margining, and the conditions under which access shall be granted by a trading venue under this Article, including the non-discriminatory and transparent basis as regards initial connectivity and access fees;

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(c) the conditions for non-discriminatory treatment in terms of how contracts traded on that trading venue are treated in terms of collateral requirements and netting of economically equivalent contracts and cross-margining with correlated contracts cleared by the same CCP, as referred to in Article 35.

(d) parameters for initial connectivity and access fees to ensure that such fees do not directly or indirectly prevent effective access to trading feeds, in accordance with this Article, or effective access to CCPs, in accordance with Article 35.';

(28) in Title VIa, the title of Chapter 1 is replaced by the following:

'*CHAPTER 1*
Scope, competences and procedures';

(29) Articles 38a to 38f are deleted;

(30) the following Article 38fa is inserted:

'*Article 38fa*
Scope of ESMA supervision for significant trading venues and PEMOs

1. ESMA shall be the competent authority for:

(a) PEMOs;

(b) market operators that operate at least one significant trading venue or that are part of the same group of a CSD or CCP for which ESMA is the competent authority pursuant to Regulation (EU) No 909/2014 or Regulation (EU) No 648/2012;

(c) investment firms that operate at least one significant trading venue or that are part of the same group of a CSD or CCP for which ESMA is the competent authority pursuant to Regulation (EU) No 909/2014 or Regulation (EU) No 648/2012 with respect to the operation of MTFs or OTFs.

A trading venue shall be considered significant where all of the following conditions are met:

(a) the trading venue is important for the economy of the Union as referred to in Article 38fb(1); and

(b) the trading venue has a significant cross-border dimension as referred to Article 38fb(2).

Where ESMA is the competent authority for a PEMO, a market operator or an investment firm pursuant to the first subparagraph, ESMA shall also be the competent authority for all trading venues operated by those entities.

Where ESMA is the competent authority pursuant to the first subparagraph for an investment firm or a market operator operating a significant trading venue, and where that investment firm or market operator belongs to a group that comprises other trading venues, ESMA shall be the competent authority for all trading venues, as well as for market operators or investment firms operating those trading venues, that are part of the group of that investment firm or that market operator operating a significant trading venue.

ESMA shall be empowered with the supervisory, investigatory and enforcement powers necessary for the exercise of its functions over the entities referred to in this paragraph to be exercised in accordance with Regulation (EU) No 1095/2010.

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2. By way of derogation from paragraph 1, national surveillance authorities as defined in Article 2(1), point (18a), shall be responsible for monitoring compliance with Articles 2g(5), fourth subparagraph, Article 2k(1) and (2), Article 2u(7), Article 2v(1) and (2), Article 25(2), Article 26(5), Article 26(7), first and last subparagraph, and Article 34b by entities subject to ESMA supervision.

National surveillance authorities shall be able to exercise the powers conferred on national competent authorities under Title VI of Directive 2014/65/EU, including the power to adopt sanctions and other administrative measures in case of infringements of the provisions referred to in the previous subparagraph.';

(31) the following Article 38fb is inserted:

'*Article 38fb*

Methodology, transitional plans and list of significant trading venues

1. For the purposes of Article 38fa(1), a trading venue shall be considered important for the economy of the Union where the ratio between the trading volume on that trading venue or, where the trading venue is part of a group, the aggregated trading volume at group level, and the total trading volume on trading venues in the Union is equal to or greater than 5 % for any of the following classes of financial instruments:

(a) shares;

(b) ETFs;

(c) bonds;

(d) derivatives relating to any of the following:

  (i) equity;

  (ii) credit;

  (iii) interest rate;

  (iv) currency; or

  (v) commodities.

2. For the purposes of Article 38fa(1), a trading venue shall be considered to have a significant cross-border dimension when it meets at least one of the following conditions:

(a) the trading venue is part of a group that includes at least one of the following undertakings that is authorised to operate in a Member State other than the Member State where that trading venue is situated or operated:

  (i) another trading venue;

  (ii) a CSD; or

  (iii) a CCP;

(b) for the classes of financial instruments referred to in paragraph 1, points (a), (b) and (c), the ratio between the trading volume on the trading venue in those financial instruments for which the competent authority of the most relevant market referred to in Article 26 is different from the competent authority of the trading venue, and the total trading volume in all financial instruments belonging to the same class on that trading venue is equal to or greater than 50 %;

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(c) for the classes of financial instruments referred to in paragraph 1, point (d), the ratio between the number of transactions on that trading venue in those financial instruments for which at least one of the counterparties to the transaction is located in a Member State that is different from the one where the trading venue is situated or operated and the total number of transactions in all financial instruments belonging to the same class on that trading venue is equal to or greater than 50%.

3. Without prejudice to Article 38fa(1), and paragraphs 1 and 2 of this Article, a trading venue shall be considered significant where the ratio between the trading volume in any class of financial instruments, as referred to in paragraph 1 of this Article, on that trading venue or, where the trading venue is part of a group, at group level, and the total trading volume in the Union in that class of financial instruments is equal to or greater than 50 %.

4. ESMA shall identify the trading venues that are considered significant pursuant to the methodology set out in paragraphs 1, 2 and 3. ESMA shall analyse market developments every twelve months starting from [OP*: please insert date = date 24 months after the entry into force of this Regulation*] to determine whether trading venues operating in the Union meet the conditions set out in paragraphs 1 and 2, or the condition set out in paragraph 3.

If ESMA concludes that a trading venue meets the conditions set out in paragraphs 1 and 2, or the condition set out in paragraph 3, it shall, without undue delay, notify the trading venue and its competent authority thereof. ESMA and the competent authority of a trading venue that is considered significant shall establish a supervisory transition plan to ensure a smooth and orderly transfer of competences and duties to ESMA. The effective date of the transfer of competences shall be no later than one year following the date of the notification by ESMA referred to in this paragraph, and in any event not earlier than [OP: *please insert date = 2 years after entry into force of this Regulation*].

5. ESMA shall verify whether the trading venues under its supervision continue to meet the conditions set out in paragraphs 1 and 2, or the condition set out in paragraph 3, every 12 months starting in the year following the first full calendar year after the date on which ESMA became the competent authority for significant trading venues.

If ESMA concludes that a significant trading venue no longer meets the conditions set out in paragraphs 1 and 2 or the condition set out in paragraph 3 over a period of three consecutive years, it shall, without undue delay, notify the trading venue and its national surveillance authority of that situation.

6. The national surveillance authority shall, within three months of receipt of the notification referred to in the second subparagraph of paragraph 5, notify ESMA and the trading venue of whether the trading venue shall remain under ESMA supervision or become exclusively subject to national supervision.

Where the national surveillance authority concludes that the trading venue shall be subject to national supervision, it shall, jointly with ESMA prepare a supervisory transition plan before taking over ESMA's supervisory competences and duties. The supervisory transition plan shall include all transitional arrangements necessary for the smooth and orderly transfer of competences and duties between ESMA and

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national surveillance authorities as well as an effective date, by which the transfer of such competences and duties shall apply.

The national surveillance authority shall become the competent authority of the trading venue on the effective date of the transfer of competences and duties to that national surveillance authority. For the transfer of supervision to be effective, ESMA and the national surveillance authority shall formally agree that the conditions for a smooth and orderly transfer of competences have been met. The effective date of the transfer of competences shall be no later than one year following the date of the notification by the national surveillance authority referred to in the second subparagraph of paragraph 5.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 50 to supplement this Regulation by:

(a) specifying the methodology to calculate the ratios as referred to in paragraphs 1 to 3, including the time periods to be used for such calculations, to determine whether an investment firm or market operator operates a significant trading venue;

(b) specifying and supplementing the classes of financial instruments referred to in paragraph 1;

(c) specifying the necessary procedural steps, including the contents of the supervisory transition plans referred to in the second subparagraphs of paragraphs 5 and 6, to ensure a smooth and orderly transfer of competences and duties.

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 50 to amend any of the thresholds referred to in paragraph 1, paragraph 2, point (b), and paragraph 3 in light of market developments.

9. ESMA shall establish a list of all significant trading venues and their operators that shall be subject to its supervision pursuant to Article 38fa(1) and publish it on its website.

ESMA shall regularly, update the list published on its website as referred to in the first subparagraph.';

(32) the following Articles 38fc and 38fd are inserted:

'*Article 38fc*

General investigations and supervisory powers

1. In order to carry out its duties under this Regulation, ESMA may conduct, in accordance with the procedure set out in Article 39c of Regulation (EU) No 1095/2010, necessary investigations of the following persons:

(a) an APA, a CTP, an ARM, and an investment firm or a market operator operating a trading venue and also providing the services of an APA, a CTP or an ARM, where they are supervised by ESMA, and the persons that control them or are controlled by them;

(b) an investment firm, a market operator, a PEMO, where they are supervised by ESMA, and the persons that control them or are controlled by them;

(c) the managers of the persons referred to in points (a) and (b);

(d) the auditors and advisors of the persons referred to in points (a) and (b).

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To that end, ESMA shall be able to exercise the powers referred to in Article 39c of Regulation (EU) No 1095/2010.

2. In addition to the powers referred to in Article 39c and Article 39h(4) of Regulation (EU) No 1095/2010, and for the purpose of carrying out its duties under this Regulation as regards investment firms, market operators and PEMOs, ESMA shall be empowered to:

(a) adopt any type of measure to ensure that investment firms, market operators, PEMOs and other persons to whom this Regulation or Directive 2014/65/EU applies continue to comply with requirements under that Regulation and Directive;

(b) suspend the exercise of the voting rights attached to the shares held by persons exercising significant influence over the management of regulated markets, market operators and PEMOs that do not comply with the provisions of this Regulation;

(c) seek a judicial order for the nullity of the votes cast or for their annulment in case of acquisition of a change to the controlling interests of a regulated markets and/or a market operators or a PEMO in violation of Article 2e;

(d) require investment firms, market operators and PEMOs to amend the rules of a regulated market, MTF or OTF.

Article 38fd
Central database

1. ESMA shall establish and maintain a central database, in accordance with Article 35c of Regulation (EU) No 1095/2010, to ensure that the following entities and authorities can submit their documents and access their documents and documents addressed to them, as registered within that database:

(a) PEMOs;

(b) market operators that operate at least one significant trading venue or that are part of the same group of a CSD or CCP for which ESMA is the competent authority pursuant to Regulation (EU) No 909/2014 or Regulation (EU) No 648/2012;

(c) investment firms that operate at least one significant trading venue or that are part of the same group of a CSD or CCP for which ESMA is the competent authority pursuant to Regulation (EU) No 909/2014 or Regulation (EU) No 648/2012 with respect to the operation of MTFs or OTFs;

(d) other trading venues that belong to the same group as market operators and investment firms referred to in points (b) and (c);

(e) relevant national surveillance authorities of the entities referred to in points (a) to (d);

(f) ESMA;

(g) relevant national competent authority referred to in Article 2q to Article 2t of this Regulation;

(h) any other recipients, as specified under this Regulation.

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2. ESMA shall ensure that the central database performs the functions set out in this Article. ESMA shall announce the establishment of the central database on its website.

3. The entities and authorities referred to in paragraph 1 shall submit the following information via the central database:

(a) any information related to authorisations of the entities referred to in paragraph 1, points (a) to (d), where those authorisations are issued pursuant to this Regulation;

(b) any information or questions formally submitted to or any information formally requested from any of the entities and authorities referred to in paragraph 1, pursuant to matters covered by this Regulation and where submitted or requested after the date of the application of this Regulation;

(c) information on the existing authorisations of entities referred to paragraph 1, points (b) to (d), where issued prior to the date of the application of this Regulation.

Where information is submitted to authorities referred to in paragraph 1, points (e) to (g), an acknowledgement of receipt shall be sent via the central database within two working days of receipt of the information.

4. Where any of the authorities referred to in paragraph 1, points (e) to (g), is required to notify each other of the information referred to in paragraph 3, that requirement for notification shall be considered complied with where the relevant documents or information subject to that notification is submitted to the database, provided the recipient of that notification has access to those documents and information via the database.

5. The central database shall be designed to automatically inform the entities and authorities referred to in paragraph 1 when changes have been made to its content, including the uploading, deletion or replacement of documents, submission of questions and requests for information.';

(33) Article 38g is amended as follows:

(a) the title is replaced by the following:

'*Article 38g*
Sanctions for infringements';

(b) paragraph 1 is replaced by the following:

'1. Where ESMA finds that a person listed in Article 38fc(1), point (a), has not complied with any of the requirements laid down in Articles 20 to 22c, or 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 Article 38g of this Regulation or periodic penalty payments pursuant to Article 39g of Regulation (EU) No 1095/2010;

(c) issue public notices.';

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

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‘1a. ESMA shall take one or more of the actions referred to in paragraph 1b, where it finds that a person listed in Article 38fc(1), point (b), has not complied with one or more of the requirements laid down in:

(a) Article 2a(1), (3) and (4);

(b) Article 2d(1) to (6) and (8);

(c) Article 2e(1) and (2);

(d) Article 2f(1), (1a) and (2);

(e) Article 2g(1) to (4), Article 2g(5), first, second and third subparagraphs, Article 2g(6) to (8), Article 2g(9), the first subparagraph, and Article 2g(10), first subparagraph, the first sentence and second sentence , and the second subparagraph ;

(f) Article 2h(1);

(g) Article 2i(1), first and second subparagraphs, Article 2i(2) to (4), and Article 2i(5), the second sentence;

(h) Article 2j(1) and (4);

(i) Article 2l(1), (2), (3), (3a), (5) and (6);

(j) Article 2m;

(k) Article 2n(1), Article 2n(2), first subparagraph, and Article 2n(3), first subparagraph;

(l) Article 2o(2), first subparagraph, the first sentence, and Article 2o(3), the first sentence;

(m) Article 2q(5);

(n) Article 2r(1);

(o) Article 2s(1);

(p) Article 2u(1) to (5) and (8);

(q) Article 2w;

(r) Article 2x(1) to (3), Article 2x(3a), first and second subparagraphs, and Article 2x(5);

(s) Article 2y(3),(3a) and (7);

(t) Article 2z(1) to (4), Article 2z(6), first and second subparagraphs, and Article 2z(7), the first and second sentences;

(u) Article 2za(3) and (4);

(v) Article 2zd(1) and (2);

(w) Article 3(1) and (3);

(x) Article 4(3), first subparagraph;

(y) Article 5;

(z) Article 6;

(za) Article 7(1), third subparagraph, the first sentence;

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(zb) Article 8(1);

(zc) Article 8a(1) and (2);

(zd) Article 8b;

(ze) Article 10;

(zf) Article 11(1), second subparagraph, the first sentence, Article 11(1a), second subparagraph, Article 11(1b) and Article 11(3), fourth subparagraph;

(zg) Article 11a(1), second subparagraph, the first sentence, and Article 11a(1), fourth subparagraph;

(zh) Article 12(1);

(zi) Article 13(1) and (2);

(zj) Article 22(2);

(zk) Article 22a(1) and (5) to (8);

(zl) Article 22b(1);

(zm) Article 22c(1);

(zn) Article 26(7), fifth subparagraph;

(zo) Article 27(1), first, second and fourth subparagraphs;

(zp) Article 29(1) and (2);

(zq) Article 30(1);

(zr) Article 31(3);

(zs) Article 34c;

(zt) Article 35(1), (2) and (3);

(zu) Article 36(1), (2) and (3);

(zv) Article 37(3);

(zw) Articles 40, 41 and 42.

1b. In cases of infringements of one or more of the requirements referred to in paragraph 1a, ESMA shall take one or more of the following actions:

(a) a public statement, which indicates the natural or legal person and the nature of the infringement;

(b) an order requiring the natural or legal person to cease the conduct and to desist from a repetition of that conduct;

(c) in the case of an investment firm, a market operator or a PEMO under ESMA supervision, withdrawal or suspension of the authorisation, or part of that authorisation, in accordance with Article 8 of Directive 2014/65/EU, Article 2c, 2q(3) or 2zc of this Regulation;

(d) for investment firms that are not exclusively supervised by ESMA, a request, addressed to the competent authority of the home Member State of the investment firm, to impose a temporary or, for repeated serious infringements, a permanent ban against any member of the management

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body of that investment firm or any other natural person, who is held responsible, to exercise management functions in investment firms, market operators and PEMOs;

(e) a temporary or, for repeated serious infringements, a permanent ban against any member of the management body of an investment firm that is exclusively supervised by ESMA, a market operator or a PEMO or any other natural person who is held responsible, to exercise management functions in investment firms, market operators and PEMOs;

(f) a decision imposing fines pursuant to Article 38g of this Regulation or periodic penalty payments pursuant to Article 39g of Regulation (EU) No 1095/2010.';

(d) paragraph 2 is replaced by the following:

'2. When taking the actions referred to in paragraphs 1 and 1b, ESMA shall take into account the nature and seriousness of the infringement, having regard to the criteria set out in Article 39h(3) of Regulation (EU) No 1095/2010 and shall act in accordance with the procedure referred to in paragraph 4 of that Article.';

(e) paragraph 3 is deleted;

(34) Article 38h is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. ESMA shall adopt a decision imposing a fine in accordance with paragraph 2 or paragraph 3 of this Article, where, in accordance with Article 39f(1) of Regulation (EU) No 1095/2010, it finds that:

(a) a person referred to in Article 38fc(1), point (a), has intentionally or negligently not complied with any of the requirements laid down in Article 22 to 22c, or in Title IVa; or

(b) a person referred to in Article 38fc(1), point (b), has intentionally or negligently not complied with any of the requirements referred to in Article 38g(1a).';

(b) paragraph 2 is replaced by the following:

'2. The maximum amount of the fine referred to in paragraph 1, point (a), shall be EUR 200 000 or, in the Member States whose currency is not the euro, the corresponding value in the national currency.';

(c) the following paragraph 2a is inserted:

'2a. The maximum amount of the fine referred to in paragraph 1, point (b), shall be:

(a) in the case of a legal person, up to EUR 5 000 000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on [OP insert date = *date of entry into force of this Regulation*], or up to 10 % of the total annual turnover of the legal person according to the last available accounts approved by the management body; where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU, the relevant total

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annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant accounting legislative acts according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking;

(b) in the case of a natural person, up to EUR 5 000 000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on [OP insert date = *date of entry into force of this Regulation*];

(c) at least twice the amount of the benefit derived from the infringement where that benefit can be determined, even if that exceeds the maximum amounts in points (a) and (b).';

(d) paragraph 3 is replaced by the following:

'3. When determining the level of a fine pursuant to paragraph 1, ESMA shall take into account the criteria set out in Article 38h(3) of Regulation (EU) No 1095/2010.';

(35) Articles 38i to 38m are deleted;

(36) Article 38n is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. ESMA shall charge fees to the data reporting services providers, investment firms, market operators and PEMOs under ESMA supervision in accordance with Article 39n of Regulation (EU) No 1095/2010 and in accordance with the delegated acts adopted pursuant to paragraphs 2 and 4 of this Article.';

(b) paragraph 2 is deleted;

(c) paragraph 3 is replaced by the following:

'3. For data reporting services providers, the Commission shall be empowered to adopt a delegated act in accordance with Article 50 supplementing this Regulation 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.';

(d) the following paragraphs 4 and 5 are added:

'4. For investment firms, market operators and PEMOs under ESMA supervision, the Commission shall be empowered to adopt a delegated act in accordance with Article 50 supplementing this Regulation 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.

5. With respect to investment firms, market operators and PEMOs under ESMA supervision, where fees or charges are levied by the national surveillance authorities for carrying out their duties provided for by this Regulation, notably in relation to market surveillance, such fees or charges shall be consistent with the overall cost relating to the performance of the functions of that authority.';

(37) Article 38o is deleted;

(38) Article 50 is amended as follows:

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

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‘2. The power to adopt delegated acts referred to in Article 1(9), Article 2(2) and (3), Article 2zg(1) and (2), Article 5(10), Article 8a(4), Article 17(3), Article 27(4) and (5), Article 31(4), Article 34b(4), Article 36(6), Article 38fb(7) and (8), Article 38n(3) and (4), Article 40(8), Article 41(8), Article 42(7), Article 45(10) and Article 52(10), (14b) and (15), shall be conferred on the Commission for an indeterminate period from 2 July 2014.

3. The delegation of power referred to in Article 1(9), Article 2(2) and (3), Article 2zg(1) and 2, Article 5(10), Article 8a(4), Article 17(3), Article 27(4) and (5), Article 31(4), Article 34b(4), Article 36(6), Article 38fb(7) and (8), Article 38n(3) and (4), Article 40(8), Article 41(8), Article 42(7), Article 45(10) and Article 52(10), (14b) and (15), 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.’;

(b) paragraph 5 is replaced by the following:

‘5. A delegated act adopted pursuant to Article 1(9), Article 2(2) or (3), Article 2zg(1) and (2), Article 5(10), Article 8a(4), Article 17(3), Article 27(4) or (5), Article 31(4), Article 34b(4), Article 36(6), Article 38fb(7) and (8), Article 38n(3) and (4), Article 40(8), Article 41(8), Article 42(7), Article 45(10) or Article 52(10), (14b) or (15), shall enter into force only if no objection has been expressed either by the European Parliament or by 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 of the Council.’;

(39) Article 52 is amended as follows:

(a) paragraph 14 is replaced by the following:

‘14. By 30 June 2028, ESMA, in close cooperation with the expert stakeholder group established pursuant to Article 22b(2), shall assess the market demand for the consolidated tape for shares and ETFs, the impact of that consolidated tape on the functioning, attractiveness and international competitiveness of Union markets and firms, and whether the consolidated tape has delivered on its aim to decrease information asymmetries between market participants and to make the Union a more attractive location to invest. ESMA shall report to the Commission on the appropriateness of adding additional features to the consolidated tape. On the basis of that report, the Commission shall submit, where appropriate, a legislative proposal to the European Parliament and the Council.’;

(b) in paragraph 14b, the first sentence is replaced by the following:

‘By 29 March 2029, the Commission shall, in close cooperation with ESMA, assess the possibility of extending the requirements of Article 26 of this Regulation to AIFMs as defined in Article 4(1), point (b), of Directive 2011/61/EU, and management companies, as defined in Article 2(1),

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point (b), of Directive 2009/65/EC, which provide investment services and activities and which execute transactions in financial instruments.';

(c) the following paragraph 16 is added:

'16. By [OP please insert date = 5 years after entry into force of this Regulation], ESMA shall submit a report to the Commission assessing the state of cross-border access to trading venues by market participants in the Union, as well as the costs incurred by market participants and end-clients relating to cross-border trading in the Union. In particular, the report should assess the extent to which PEMOs have implemented solutions to effectively pool liquidity across the trading venues they operate.';

(40) in Article 54, the following paragraphs 1a and 1b are inserted:

'1a. References to the provisions laid down in Directive 2014/65/EU that are repealed pursuant to Directive [OP: please insert reference to the Master Amending Directive proposal] shall be construed as references to this Regulation and shall be read in accordance with the correlation table in the Annex to this Regulation.

1b. A regulated market or a market operator already authorised in the Member State in which it is registered or, if under the law of that Member State it has not registered office, the Member State in which its head office is situated, pursuant to Directive 2014/65/EU as applicable, before the [OP please insert date = date of entry into force of this Regulation], shall be deemed to be so authorised for the purposes of this Regulation.

A market operator already authorised in the Member State in which it is registered or, if under the law of that Member State it has not registered office, the Member State in which its head office is situated, pursuant to Directive 2014/65/EU as applicable, before the [OP please insert date = *date of entry into force of this Regulation*] to operate an MTF or OTF, shall be deemed to be so authorised for the purposes of this Regulation.';

(41) Article 54a is amended as follows:

(a) the following paragraph 1a is inserted:

'1a. Where ESMA concludes that a trading venue meets the conditions set out in Article 38fb(1) and (2), or the condition set out in Article 38fb(3), before [OP please insert date = *2 years after entry into force of the amending Regulation*], all competences and duties related to the supervisory and enforcement activity regarding that trading venue shall be transferred to ESMA on [OP please insert date = *2 years after entry into force of the amending Regulation*].

Where, as a result of the analysis of market developments referred to in Article 38fb(4), ESMA concludes that a trading venue meets the conditions set out in Article 38fb(1) and (2), or the condition set out in Article 38fb(3), all competences and duties related to the supervisory and enforcement activity regarding that trading venue shall be transferred to ESMA on the date agreed between ESMA and the competent authority of that trading venue and, in any event, no later than one year following the date of the notification by ESMA referred to in Article 38fb(4), second subparagraph.';

(b) the following paragraph 2a is inserted:

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‘2a. The competent authorities shall ensure that ESMA receives any files and working documents related to the ongoing supervisory and enforcement activity regarding trading venues referred to in Article 38fa, including any ongoing examinations and enforcement actions, or certified copies thereof, by the date referred to in paragraph 1a.

ESMA may request the competent authorities to provide any additional existing documents related to past supervisory and enforcement activities regarding trading venues referred to in Article 38fa. The competent authorities shall provide those documents to ESMA without undue delay.’;

(c) the following paragraph 3a is inserted:

‘3a. The competent authorities shall render all necessary assistance and advice to ESMA to facilitate effective and efficient transfer to and taking up of supervisory and enforcement activity regarding trading venues referred to in Article 38fa by ESMA.’;

(d) paragraph 4 is replaced by the following:

‘4. If the supervisory competence is transferred to ESMA, the authority whose competence ends shall undertake efforts to complete any pending supervisory procedure which requires a decision prior to the date on which the change in the supervisory competence is to occur. Where, despite all the best efforts by the competent authorities, it was not possible to complete any pending supervisory procedure prior to the date of the effective transfer of competences and duties to ESMA, ESMA shall act as the legal successor to the competent authorities referred to in paragraphs 1 and 1a 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.’;

(e) the following paragraph 5a is inserted:

‘5a. Any authorisation of an investment firm or a market operator operating a trading venue or any authorisation of a regulated market by a competent authority as defined in Article 2(1), paragraph (18), point (a) shall remain valid after the transfer of competences to ESMA.’;

(42) the following Article 54ab is inserted:

‘*Article 54ab*

Transitional provisions on delegated and implementing regulations

The delegated acts and the regulatory technical standards adopted pursuant to Articles 31(4), 32(2), 32(4), 33(8), 48(12), 49(3), 49(4), 51(6), 51a(7), 52(2), 52(4), 54(4), 57(8) and 58(6) of Directive 2014/65/EU in its version in force on [OP*: please insert the date of the day preceding the date of entry into application of Master Directive*] shall continue to apply mutatis mutandis with regard to Articles 2h, 2i, 2j, 2k, 2n, 2u, 2v, 2y, 34a and 34b of this Regulation.

The Commission may, in accordance with Article 50, amend the delegated acts referred to in the first subparagraph pursuant to Articles 2zg(2) and 34b(4).

The implementing technical standards adopted under Articles 18(11), 32(3), 52(3), 58(5) and 58(7) of Directive 2014/65/EU in its version in force on [OP*: please insert the date of the day preceding the date of entry into application of Master Directive*]

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shall continue to apply mutatis mutandis with regard to Articles 2k, 2u, 2v and 34b of this Regulation.

Where the Commission considers that amendments to the regulatory technical standards or to the implementing technical standards referred to in the first and in the third subparagraph are required, it shall follow the procedures set out in Article 10(4a) or 15(4a) of Regulation (EU) No 1095/2010. Those amendments shall be adopted pursuant to Articles 2zg(3), second subparagraph, 2zg(4), second subparagraph, 34a(1), third subparagraph, 34b(3), second subparagraph and 34b(5), second subparagraph.';

(43) in Article 54b, paragraph 1 is replaced by the following:

'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 provider or in a trading venue operated by a person referred to in Article 38fa(1) the task described in Article 34 of Directive 2013/34/EU of the European Parliament and of the Council* 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 data reporting services provider or that trading venue 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 or of the trading venue operated by a person referred to in Article 38fa(1);

(b) affect the continuous functioning of the data reporting services provider or the trading venue operated by a person referred to in Article 38fa(1);

(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 or the trading venues operated by a person referred to in Article 38fa(1) within which he or she is carrying out that task.

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* 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. ELI: http://data.europa.eu/eli/dir/2006/43/oj).

* 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, pp. 19. ELI: http://data.europa.eu/eli/dir/2013/34/oj).';

(44) Annex I to this Regulation is added as an Annex to Regulation (EU) No 600/2014.

Article 4

Amendments to Regulation (EU) No 909/2014

Regulation (EU) No 909/2014 is amended as follows:

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(1) in Article 1, paragraph 4 is replaced by the following:

‘4. Articles 10 to 20, 22 to 24a and 27, Article 28(6), Article 30(4) and Articles 46 and 47, Article 48(2), (2a) and (2b), and Article 48b, the provisions of Title IV and the requirements to report to competent authorities or relevant authorities or to comply with their orders under this Regulation, do not apply to the members of the ESCB, other Member States’ national bodies performing similar functions, or to other public bodies charged with or intervening in the management of public debt in the Union in relation to any CSD which the aforementioned bodies directly manage under the responsibility of the same management body, which has access to the funds of those bodies and which is not a separate entity.’;

(2) in Article 2, paragraph 1 is amended as follows:

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

‘(1a) ‘significant CSD’ means a CSD authorised under Article 16 that qualifies as significant pursuant to Article 11;

‘(1b) ‘less significant CSD’ means a CSD authorised under Article 16 that is not a significant CSD;’;

(b) point (3) is replaced by the following:

‘(3) ‘immobilisation’ means the act of concentrating the location of physical and non-physical securities in a CSD in a way that enables subsequent transfers of such securities to be made by book entry;’;

(c) the following points (4a) and (4b) are inserted:

‘(4a) ‘book entry’ means an electronic record, evidencing any credit or debit or other changes made to such electronic record, where the electronic record and any changes to such electronic record may be undertaken by using distributed ledger technology;

(4b) ‘distributed ledger technology’ or ‘DLT’ means distributed ledger technology as defined in Article 2, point (1), of Regulation (EU) 2022/858;’;

(d) the following points (8a), (8b), (8c) and (8d) are inserted:

‘(8a) ‘central bank money’ means a liability of a central bank that is in the form of deposits held at the central bank, including in tokenised form, and that can be used for settlement purposes;

(8b) ‘commercial bank money’ means a liability of a credit institution that is in the form of deposits held at the credit institution, including in tokenised form, and that can be used for settlement purposes;

(8c) ‘cash’ means any currency, including where issued or recorded on a distributed ledger;

(8d) ‘e-money token’ means e-money token as defined in Article 3(1), point (7), of Regulation (EU) 2023/1114;’;

(e) point (9) is replaced by the following:

‘(9) ‘transfer order’ means transfer order as defined in Article 2, point (20), of [Regulation (EU) …/… on settlement finality];’;

(f) the following points (9a) and (9b) are inserted:

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‘(9a) ‘transfer of cash’ or ‘cash payment’ means a payment transaction in cash or in e-money tokens;

(9b) ‘cash leg’ means in the context of delivery versus payment as defined in point (27), the corresponding transfer of cash;’;

(g) point (10) is replaced by the following:

‘(10) ‘securities settlement system’ means a securities settlement system as defined in Article 2, point (5), of [Regulation (EU) …/… on settlement finality] that is designated in accordance with Article 3 of that Regulation and that is not operated by a central counterparty;’;

(h) point (14) is replaced by the following:

‘(14) ‘business day’ means business day as defined in Article 2, point (28), of [Regulation (EU) …/… on settlement finality];’;

(i) point (15) is replaced by the following:

‘(15) ‘settlement fail’ means the non-occurrence of settlement, or partial settlement of a securities transaction on the intended settlement date, due to a lack of securities or of payment and regardless of the underlying cause;’;

(j) point (17) is replaced by the following:

‘(17) ‘competent authority’ means, unless otherwise specified in this Regulation, the national competent authority and ESMA, as designated pursuant to Articles 10 and 11;’;

(k) the following point (17a) is inserted:

‘(17a) ‘national competent authority’ means the national authority of the Member State in which a CSD is established designated pursuant to Article 10(1);’;

(l) point (19) is replaced by the following:

‘(19) ‘participant’ means participant as defined in Article 2, point (15), of [Regulation (EU) …/… on settlement finality];’;

(m) point (20) is replaced by the following:

‘(20) ‘participating interest’ means participation within the meaning of the first sentence of point (2) of Article 2 of Directive 2013/34/EU, or the ownership, direct or indirect, of 20 % or more of the voting rights or capital of an undertaking;’;

(n) point (26) is replaced by the following:

‘(26) ‘default’ means, in relation to a participant, a situation where insolvency proceedings, as defined in Article 2, point (23), of [Regulation (EU) …/… on settlement finality], are opened against a participant or an event defined in the CSD’s internal rules as constituting a default;’;

(o) point (28) is replaced by the following:

‘(28) ‘securities account’ means an account or record, including centralised and decentralised electronic records, on which securities may be credited, debited, or otherwise recorded to register a change in the record of such securities;’;

(p) point (29) is replaced by the following:

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‘(29) ‘CSD link’ means an arrangement between CSDs whereby one CSD becomes a participant in the securities settlement system of another CSD in order to facilitate the transfer of securities from the participants of the latter CSD to the participants of the former CSD or an arrangement whereby a CSD accesses another CSD indirectly via an intermediary. CSD links include standard links, customised links, indirect links, relayed links and interoperable links;’;

(q) the following point (32a) is inserted:

‘(32a) ‘relayed link’ means an indirect link where the third party is a CSD;’;

(r) the following point (33a) is inserted:

‘(33a) ‘bilateral link’ means an arrangement between two CSDs that is composed of two links that are both standard and interoperable, where each involved CSD is the receiving CSD in one of the links and the requesting CSD in the other link;’;

(s) point (43) is replaced by the following:

‘(43) ‘settlement agent’ means settlement agent as defined in Article 2, point (13), of [Regulation (EU) …/… on settlement finality];’;

(t) the following points (51), (52), (53) and (54) are added:

‘(51) ‘real-time gross settlement’ means a settlement mechanism whereby cash, e-money tokens or securities transfer orders in relation to securities transactions of the participants in the securities settlement system are executed on a transaction-by-transaction basis, and whereby settlement of participants’ claims and obligations takes place without deferral and on a gross basis;

(52) ‘settlement mismatch message’ means, in the context of the settlement of a securities transaction, a message sent by a CSD to the owner of an account at that CSD informing such account owner of a mismatch with their counterpart with respect to the data submitted in their respective settlement instructions;

(53) ‘central database’ means the central database established by ESMA pursuant to Article 21a;

(54) ‘omnibus client segregation’ means an arrangement where a CSD keeps records and accounts that enable any participant to that CSD to hold in one securities account the securities that belong to different clients of that participant.’;

(3) in Article 3, paragraph 1 is replaced by the following:

‘1. Without prejudice to paragraph 2, any issuer established in the Union that issues or has issued transferable securities which are admitted to trading or traded on trading venues, shall arrange for such securities to be recorded in book-entry form by means of an immobilisation or a direct initial recording in dematerialised form.’;

(4) Article 6 is amended as follows:

(a) in paragraph 2, the following subparagraph is inserted after the second subparagraph:

‘Investment firms and their professional clients shall use international open communication procedures and standards for the communication of the allocations and confirmations referred to in the previous sub-paragraph.’;

(b) in paragraph 2, the third subparagraph is deleted;

(c) in paragraph 4, the second sentence is replaced by the following:

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‘CSDs and participants shall put in place measures to ensure that the processing of settlement instructions is fully automated. CSDs shall require participants to settle their transactions on the intended settlement date and to put in place measures ensuring that requirement.’;

(d) in paragraph 5, the first and second subparagraphs are replaced by the following:

‘5. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify all of the following:

(a) the measures to prevent settlement fails in order to increase settlement efficiency and in particular:

(i) the measures to be taken by investment firms and their professional clients in accordance with paragraph 2;

(ii) the details of the procedures that facilitate settlement referred to in paragraph 3, which could include the shaping of transaction sizes, partial settlement of failing trades and the use of auto-lend/borrow programmes provided by certain CSDs. These procedures shall necessarily include settlement mismatch messaging and power of attorney requirements to participants for matched instructions; and

(iii) the details of the measures to encourage and incentivise the timely settlement of the transactions referred to in paragraph 4;

(b) the standardised procedures and messaging protocols to be implemented by investment firms and their professional clients in accordance with paragraph 2, which shall allow the automated processing of allocations and confirmations, and the international procedures and standards for messaging and reference data, referred to in Article 35, to be implemented by issuers, CSDs, and other market infrastructures in order to comply with the requirement set out in Article 35.

When developing the details of the measures referred to in the first subparagraph, ESMA shall take into account the technology used by CSDs, such as DLT. When developing the details of the measures and procedures referred to in point (a)(iii) of the first subparagraph, ESMA shall consider any aspects relevant for cross-border transactions.

ESMA shall submit those draft regulatory technical standards to the Commission by [OP insert date = 1 year after the entry into force of this amending Regulation].’;

(5) in Article 7(2), third subparagraph, the third sentence is replaced by the following:

‘The cash penalties shall not be configured as a revenue source for the CSD or its participants. Cash penalties shall be paid in cash or in e-money tokens.’;

(6) in Article 7a(15), the second subparagraph is replaced by the following:

‘ESMA shall submit those draft regulatory technical standards to the Commission by 30 October 2027.’;

(7) Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Settlement internalisers shall report to the competent authorities of their place of establishment on a quarterly basis the aggregated volume and value, broken down by type of financial instrument and type of transaction, of all securities transactions that

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they settle outside securities settlement systems, and the corresponding settlement fail rates. Competent authorities shall transmit, without undue delay, the information received under the first sentence to ESMA via the central database and ESMA shall publicly disclose the information on the settlement fail rates of internalised settlement. Competent authorities shall also inform ESMA of any potential risk resulting from that settlement activity.';

(b) in paragraph 3, the second subparagraph is replaced by the following:

'ESMA shall submit those draft implementing technical standards to the Commission by [OP insert date = 18 months after the entry into force of this amending Regulation].';

(8) Article 10 is replaced by the following:

'Article 10

Competent authorities designated by the Member States

1. Each Member State shall designate one or more national competent authorities, to carry out the tasks and duties laid down in this Regulation for the authorisation and supervision of less significant CSDs established or to be established in its territory and the support and assistance functions referred to in Article 14(3). Each Member State shall inform the Commission and ESMA thereof.

   Where a Member State designates more than one national competent authority in accordance with the first subparagraph, it shall determine their respective roles and shall designate a single authority to be responsible for coordinating cooperation and the exchange of information with the Commission, other Member States' competent authorities, the relevant authorities, ESMA, and EBA, where specifically referred to in this Regulation.

2. Without prejudice to Article 11(1), a Member State may designate ESMA as the competent authority for one or more less significant CSDs established in its territory. Where it exercises this option, the Member State shall notify the Commission, ESMA and the national competent authority thereof via the central database.

3. Each Member State shall ensure that the national competent authority has the supervisory and investigatory powers necessary for the exercise of its functions under this Regulation.

4. ESMA shall publish on its website a list of the competent authorities of each CSD designated in accordance with this Article or identified in accordance with Article 11(1).

5. The provisions of this Article are without prejudice to the oversight by the members of the ESCB referred to in Article 12(1).';

(9) Article 11 is replaced by the following:

'Article 11

Competent authority for significant CSDs

1. ESMA shall be the competent authority for significant CSDs and carry out the supervisory tasks and duties laid down in this Regulation for their authorisation and supervision.

2. A CSD shall be considered significant where it fulfils at least one of the following conditions:

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(a) it meets the criteria laid down in Article 11a(1);

(b) it belongs to the same group as at least one of the following:

(i) a CSD that is established in the territory of another Member State;

(ii) a CSD, a CCP or a trading venue for which ESMA is the competent authority;

(c) it operates a securities settlement system governed by the law of a different Member State than the Member State where the legal person is established, where such system has been designated in accordance with Article 3 of [Regulation (EU) …/… on settlement finality];

(d) the Member State where the CSD is established has designated ESMA as the competent authority in accordance with Article 10(2), where this designation applies to that CSD.

ESMA shall determine whether a CSD meets the conditions for qualifying as significant in accordance with this Article.

3. ESMA shall assess, at least every 12 months, whether any authorised CSD fulfils at least one of the conditions set out in paragraph 2.

4. Where ESMA has determined that an authorised CSD meets at least one of the conditions laid down in paragraph 2 that CSD shall qualify as significant. Where the CSD is not yet supervised by ESMA, ESMA may set a potential adaptation period that shall not exceed 6 months, after which the CSD shall become supervised by ESMA.

ESMA shall notify the CSD concerned, its relevant authorities and its national competent authority of the outcome of the determination, and of any adaptation period, referred to in the second subparagraph within two working days of the date of that determination.

5. Before a legal person established in the Union applies for authorisation in accordance with Article 16, it shall request ESMA, via the central database, to determine whether it fulfils at least one of the conditions laid down in paragraph 2 of this Article.

ESMA may request further information from that legal person for that purpose. The legal person shall provide the requested information within the deadline set by ESMA. ESMA shall, within 20 working days from the receipt of all the relevant information, determine whether the legal person meets at least one of the conditions referred to in the first subparagraph.

Where ESMA has determined that the legal person meets at least one of the conditions laid down in paragraph 2 of this Article, that legal person shall qualify as significant and shall be supervised by ESMA, which shall be responsible for the authorisation of such legal person in accordance with Article 16.

Where ESMA has determined that the legal person does not meet any of the conditions laid down in paragraph 2 of this Article, that legal person shall qualify as less significant and it shall be supervised by the national competent authority, as referred to in Article 10(1), of the Member State in which the legal person is established. That authority shall be responsible for the authorisation of such legal person in accordance with Article 16.

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ESMA shall inform, via the central database, the legal person, the national competent authority of the Member State in which the legal person is established and the relevant authorities of the outcome of its determination within two working days from the date of that determination.

6. Where ESMA determines that a CSD that was previously determined to be significant has not fulfilled any of the conditions laid down in paragraph 2 for the past 36 months, it shall determine that the CSD shall no longer qualify as a significant CSD. ESMA shall immediately notify the CSD concerned, its relevant authorities and its national competent authority of that determination. That determination shall take effect after an adaptation period to be determined by ESMA which shall not exceed 24 months.

7. ESMA shall, without undue delay, establish, and publish on its website the list of significant CSDs, and keep it updated.

8. ESMA shall charge fees to the significant CSDs for performing its supervisory tasks and duties laid down in this Regulation for the authorisation and supervision of significant CSDs and in accordance with the delegated act adopted pursuant to paragraph 10.

9. The provisions of this Article are without prejudice to the oversight by the members of the ESCB referred to in Article 12(1).

10. The Commission shall be empowered to adopt a delegated act in accordance with Article 67 in order to supplement this Regulation by specifying the fees referred to in paragraph 8 by setting out:

(a) the types of fees;

(b) the matters for which fees are due;

(c) the method of calculation of the amount of the fees; and

(d) the manner in which fees are to be paid.';

(10) the following Article 11a is inserted:

'Article 11a

Criteria for determining the significance of a CSD

1. The condition set out in Article 11(2), point (a), shall be fulfilled where the CSD meets both the following criteria:

   (a) it operates a settlement system that settles more than 5 % of the settlement instructions by value settled annually in the Union;

   (b) it is of substantial importance for the functioning of the securities markets and the protection of investors in at least three host Member States in accordance with the criteria set out in paragraph 2.

2. The criterion set out in paragraph 1, point (b), shall be fulfilled when the CSD meets at least one of the following criteria in the host Member States referred to in that point:

   (a) the aggregated market value or, where not available, the nominal value of financial instruments issued by issuers incorporated in the host Member State that are initially recorded or centrally maintained in securities accounts by the CSD represents at least 15 % of the total value of financial instruments issued

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by all issuers from the host Member State that are initially recorded or centrally maintained in securities accounts by all CSDs authorised in the Union;

(b) the aggregated market value or, where not available, the nominal value of financial instruments centrally maintained in securities accounts by the CSD for participants and other holders of securities accounts from the host Member State represents at least 15 % of the total value of financial instruments centrally maintained in securities accounts by all CSDs authorised in the Union for all participants and other holders of securities accounts from the host Member State;

(c) the annual value of settlement instructions related to transactions in financial instruments issued by issuers from the host Member State and settled by the CSD represents at least 15 % of the total annual value of all settlement instructions related to transactions in financial instruments issued by issuers from the host Member State and settled by all CSDs authorised in the Union;

(d) the annual value of settlement instructions settled by the CSD for participants and other holders of securities accounts from the host Member State represents at least 15 % of the total annual value of the settlement instructions settled by all CSDs authorised in the Union, for participants and other holders of securities accounts from the host Member State;

(e) the CSD operates a securities settlement system governed by the law of the host Member State designated in accordance with Article 3 of [Regulation (EU) …/… on settlement finality].

For the purposes of the calculation of the values referred to in the first subparagraph, points (b) and (d),

(a) in the case of individual client segregation, the country of incorporation (for legal persons) or the country of residence (for natural persons) of the holders of securities accounts, including participants' clients, shall be the relevant country;

(b) in the case of omnibus client segregation, the participants' country of incorporation shall be the relevant country, unless the information on the country of incorporation or the country of residence of the underlying clients is available to the CSD.

3. ESMA shall determine the value of a settlement instruction as follows:

(a) for a settlement instruction against payment, the value of a settlement instruction shall be the value of the corresponding transaction in financial instruments as entered into the securities settlement system;

(b) for a free-of-payment settlement instruction, the value of a settlement instruction shall be the aggregated market value, or where not available, the aggregated nominal value of the relevant financial instruments as determined in accordance with paragraph 4.

4. ESMA shall determine the market value of financial instruments, referred to in paragraphs 2 and 3, as follows:

(a) for shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments admitted to trading on a trading venue within the Union, the market value of the financial instrument concerned shall be the

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closing price of the most relevant market in terms of liquidity as referred to in Article 4(1), point (a), of Regulation (EU) No 600/2014 of the European Parliament and of the Council[32];

(b) for financial instruments admitted to trading on a trading venue within the Union other than those referred to in point (a), the market value shall be the closing price derived from the trading venue within the Union with the highest turnover;

(c) for financial instruments other than those referred to in points (a) and (b), the market value shall be determined on the basis of a reference price calculated according to a predetermined methodology approved by the competent authority that refers to criteria related to reliable market data, including market prices available across trading venues or investment firms.

5. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to further specify the details and the procedures for the calculation of the criteria referred to in this Article, including the data to be reported by CSDs to ESMA for the purposes of such calculation.

When developing those standards, ESMA shall ensure that the data to be reported is limited to what is strictly necessary for the calculation of the criteria referred to in this Article.

ESMA shall submit those draft regulatory technical standards to the Commission by [OP insert date = 1 year after the entry into force of this amending Regulation]

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.';

(11) the following Article 11b is inserted:

'Article 11b

Powers of ESMA over significant CSDs under this Regulation

1. ESMA shall be responsible for carrying out its duties under this Regulation for the authorisation and supervision of significant CSDs. For those purposes it shall take any decision or other measure in accordance with Article 46a of Regulation (EU) No 1095/2010.

2. ESMA shall ensure on an ongoing basis the compliance by significant CSDs with Article 5, Article 6, Article 7, Articles 16 to 20, Article 22, Article 22a, Article 23, Title III, Chapters 2 and 3, and Title IV.

3. ESMA shall be conferred with the powers necessary for the exercise of its functions over significant CSDs pursuant to this Regulation and pursuant to Regulation (EU) No 1095/2010.

ESMA shall use these powers over significant CSDs and, where specified under this Regulation, over related parties, including to:

[32] Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84, ELI: http://data.europa.eu/eli/reg/2014/600/oj).

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(a) supervise the significant CSDs' compliance with the requirements laid down in this Regulation;

(b) adopt decisions, conduct supervisory assessments and take measures in relation to Article 5, Article 6, Article 7, Articles 16 to 20, Article 22, Article 22a, Article 23, Chapters 2 and 3 of Title III, and Title IV;

(c) request via the central database, significant CSDs, and related third parties to whom those CSDs have outsourced services, operational functions or activities, to provide, within the time limit provided for in the request, all relevant information or data to enable ESMA to monitor those CSDs' provision of services and activities and to carry out ESMA's tasks and duties under this Regulation. The recipient of such a request shall provide ESMA, via the central database, with all the information requested by ESMA within the provided time limit. The information request may be of a periodic or one-off nature;

(d) require the auditors of significant CSDs to provide information or data;

(e) adopt a decision imposing fines, where a significant CSD has, intentionally or negligently, committed one of the infringements listed in the Annex. Such fines shall be up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined, or up to 10 % of the total annual turnover of a legal person in the preceding business year and can take into account aggravating or mitigation factors in accordance with the relevant coefficients set out in the Annex;

(f) adopt a decision requiring a significant CSD to bring an infringement listed in the Annex to an end;

4. In addition, for the purpose of carrying out its tasks regarding significant CSDs, ESMA shall have the powers to take the temporary measures set out in the second subparagraph in any of the following circumstances:

(a) ESMA has obtained evidence suggesting that the entity infringes, or is likely to infringe, the requirements governing its operations within the next three months;

(b) ESMA has evidence that the arrangements, strategies, processes and mechanisms implemented by the entity do not ensure a sound management and coverage of its risks.

For the purposes of the first subparagraph, ESMA shall have, in particular, the powers to take the following temporary measures:

(a) require that the entity's arrangements, processes, mechanisms and strategies are properly adjusted to ensure the sound management and coverage of its risks;

(b) require the significant CSD to convene a meeting of its shareholders or, if the significant CSD fails to comply with that requirement, convene the meeting itself. In both cases ESMA shall set the agenda, including the decisions to be considered for adoption by the shareholders;

(c) require entities to present a plan to restore compliance with supervisory requirements and set a deadline for its implementation, including improvements to the scope and deadline of that plan;

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(d) restrict or limit the business, operations or network of the entity, or request the divestment of activities that pose excessive risks to its soundness;

(e) require the CSD to mitigate the risk related to the infringement or likely infringement of the requirements under this Regulation and the inherent related risks in the activities, and systems of the entity;

(f) impose additional or more frequent reporting requirements;

(g) require additional disclosures;

(h) require the suspension of members from the management body of entities who do not fulfil the requirements governing their operations set out in this Regulation.

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

5. ESMA shall refuse or subsequently withdraw the appointment of the person or persons referred to in Article 27 if it is not satisfied that the person is of sufficiently good repute, or if there are objective and demonstrable grounds for believing that the appointment or proposed changes would pose a threat to the sound and prudent management of the entity, the adequate consideration of the clients' interest and integrity of the market.

6. ESMA shall consider, in cooperation with EBA and the ESCB, any cross-border risks arising from CSDs' activities, including due to CSDs' interconnectedness with trading venues and CCPs and risks due to such cross-border connections.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 67 to amend the list of infringements under the Annex, where needed to take account of amendments to the requirements on CSDs under this Regulation and in particular as laid down in Article 6, Article 7, Articles 16 to 20, Article 22, Article 22a, Title III, Chapters 2 and 3, and Title IV or where needed to ensure that the infringements under the Annex correspond to the requirements under this Regulation and in particular as laid down in Article 6, Article 7, Articles 16 to 20, Article 22, Article 22a, Title III, Chapters 2 and 3, and Title IV.';

(12) the following Article 11c is inserted:

'Article 11c

Specific provisions for significant CSDs

1. By way of derogation from Article 24a, no college shall be established for a significant CSD. Where, for a CSD that becomes significant, a college had been established pursuant to Article 24a, such college shall be dissolved at the latest within a year after the CSD qualified as a significant CSD. In relation to a significant CSD, the procedures referred to in Articles 15, 17, 19a, 21a, 22, 23, 24, 48b, 55 and 60 shall apply without including the college.

2. By way of derogation from Articles 7, 13, 15, 17, 19a, 20, 21(1), 21a, 22, 22a, 23, 24, 27a, 27b, 33, 49, 52, 54a, 54b, 54c, 55, 57, 58 and 60 any requirement for the CSD, or the competent authority, to interact with ESMA, or ESMA to interact with the CSD or the competent authority, referred to in those Articles, shall not apply with respect to a significant CSD.

Article 17a shall not apply with respect to significant CSDs.';

(13) in Article 14, the following paragraphs 3 and 4 are inserted:

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‘3. For each significant CSD, ESMA, the national competent authority and the relevant authorities shall establish cooperation arrangements, as laid down in Article 8a of Regulation (EU) No 1095/2010, including in relation to ESMA’s direct supervision of each significant CSD. Such arrangements shall reflect the distribution of competences and responsibilities pursuant to this Regulation and frame practical cooperation modalities in view of ESMA exercising its competencies and responsibilities with regard to significant CSDs. In particular, such arrangements may cover support and assistance by the relevant authorities and the national competent authority in respect of all of the following:

(a) the carrying out of supervisory tasks over a significant CSD, including investigations and on-site inspections;

(b) the preparation of authorisations, approvals, decisions, reports or other measures pertaining to the significant CSD under this Regulation, including where specified under the relevant Article and under Articles 15, 16, 17,19, 19a, 22, 27, 27a, 27b, 33(3), 48, 48a, 48b, 55, 56 and 60;

(c) any supervisory tasks to ensure financial stability and to monitor the operational resilience and market conduct of the significant CSD, including stress testing;

(d) addressing emergency situations in relation to the significant CSD.

4. For each less significant CSD, ESMA shall fulfil a coordination role between competent authorities, relevant authorities and colleges to:

(a) ensure consistent supervisory practices in particular with regard to supervisory areas which have a cross-border dimension or a possible cross-border impact for CSDs that provide services cross-border;

(b) strengthen coordination in emergency situations in accordance with Article 15;

(c) assess risks when providing opinions to competent authorities pursuant to the second subparagraph on CSDs’ compliance with the requirements of this Regulation, including in relation to identified cross-border risks or risks to the financial stability of the Union, and providing recommendations as to how a CSD shall mitigate such risks;

(d) promote regular exchange and discussion on relevant market developments, including situations or events which impact or are likely to impact the prudential or financial soundness or the resilience of CSDs.

Competent authorities shall submit their draft decisions, reports or other measures with respect to less significant CSDs to ESMA for its opinion before adopting any act or measure pursuant to Articles 17, 22, 24(5), 27a, 27b and 55 and, except where a decision is required urgently, pursuant to Article 20.

Competent authorities may also submit draft decisions to ESMA for its opinion before adopting any other act or measure in accordance with their duties under Article 10(1).

ESMA shall assess all opinions and recommendations adopted by colleges pursuant to Article 24a of this Regulation, in order to contribute to the consistent and coherent functioning of the colleges and to foster coherence in the application of this Regulation among them.

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For the purpose of this paragraph, ESMA shall consider, in cooperation with EBA and the ESCB, any cross-border risks arising from CSDs' activities, including due to CSDs' interconnectedness with trading venues and CCPs and risks due to such cross-border connections.

Any opinion, decision, input, or other measure taken by ESMA under this paragraph, shall be taken in accordance with Article 46a of Regulation (EU) No 1095/2010.

ESMA shall on a yearly basis report to the Commission on the cross-border risks arising from CSDs' activities referred to in the fifth subparagraph.';

(14) in Article 15, the following subparagraph is added:

'In an emergency situation at one or more CSDs that has or is likely to have destabilising effects on cross-border markets, ESMA shall coordinate with the competent authorities, the relevant authorities, and, where applicable, the colleges referred to in Article 24a to build a coordinated response to the emergency situation and ensure effective information sharing among competent authorities, relevant authorities and, where applicable, the colleges referred to in Article 24a. Any tasks undertaken by ESMA under this subparagraph shall be undertaken in accordance with Article 46a of Regulation (EU) No 1095/2010.';

(15) Article 16 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Any legal person that falls within the definition of a CSD shall obtain an authorisation from the competent authority in accordance with the procedure laid down in Article 17 before commencing its activities.';

(b) the following paragraph 1a is inserted:

'1a. Once the authorisation has been granted in accordance with Article 17, it shall be effective for the entire territory of the Union.';

(16) Article 17 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Without prejudice to Article 11(5), an applicant CSD shall submit an application for an initial authorisation pursuant to Article 16, an application for authorisation of an extension of an existing authorisation pursuant to Article 19 or an application for authorisation of the outsourcing of a core service pursuant to Article 19, to its competent authority. The application shall be immediately shared with the registered recipients referred to in Article 21a and, where applicable, the college referred to in Article 24a.';

(b) paragraph 3 is replaced by the following:

'3. During the period specified under paragraph 8, the competent authority, ESMA and the relevant authorities may request the applicant CSD to provide additional documents or information, where such documents or information are needed to assess that the applicant CSD meets all of its obligations as laid down in this Regulation. The competent authority may take a decision on the application in the absence of the CSD's response.

(c) paragraph 4 is amended as follows:

(i) the first, second and third subparagraphs are replaced by the following:

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‘During the period specified under paragraph 8, the competent authority shall conduct a risk assessment of the applicant CSD’s compliance with the requirements laid down in this Regulation and shall consult the relevant authorities, ESMA, and, where applicable, the college referred to in Article 24a concerning the features of the securities settlement system operated by the applicant CSD. Within three months of the acknowledgement of receipt of the application referred to in Article 21a(2), where the applicant CSD has applied for an initial authorisation pursuant to Article 16, or within one month of the acknowledgement of receipt of the application referred to in Article 21a(2), where an applicant CSD has applied for an extension of an existing authorisation or for the outsourcing of a core service, pursuant to Article 19:

(a) ESMA shall adopt an opinion pursuant to Article 14(4) determining whether the applicant CSD complies with the requirements laid down in this Regulation, and transmit it to the registered recipients referred to in Article 21a; and

(b) each relevant authority may issue an opinion within its areas of competence, determining whether the applicant CSD complies with the requirements laid down in this Regulation, and transmit it to the registered recipients referred to in Article 21a.

When providing the opinions referred to in the first subparagraph, ESMA and the relevant authorities, within their areas of competence, shall assess any relevant risks in relation to the applicant CSD, including any cross-border risks or risks to the financial stability of the Union, and may include any conditions or recommendations they consider necessary to mitigate any shortcomings in the applicant CSD’s risk management. ESMA may also include in its opinion any elements needed to promote a consistent and coherent application of a relevant Article of this Regulation. A negative opinion shall state in writing the full and detailed reasons why the requirements laid down in this Regulation or other requirements of Union law are not met.

Where any of the relevant authorities or ESMA, has issued a negative reasoned opinion, and the competent authority nevertheless intends to grant the authorisation, that competent authority shall, within 30 working days of receipt of the negative opinion, where the applicant CSD has applied for an initial authorisation pursuant to Article 16, or within 15 working days of receipt of the negative opinion, where an applicant CSD has applied for an extension of an existing authorisation or for the outsourcing of a core service, pursuant to Article 19, provide the relevant authority concerned or ESMA with the reasons why it intends to grant the authorisation notwithstanding the negative opinion.’;

(ii) the seventh subparagraph is deleted;

(b) paragraph 6 is replaced by the following:

‘6. The competent authority may, before granting authorisation to the applicant CSD, consult other authorities supervising an entity that has a qualifying holding in, or that controls, the applicant CSD on any of the following:

(a) the suitability of the shareholders and persons referred to in Article 27(6) and the reputation and experience of the persons who effectively direct the business of the applicant CSD referred to in Article 27(1) and (4), where those

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shareholders and persons are common to the applicant CSD and to the entity that has a qualifying holding in or controls the applicant CSD;

(b) whether the corporate relations between the applicant CSD and the entity that has a qualifying holding in or controls the applicant CSD do not affect the ability of the applicant CSD to comply with the requirements of this Regulation.';

(c) paragraphs 7 and 7a are deleted;

(d) paragraph 8 is replaced by the following:

'8. Within six months from the acknowledgement of receipt of the application referred to in Article 21a(2), where the applicant CSD has applied for an initial authorisation pursuant to Article 16, or within three months from of the acknowledgement of receipt of the application referred to in Article 21a(2), where an applicant CSD has applied for an extension of an existing authorisation or for the outsourcing of a core service, pursuant to Article 19, the competent authority shall adopt its decision and transmit it to the registered recipients referred to in Article 21a and the applicant CSD. The decision shall include a fully reasoned explanation of whether the authorisation has been granted or refused.

Where the decision of the competent authority does not reflect the opinion of ESMA, or any of the relevant authorities, including any conditions or recommendations contained therein, it shall contain a fully reasoned explanation of any significant deviation from those opinions or conditions or recommendations.

Where the competent authority does not comply or does not intend to comply with an opinion of ESMA or with any conditions or recommendations included therein, the Executive Board shall inform the Board of Supervisors. The information shall also include the reasoning from the competent authority for non-compliance or for its intention not to comply.';

(e) paragraph 8a is replaced by the following:

'8a. The competent authority shall, without undue delay, inform the authorities consulted pursuant to paragraphs 4, 5 and 6 of the results of the authorisation process, including any remedial actions.';

(17) the following Article 17a is inserted:

'*Article 17a*

Procedure for adopting decisions, reports or other measures

1. The competent authority shall submit a request for an opinion by ESMA, pursuant to Article 14(4), where the competent authority intends to adopt a decision, report or other measure pursuant to Articles 22, 24(5), 27a, 27b, 55 and, except where a decision is required urgently, pursuant to Article 20.

The request for an opinion referred to in the first subparagraph, together with all relevant documents, shall be shared immediately with ESMA.

2. Unless otherwise specified under a relevant article, the competent authority shall, within 30 working days of submitting the request referred to in paragraph 1, assess the CSD's compliance with the respective requirements. By the end of that assessment period, the competent authority shall transmit its draft decision, report or other measure to ESMA.

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3. Unless otherwise specified under a relevant article, following the receipt of both the request for an opinion referred to in paragraph 1 and the draft decisions, reports or other measures referred to in paragraph 2:

(a) ESMA shall, with respect to Articles 20, 22, 24(5), and 55 adopt an opinion assessing the CSD's compliance with the requirements under this Regulation. ESMA may include in its opinion any conditions or recommendations it considers necessary to mitigate any shortcomings in the CSD's risk management, including in relation to identified cross-border risks or risks to the financial stability of the Union; and

(b) ESMA may, with respect to Articles 27a and 27b adopt an opinion on that draft decision, report or other measure where necessary to promote a consistent and coherent application of a relevant article.

ESMA shall adopt its opinion within the deadline provided by the competent authority, which shall be at least 15 working days following the receipt of the relevant documents under paragraph 2, and communicate it to the competent authority. The opinions shall be also shared with the relevant authorities.

4. Within 10 working days of receipt of the opinion of ESMA adopted under paragraph 3, first subparagraph, point (a), and, where issued, the opinion of ESMA adopted under paragraph 3, first subparagraph, point (b), or within the relevant period where otherwise specified in this Regulation, the competent authority shall, after duly considering the opinion of ESMA, including any conditions or recommendations contained therein, adopt its decision, report or other measure as required under a relevant article and transmit it to ESMA.

Where the decision, report or other measure does not reflect an opinion of ESMA it shall contain a fully reasoned explanation of any significant deviation from that opinion or those conditions or recommendations.

For the purpose of paragraph 3, first subparagraph, points (a) and (b), where the CSD's competent authority does not comply or does not intend to comply with the opinion of ESMA or with any conditions or recommendations included therein, the Executive Board shall inform the Board of Supervisors. The information shall also include the reasoning from the competent authority for non-compliance or for its intention not to comply.';

(18) in Article 18, paragraphs 1, 2 and 3 are replaced by the following:

'1. An authorised CSD shall not provide any additional services or otherwise undertake any activity for which it is not authorised, or which it has not notified to the competent authority in accordance with Article 19(8).

2. Securities settlement systems may be operated only by authorised CSDs or by central banks acting as CSDs.

3. An authorised CSD may have a participating interest only in a legal person whose activities are limited to the provision of services listed in Sections A and B of the Annex, unless such a participating interest is approved by its competent authority on the basis that it does not significantly increase the risk profile of the CSD.';

(19) Article 19 is amended as follows:

(a) in paragraph 1, the introductory wording is replaced by the following:

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‘An authorised CSD shall submit an application for authorisation to the competent authority where it wishes to outsource a core service to a third party pursuant to Article 30, other than to a CSD within its group as referred to in Article 19a, or extend its activities to one or more of the following:’;

(b) paragraph 2 is amended as follows:

(i) the second and third subparagraphs are replaced by the following:

‘The granting of an authorisation under paragraph 1, point (b), of this Article shall follow the procedure laid down in Article 17(1), (2), (3), (5), (8) and (8a).

The granting of an authorisation under paragraph 1, point (e), of this Article shall follow the procedure laid down in Article 17 with respect to interoperable links between a CSD established in the Union and a third-country CSD, or the procedure laid down in Article 48b with respect to interoperable links between CSDs established in the Union.’;

(ii) the fourth subparagraph is deleted;

(c) paragraphs 3 to 7 are deleted;

(20) the following Article 19a is inserted:

‘Article 19a

Procedure for the approval of outsourcing of core services within a CSD group

1. An authorised CSD shall submit an application for approval to ESMA where it wishes to outsource a core service to a CSD within its group pursuant to Article 30. The application shall immediately be shared with the respective registered recipients referred to in Article 21a for both CSDs involved in the intended outsourcing and, where applicable, the respective colleges referred to in Article 24a of both CSDs involved in the intended outsourcing.

2. The applicant CSD shall include in the application all documents and information necessary to demonstrate that it will have established, at the time of the approval of the outsourcing, all the necessary arrangements to meet its obligations as laid down in this Regulation in respect of such outsourcing. The applicant CSD shall also include in the application a description of the core services to be outsourced and the CSDs within the group to which those services are intended to be outsourced, as well as the structural organisation of the applicant CSD.

3. During the period specified in paragraph 5, ESMA and the relevant authorities may request the applicant CSD to provide additional documents or information where such documents or information are needed to assess the applicant CSD’s compliance with the relevant requirements laid down in this Regulation in respect of the intended outsourcing. ESMA may take a decision on the application in the absence of the CSD’s response. .

4. During the period specified in paragraph 5, ESMA shall conduct a risk assessment of the applicant CSD’s compliance with the relevant requirements laid down in this Regulation in respect of the intended outsourcing and shall, with respect to both CSDs involved in the intended outsourcing, consult the relevant authorities, the colleges referred to in Article 24a, where applicable, and the competent authorities on whether the intended outsourcing complies with the requirements laid down in this Regulation and on any potential risks that may arise as a consequence of such outsourcing.

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5. Within three months from the acknowledgement of receipt of the application referred to in Article 21a(2), ESMA shall adopt its decision and transmit it to the respective registered recipients referred to in Article 21a that are relevant for each CSD involved in the outsourcing, the respective colleges referred to in Article 24a responsible for each CSD involved in the outsourcing, where applicable, and the applicant CSD. The decision shall include a fully reasoned explanation of whether the approval has been granted or refused.';

(21) Article 20 is amended as follows:

(a) in paragraph 1, the introductory wording is replaced by the following:

'Without prejudice to any remedial actions or measures under Title V, the competent authority shall withdraw the authorisation in any of the following circumstances, where the CSD';

(b) paragraphs 2 and 3 are replaced by the following:

'2. Before the competent authority takes a decision to withdraw the authorisation of the CSD it shall do all of the following:

(a) it shall request an opinion of the relevant authorities on the necessity of withdrawing the authorisation of the CSD;

(b) it shall consult, where applicable, the authority referred to in Article 67 of Directive 2014/65/EU on the necessity of withdrawing the authorisation of the CSD;

(c) for a less significant CSD, it shall, request the opinion of ESMA, pursuant to Article 14(4) and in accordance with the procedure laid down in Article 17a on the necessity of withdrawing the authorisation of the CSD;

(d) for a significant CSD, it shall consult the national competent authority on the necessity of withdrawing the authorisation of the CSD.

Points (b) to (d) of the first subparagraph shall not apply where a decision is required urgently.

3. Any relevant authority, the authority referred to in Article 67 of Directive 2014/65/EU, where applicable, and, for a less significant CSD, ESMA may, at any time, request that the competent authority examines whether the CSD still complies with the conditions under which the authorisation was granted.';

(22) the following Article 21a is inserted:

'Article 21a

Central Database

1. ESMA shall establish and maintain a central database in accordance with Article 35c of Regulation (EU) No 1095/2010. Separately for each CSD, the competent authority of the CSD, ESMA, the relevant authorities of the CSD, and the national competent authority of the CSD, as well as the members of the CSD's college referred to in Article 24a, where applicable and where required under a relevant Article, ('registered recipients') shall have access to all information and documents referred to in paragraph 2, registered within the central database for that CSD, where relevant or necessary for the performance of their duties.

A CSD shall have access to the central database as regards the information and documents referred to in paragraph 2 it submitted to that central database or the information and documents referred to in paragraph 2 transmitted to it through that

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central database by any of the registered recipients. Other recipients shall also submit and have access to certain specific documents or information, where specified under this Regulation, that is registered in the central database. ESMA shall ensure that the central database performs the functions under this Article.

ESMA shall make available the information referred to in paragraph 2 shared via the central database under this Regulation to any authority relevant for the purpose of Regulation (EU) No 648/2012 and [Regulation (EU) …/… on settlement finality] where relevant or necessary for the performance of their duties.

ESMA shall announce the establishment of the central database on its website.

2. CSDs and registered recipients shall upload to the central database, in electronic format, all information and documents, including applications, decisions, recommendations, information, requests, questions, answers and notifications referred to in this Regulation, unless stated otherwise.

An acknowledgement of receipt shall be sent via the central database within two working days of submission of information or documents.

3. The central database shall be designed to automatically inform the registered recipients when changes have been made to its content, including the uploading, deletion or replacement of documents, submission of questions and requests for information.

ESMA shall ensure the database enables DLT recorded data, including on-chain data reading and access to such data.';

(23) Article 22 is amended as follows:

(a) the following paragraph 1a is inserted:

'1a. The CSD shall provide all the necessary information for the purposes of the review and evaluation referred to in paragraph 1, including periodic information, as specified in accordance with paragraph 10. This information shall be immediately shared with the registered recipients referred to in Article 21a.';

(b) paragraph 5 is replaced by the following:

'5. The competent authority shall subject the CSD to on-site inspections.

The competent authority shall inform ESMA and the relevant authorities of any planned on-site inspection one month before such inspection is due to take place, unless the decision to conduct an on-site inspection is taken in an emergency, in which case the competent authority shall inform those authorities as soon as that decision is taken.

ESMA or the relevant authorities may request to be invited to on-site inspections. Where the competent authority refuses to invite the authorities that have made such a request to an on-site inspection, it shall provide a reasoned explanation for such refusal.

The competent authority shall forward to ESMA, the relevant authorities, and, where applicable, the members of the college referred to in Article 24a any relevant information received from the CSD in relation to all on-site inspections it carries out.';

(c) in paragraph 6, the first and second subparagraphs are replaced by the following:

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‘When performing the review and evaluation referred to in paragraph 1, the competent authority shall cooperate closely with ESMA, and with the relevant authorities. The competent authority shall, at an early stage, transmit the necessary information to ESMA, the relevant authorities and, where applicable, to the authority referred to in Article 67 of Directive 2014/65/EU, and consult them on whether the requirements of this Regulation or other requirements of Union law are met by the CSD as regards the functioning of the securities settlement systems operated by the CSD.

Within 90 working days of receipt of the information referred to in the first subparagraph from the competent authority:

(a) the relevant authorities and, where applicable, the authority referred to in Article 67 of Directive 2014/65/EU may issue an opinion within their areas of competence; and

(b) ESMA may issue an opinion pursuant to Article 14(4) in accordance with the procedure laid down in Article 17a.’;

(c) paragraph 7 is replaced by the following:

‘7. The competent authority shall regularly, and at least immediately after the end of every review and evaluation period, inform, via the central database, the registered recipients referred to in Article 21a and, where applicable, the college referred to in Article 24a and the authority referred to in Article 67 of Directive 2014/65/EU of the results, including any remedial action or penalties, of the review and evaluation referred to in paragraph 1 of this Article.’;

(d) paragraph 8 is replaced by the following:

‘8. When performing the review and evaluation referred to in paragraph 1 of this Article, the competent authority shall consult the authorities referred to in Article 17(6) on all relevant information that is likely to facilitate the competent authority’s tasks pursuant to this Article.’;

(24) Article 23 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. An authorised CSD shall be able to provide services referred to in the Annex, within the territory of the Union, including through setting up a branch to provide such services, in accordance with Article 18.’;

(b) paragraph 2 is replaced by the following:

‘2. An authorised CSD that provides the core services referred to in Section A, points 1 and 2, of the Annex in relation to financial instruments issued by issuers incorporated in a Member State other than the one in which the CSD is established or that has set up a branch in a Member State other than the one in which the CSD is established to provide those core services, shall notify this to its competent authority within 5 working days of commencing the provision of such services, or of setting up a branch, as applicable.

As part of the notification referred to in the first subparagraph, the CSD shall provide all of the following information, for each host Member State:

(a) the core services referred to in the first subparagraph provided by the CSD;

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(b) whether the core services referred to in the first subparagraph are provided in relation to equities or debt instruments;

(c) the aggregate market value or, where not available, the nominal value of the financial instruments in relation to which the CSD provides the core services referred to in the first subparagraph;

(d) where applicable, the organisational structure of the branch and the names of the persons responsible for the management of the branch.

The CSD shall update the information listed in the second subparagraph every six months and share the updated information with its competent authority.';

(c) paragraph 3 is replaced by the following:

'3. Following receipt of the notification or of the updated information referred to in paragraph 2, as applicable, the competent authority shall immediately share it with the registered recipients referred to in Article 21a and, where applicable, the college referred to in Article 24a.

ESMA shall publish the information referred to in paragraph 2, second subparagraph points (a), (b) and (c) on its website. ';

(d) paragraphs 4 to 10 are deleted;

(25) Article 24 is amended as follows:

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

'1. Where an authorised CSD has set up a branch in a host Member State, in accordance with Article 23, the competent authority shall cooperate closely with the national competent authority of the host Member State in the performance of its duties provided for in this Regulation, in particular when carrying out on-site inspections in that branch. The competent authority may invite staff from the national competent authorities of the host Member States and from ESMA to participate in on-site inspections. The competent authority shall transmit to ESMA, to the national competent authority of the host Member State and, where applicable, to the college referred to in Article 24a the findings of the on-site inspections and information on any remedial actions or penalties decided on by that competent authority.

2. The competent authority may require CSDs which provide services in accordance with Article 23 to report to it periodically on their activities in a host Member State, including for the purpose of collecting statistics. The competent authority shall, on request from the national competent authority of the host Member State, provide those periodic reports to the national competent authority of the host Member State.

3. The competent authority shall, upon the request of the national competent authority of the host Member State and without delay, communicate the identity of the issuers established in the host Member State and of the participants holding financial instruments issued by issuers incorporated in the host Member State in the securities settlement systems operated by the CSD which provides the services referred to in Article 23(2), and any other relevant information concerning the activities of a CSD that provides core services in the host Member State through a branch.';

(b) paragraph 5 is amended as follows:

(i) the first subparagraph is replaced by the following:

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‘Where the national competent authority of the host Member State has clear and demonstrable grounds for believing that a CSD providing services within its territory in accordance with Article 23 is in breach of the obligations arising from the provisions of this Regulation, it shall inform the competent authority of such CSD, ESMA and, where applicable, the college referred to in Article 24a of those findings. The competent authority shall take appropriate measures to ensure compliance by the CSD with the provisions of this Regulation. Before taking a decision in accordance with the second sentence of this subparagraph, the competent authority shall submit its draft decision to ESMA for an opinion pursuant to Article 14(4) in accordance with the procedure laid down in Article 17;’;

(ii) the second subparagraph is deleted;

(c) paragraph 6 is deleted;

(26) Article 24a is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Without prejudice to Article 11(8), the competent authority shall establish a college of supervisors to carry out the tasks referred to in paragraph 8 in relation to a CSD that fulfils at least one of the following criteria:

(a) the CSD has initially recorded in its securities accounts financial instruments issued by issuers incorporated in a host Member State;

(b) the CSD centrally maintains in its securities accounts financial instruments issued by issuers incorporated in a host Member State;

(c) the CSD centrally maintains in its securities accounts financial instruments for participants and other holders of securities accounts from a host Member State.

For the purposes of the assessment of the criterion referred to in the first subparagraph, point (c), the following shall apply:

(a) in the case of individual client segregation, the country of incorporation (for legal persons) or the country of residence (for natural persons) of the holders of securities accounts, including participants’ clients, shall be the relevant country;

(b) in the case of omnibus client segregation, the participants’ country of incorporation shall be the relevant country, unless the information on the country of incorporation or the country of residence of the underlying clients is available to the CSD.’;

(b) the following paragraph 1a is inserted:

‘1a. ESMA shall assess, six months after an initial authorisation of a CSD pursuant to Article 17, whether a CSD meets the criteria laid down in paragraph 1.

ESMA shall also assess every twelve months whether an authorised CSD meets, or continues to meet, the criteria laid down in paragraph 1.

ESMA shall communicate the results of this assessment to the CSD and the registered recipients referred to in Article 21a.’;

(c) paragraphs 2 and 3 are replaced by the following:

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‘2. The competent authority shall establish the college within six months of the date of the communication of the results of the assessment made by ESMA pursuant to paragraph 1a.

3. The college shall be chaired and managed by ESMA (‘the chair’).’;

(d) paragraph 4 is amended as follows:

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

‘(b) the competent authority of the CSD;’;

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

‘(d) the competent authorities of the host Member States in which the CSD is offering its services in accordance with Article 23;

(e) EBA, where the CSD has been authorised pursuant to Article 54; and’;

(iii) the following point (f) is added:

‘(f) the competent authority referred to in Article 4(1), point (40), of Regulation (EU) No 575/2013 where the CSD has been authorised pursuant to Article 54 of this Regulation.’;

(e) paragraph 5 is deleted;

(f) paragraph 6 is replaced by the following:

‘The chair shall notify the composition of the college to ESMA within one month of the college’s establishment and any change in its composition within one month of that change. ESMA shall publish on their websites without undue delay the list of the members of that college and keep that list updated.’;

(g) paragraph 8 is amended as follows:

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

‘(a) the exchange of information, including requests for information pursuant to Articles 13, 14 and 15 and information on the review and evaluation process pursuant to Articles 22 and 60;’;

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

‘(d) the exchange of information on an authorised outsourcing or extension of activities and services under Articles 19, 19a and 56;

(e) cooperation regarding any issues encountered in relation to the provision of services in other Member States in accordance with Article 23;’;

(h) in paragraph 9, the third subparagraph is replaced by the following:

‘The chair may invite additional participants to the discussions of the college on an ad hoc basis on specific topics or as permanent observers.’;

(i) in paragraph 10, points (b) and (c) are replaced by the following:

‘(b) issues relating to any outsourcing or extension of activities and services under Article 19, 19a or 56; or

(c) issues relating to any potential breach of this Regulation arising from the provision of services in a host Member State in accordance with Article 23.’;

(j) paragraph 13 is deleted;

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(27) Article 25 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. Notwithstanding paragraph 1, a third-country CSD shall be subject to the procedure referred to in paragraphs 4 to 11 of this Article where it intends to do any of the following:

(a) set up a branch in a Member State;

(b) provide the core services referred to in points (1) and (2) of Section A of the Annex in relation to financial instruments governed by the law of a Member State.’;

(b) paragraph 2a is replaced by the following:

‘2a. A third-country CSD that intends to provide the core service referred to in Section A, point 3, of the Annex in relation to financial instruments governed by the law of a Member State, shall notify ESMA thereof. ESMA shall inform the national competent authority of the Member State by whose law the financial instruments are governed of the notification received.’;

(c) in paragraph 4, point (d) is replaced by the following:

‘(d) where relevant, the third-country CSD takes the necessary measures to allow its users to comply with the relevant national law of the Member State in which the third-country CSD intends to provide CSD services, and the adequacy of those measures has been confirmed by the competent authorities of the Member State in which the third-country CSD intends to provide CSD services;’

(d) paragraph 13 is amended as follows:

(i) in the first subparagraph, point (b) is replaced by the following:

‘(b) the number and volume of transactions in financial instruments governed by the law of a Member State settled during the previous year;’;

(ii) the second subparagraph is replaced by the following:

‘ESMA shall submit those draft regulatory technical standards to the Commission by [OP insert date = one year after the entry into force of this amending Regulation].’;

(28) the following Article 25a is inserted:

‘*Article 25a*

Fees for third-country CSDs

1. ESMA shall charge fees associated with applications for recognition pursuant to Article 25 to CSDs established in a third country in accordance with this Regulation and with the delegated act adopted pursuant to paragraph 2.

2. The Commission shall be empowered to adopt a delegated act in accordance with Article 67 in order to supplement this Regulation by specifying the fees referred to in paragraph 1 by setting out:

(a) the types of fees;

(b) the amount of the fees;

(c) the manner in which fees are to be paid.’;

(29) in Article 26(2), the second subparagraph is replaced by the following:

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‘Where a CSD intends to provide banking-type ancillary services to other CSDs pursuant to Article 54a, that CSD shall have in place clear rules and procedures addressing potential conflicts of interest and mitigating the risk of discriminatory treatment towards those other CSDs and their participants’;

(30) in Article 27a(3), the following subparagraph is inserted after the second subparagraph:

‘During the assessment period, ESMA shall issue an opinion pursuant to Article 14(4), in accordance with the procedure under Article 17a.’;

(31) in Article 27b(1), the following subparagraph is added:

(32) ‘The assessment of the competent authority concerning the notification provided for in Article 27a(2) and the information referred to in Article 27a(4) shall be subject to an opinion of ESMA pursuant to Article 14(4), issued in accordance with the procedure set out in Article 17a.’;

(33) Article 30 is amended as follows:

(a) paragraph 4 is replaced by the following:

‘4. The outsourcing of a core service to a third party other than a CSD within the same group shall be subject to authorisation by the competent authority in accordance with Article 19. The outsourcing of a core service to another CSD within the group shall be subject to approval by ESMA in accordance with Article 19a.

A CSD shall notify the outsourcing of services referred in Section B of the Annex to its competent authority prior to implementing the outsourcing. As part of the notification, the CSD shall provide all relevant information that allows its competent authority to assess compliance with the requirements provided in this Article.’;

(b) the following paragraphs 6 and 7 are added:

‘6. The use of DLT by a CSD to provide the core services shall not be considered as outsourcing, unless the CSD is entering into an arrangement with a third party to provide the core services using DLT.

7. ESMA, in close cooperation with the ESCB, shall develop draft regulatory technical standards to specify under which specific circumstances an outsourcing arrangement shall be considered as an outsourcing of core services.

ESMA shall submit those draft regulatory technical standards to the Commission by [OP insert date = 18 months after the entry into force of this amending Regulation].

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.’;

(34) in Article 33, the following paragraph 7 is added:

‘7. The Commission shall be empowered to adopt delegated acts in accordance with Article 67 to enable CSDs to also allow private individuals to become participants in a CSD where such private individuals have been allowed to participate in a securities settlement system under [Regulation (EU) …/… on settlement finality]. The delegated acts shall specify any additional requirements needed to mitigate any risks that may arise for CSDs accepting private individuals as participants.’;

(35) in Article 34, the following paragraphs 9 and 10 are added:

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‘9. Settlement internalisers shall disclose to their clients the prices and fees associated with the services they provide and shall differentiate between the prices pertaining to settlement in and outside a securities settlement system. They shall disclose the prices and fees of each service provided separately, including discounts, rebates and the conditions to benefit from those reductions.

10. ESMA shall develop draft implementing technical standards to determine standard forms, templates and procedures for the disclosures referred to in the paragraphs 1, 5 and 9.

ESMA shall submit those draft implementing technical standards to the Commission by [OP insert date = 18 months after the entry into force of this amending Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’;

(36) in Article 37, paragraph 1 is replaced by the following:

‘1. A CSD shall take appropriate reconciliation measures, that may be undertaken using DLT, to verify that the number of securities making up a securities issue or part of a securities issue submitted to the CSD is equal to the sum of securities recorded on the securities accounts of the participants of the securities settlement system operated by the CSD and, where relevant, on owner accounts maintained by the CSD. Such reconciliation measures shall be conducted at least daily.’;

(37) Article 38 is amended as follows:

(a) paragraph 3 is replaced by the following:

‘3. A CSD shall keep records and accounts that enable omnibus client segregation. Where a CSD is operating its core services using DLT, and where the CSD enables all participants and their clients to have individual client segregation as defined in paragraph 4, such CSD may, in derogation to the first sentence, opt not to offer omnibus client segregation. This provision is without prejudice to the obligations of the CSD to comply with the requirements set out in Article 48a for at least one of the security settlement systems it operates.’;

(b) in paragraph 5, the following subparagraph is inserted after the first subparagraph:

‘Where the CSD is operating its core services using DLT and has opted to offer omnibus client segregation in accordance with paragraph 3, such CSD shall, in derogation to the first subparagraph, take all reasonable steps to ensure that a participant offers its clients at least the choice between omnibus client segregation and individual client segregation and inform them of the costs and risks associated with each option.’;

(38) Article 39 is amended as follows:

(a) paragraph 6 is replaced by the following:

‘Where the CSD offers the services referred to in Article 40(3), it shall ensure that the cash proceeds of securities settlements shall be available for recipients to use no later than by the end of the business day of the intended settlement date.’

(b) paragraph 7 is replaced by the following:

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‘7. All securities transactions against payment in cash or in e-money tokens between direct participants in a securities settlement system operated by a CSD and settled in that securities settlement system shall be settled on a DVP basis.’;

(39) Article 40 is replaced by the following:

‘Article 40

Cash and e-money token settlement

1. A CSD shall settle the cash payments of its securities settlement system in central bank money where practical and available.

2. Where a CSD offers to settle the cash payments of its securities settlement system in a currency available on a common settlement infrastructure integrated with central bank real-time gross settlement systems operated in the Union, that CSD shall connect directly to such infrastructure and offer to its participants the possibility to settle their transactions denominated in currencies available on such infrastructure in accounts opened at such infrastructure.

3. Where a CSD does not settle in central bank money as provided in paragraph 1, a CSD shall only offer to settle the cash payments for all or part of its securities settlement systems:

   (a) through its own accounts;

   (b) through accounts opened with a credit institution authorised in accordance with Article 8 of Directive 2013/36/EU; or

   (c) through accounts opened with another CSD whether within the same group of undertakings ultimately controlled by the same parent undertaking or not.

   A CSD wishing to settle the cash payments as specified in points (a) to (c) of the first subparagraph, shall obtain an authorisation to do so in accordance with Articles 54, 54a or 54b and, where applicable, 54c, and Article 55, and shall comply with the requirements set out in Title IV.’;

(40) the following Article 45a is inserted:

‘Article 45a

Risks related to the use of distributed ledger technology outside of an outsourcing arrangement

1. Without prejudice to the provisions of Article 45, where a CSD operates itself a core service listed in Section A of the Annex using DLT the CSD shall ensure it complies with the following requirements:

   (a) the use of DLT does not result in depriving the CSD of the systems and controls necessary to manage the risks it faces;

   (b) the use of DLT does not negatively affect the relationship and obligations of the CSD towards its participants or issuers;

   (c) the use of DLT does not prevent the exercise of supervisory and oversight functions, including on-site access to acquire any relevant information needed to fulfil those functions;

   (d) the CSD retains the expertise and resources necessary to provide its services on DLT, to monitor the services provided using DLT and to effectively manage the risks associated with the use of DLT on an ongoing basis;

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(e) the CSD has direct access to the relevant information in relation to the provision of services using DLT.

2. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the risks referred to in paragraph 1 and the methods of assessment thereof, and to specify the methods for the CSD to meet the requirements set out in paragraph 1.

ESMA shall submit those draft regulatory technical standards to the Commission by [OP insert date = 12 months after the entry into force of this amending Regulation].

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.';

(41) in Article 47a(3), the second subparagraph is replaced by the following:

'ESMA shall submit those draft regulatory technical standards to the Commission by 30 October 2027.';

(42) Article 48 is amended as follows:

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

'CSDs intending to establish an interoperable link shall provide the risk assessment referred to in the first subparagraph to their respective competent authorities in the application for authorisation of such interoperable link to be submitted by each of the concerned CSDs in accordance with the procedure laid down in Article 48b.';

(b) paragraph 2 is replaced by the following:

'2. CSDs established in the Union that intend to establish interoperable links with other CSDs established in the Union shall submit an application for authorisation as required under Article 19.';

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

'2a. Interoperable links of CSDs that outsource some of their services related to those interoperable links to a public entity as referred to in Article 30(5) and CSD links that are not interoperable links shall not be subject to authorisation but shall be notified by the CSDs to their competent and relevant authorities prior to their implementation, by providing all relevant information that allows those authorities to assess compliance with the requirements provided in this Article.

2b. The competent authority of the requesting CSD shall require that CSD to discontinue a CSD link that has been notified when that link does not fulfil the requirements provided for in this Article and thereby would threaten the smooth and orderly functioning of the financial markets or cause systemic risk. Where a competent authority requires the CSD to discontinue a CSD link, it shall follow the procedure laid down in Article 20(2) and (3).

2c. An authorised CSD may establish a CSD link with a third-country CSD. In that case, it shall comply with the conditions and procedure provided in this Article. The information provided by the requesting CSD shall allow the competent authority to evaluate whether such links fulfil the requirements provided in this Article or the requirements that are equivalent to those provided in this Article.

2d. An authorised CSD intending to establish an interoperable link with a third-country CSD shall submit an application for authorisation to its competent authority,

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as required under Article 19. The competent authority shall refuse to authorise such a CSD link only where it would threaten the smooth and orderly functioning of the financial markets or cause systemic risks.';

(d) in paragraph 8, first subparagraph, the introductory wording is replaced by the following:

'CSDs which use a common settlement infrastructure, and interoperable securities settlement systems shall establish identical moments of:';

(e) paragraph 9 is replaced by the following:

'9. All interoperable links between authorised CSDs shall be, where applicable, DVP-settlement supporting links.';

(f) paragraph 10 is amended as follows:

(i) the first subparagraph is replaced by the following:

'ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify all of the following:

(a) the scope of the risk assessments referred to in paragraph 1;

(b) the conditions provided for in paragraph 3 under which each type of link arrangement provides for adequate protection of the linked CSDs and of their participants, in particular where a CSD intends to participate in the securities settlement system operated by another CSD;

(c) the monitoring and managing of additional risks referred to in paragraph 5 arising from the use of intermediaries;

(d) the reconciliation procedures referred to in paragraph 6;

(e) the cases where DVP settlement through CSD links is practical and feasible as provided for in paragraph 7 and the methods of assessment thereof;

(f) the rules ensuring the harmonised application of the obligation pertaining to the moments referred to in paragraph 8, specifically the moments of entry of transfer orders into a system, irrevocability of transfer orders and finality of transfers of securities and cash.';

(ii) the following subparagraph is inserted after the first subparagraph:

'When specifying the elements referred to in the first subparagraph, point (d), ESMA shall take into account the most widespread current practices.';

(iii) the second subparagraph is replaced by the following:

'ESMA shall submit those draft regulatory technical standards to the Commission by [OP please insert date = 1 year after entry into force of this amending Regulation].';

(43) the following Articles 48a and 48b are inserted:

'Article 48a

CSD connectivity

1. Where a significant CSD fulfils the criteria laid down in Article 11a(1) and is not part of a group of CSDs, or it is the only significant CSD within a group that fulfils the criteria of Article 11a(1), such CSD shall be considered a CSD hub.

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Where two or more significant CSDs within a group fulfil the criteria of Article 11a(1), the group shall, without undue delay, appoint one of those CSDs as its CSD hub and notify ESMA via the central database.

ESMA shall disclose in the register referred to in Article 21, the CSD hubs, without undue delay.

2. Every CSD hub shall establish and maintain a bilateral link with each of the other CSD hubs.

3. Every CSD that is not a CSD hub shall establish and maintain a bilateral link with a CSD hub.

4. Paragraphs 2 and 3 shall not apply to a DLT SS or a DLT TSS operated by a CSD as defined respectively in Article (2), points (7) and (10), of Regulation (EU) 2022/858.

5. CSDs involved in a bilateral link referred to in paragraphs 2 or 3, as applicable, shall ensure that all financial instruments issued in each of the CSDs involved are available for settlement through that bilateral link.

6. Receiving CSDs in links composing the bilateral link established pursuant to paragraphs 2 or 3, as applicable, may charge a reasonable commercial fee to the requesting CSDs, to recover the costs incurred by the establishment and the use of those links from the requesting CSDs.

7. CSDs shall comply with the obligations set out in paragraphs 2 or 3, as applicable, at the latest by [OP enter date = 18 months after entry into force of this amending Regulation].

8. Where ESMA determines that a CSD previously considered to be a CSD hub failed to meet the criteria laid down in Article 11a(1) for three consecutive years, all of the following shall apply:

   (a) that CSD shall no longer be considered a CSD hub and ESMA shall notify the CSD concerned of such determination;

   (b) ESMA shall remove the CSD, without undue delay, from the register referred to in paragraph 1;

   (c) ESMA shall notify all CSDs that have established bilateral links with that CSD pursuant to paragraphs 2 or 3, and their competent authorities;

   (d) the CSDs referred to in point (c) of this paragraph shall have 18 months to re-establish their compliance with the requirements set out in paragraphs 2 or 3, with another CSD hub.

9. The Commission shall be empowered to adopt delegated acts in accordance with Article 67 to amend the conditions under which a CSD shall be subject to the obligations set out in paragraphs 2 and 3.

The Commission shall consider the appropriateness of making any such changes. Where amending such conditions the Commission shall take into account the cross-border relevance of the CSDs established in the Union and the risks they pose to the financial stability of the Union.

Article 48b

Procedure to authorise interoperable links

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1. Authorised CSDs shall submit an application for authorisation to ESMA where they intend to establish an interoperable link.

2. Applications to establish each of the standard and interoperable links composing the bilateral links referred to in Article 48a(2) and (3) shall be submitted by both receiving and requesting CSDs and treated as a single application. By way of derogation from the first sentence, where one of the standard and interoperable links that is to compose the mandatory bilateral link between two CSDs pursuant to Article 48a(2) and (3) has already been established, only an application for authorisation of the missing standard and interoperable link that is to compose the bilateral link shall be submitted to ESMA. Once ESMA has authorised the missing links, the requirements referred to in Article 48a(2) or (3), as applicable, shall be considered to be fulfilled.

3. The application shall be immediately shared with the respective registered recipients referred to in Article 21a for both CSDs involved in the intended interoperable link and, where applicable, the respective colleges referred to in Article 24a of both CSDs involved in the intended link.

   The applicant CSDs shall include in the application all documents and information necessary to demonstrate that they will have established, at the time of the authorisation of the interoperable link, all the necessary arrangements to meet their obligations as laid down in this Regulation in respect of such interoperable link.

4. During the period specified in paragraph 6, ESMA and the relevant authorities may request the applicant CSDs to provide additional documents or information where such documents or information are needed to assess the applicant CSDs' compliance with the relevant requirements laid down in this Regulation in respect of the interoperable link they intend to establish. ESMA may take a decision on the application in the absence of the CSDs' response.

5. During the period specified in paragraph 6, ESMA shall conduct a risk assessment of the applicant CSDs' compliance with the relevant requirements laid down in this Regulation in respect of the interoperable link they intend to establish and shall, for both applicant CSDs involved, consult the relevant authorities, the college referred to in Article 24a, where applicable, and the competent authority on whether the interoperable link the applicant CSDs intend to establish complies with the requirements laid down in this Regulation and on any potential risks that may arise as a consequence of such interoperable link.

6. Within three months from the acknowledgement of receipt of the application referred to in Article 21a(2), ESMA shall adopt its decision and transmit it to the respective registered recipients referred to in Article 21a for both CSDs involved in the interoperable link, the respective colleges referred to in Article 24a of both CSDs involved in the interoperable link, where applicable, and the applicant CSDs. The decision shall include a fully reasoned explanation of whether the authorisation has been granted or refused.

   Without prejudice to paragraph 4, ESMA shall refuse to authorise an interoperable link only where the link would threaten the smooth and orderly functioning of the financial markets or cause systemic risk.';

(44) Article 49 is amended as follows:

   (a) in paragraph 1, the first, second and third subparagraphs are replaced by the following:

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‘Any issuer established in the Union that issues or has issued securities that are in the process of being admitted to trading, admitted to trading, or traded on trading venues, shall have the right to arrange for such securities to be initially recorded and the right to arrange for such securities to be recorded subsequently to an initial recording, in book-entry form in any CSD established in any Member State.’;

(b) paragraphs 2 and 3 are replaced by the following:

‘2. Where an issuer submits a request for recording its securities in a CSD, initially or subsequently to an initial recording, such CSD shall treat such request promptly and in a non-discriminatory manner and provide a response to the requesting issuer within three months.

3. A CSD may refuse to provide services to an issuer. Such a refusal shall be based only on a comprehensive risk assessment or if that CSD does not provide the services referred to in Section A, point (1), of the Annex in relation to securities for which such services are requested by the issuer.’;

(45) Article 50 is replaced by the following:

‘Subject to fulfilling the requirements for participation set out in Article 33 and to the prior notification of the CSD link provided under Article 48(2a), a CSD shall have the right to become a participant of another CSD and set up a standard link with that CSD in accordance with the procedure set out in Article 52.’;

(46) the following Article 51a is inserted:

‘*Article 51a*

Relayed links

‘1. Where a CSD requests a CSD hub to be the third party to a relayed link with a CSD established in the Union, the CSD-hub and the receiving CSD shall reject such a request only on the basis of risks considerations. The CSD hub and the receiving CSD shall not deny a request on the grounds of loss of market share.

2. The CSD hub acting as the third party in a relayed link and the receiving CSD may charge a reasonable commercial fee to the requesting CSD to recover the costs incurred by the establishment and the use of the links referred to in paragraph 1.’;

(47) Article 52 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. When a CSD submits a request for access to another CSD pursuant to Articles 48a(2) and (3), 50 and 51, the receiving CSD shall treat the request promptly and shall provide a response to the requesting CSD within three months. If the receiving CSD agrees to the request, the CSD link shall be implemented within a reasonable timeframe, which shall be no longer than 12 months.’;

(b) paragraph 2 is amended as follows:

(i) the third subparagraph is replaced by the following:

‘In case of a refusal to grant access through a link not referred to in Article 48a(2) or (3), the requesting CSD has the right to complain via the central database to the competent authority of the CSD that has refused access.’;

(ii) in the fifth subparagraph, the first sentence is replaced by the following:

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‘The competent authority of the receiving CSD shall consult, via the central database, the competent authority of the requesting CSD and the relevant authority of the requesting CSD referred to in Article 12(1), point (a), on its assessment of the complaint.’

(c) the following paragraph 2a is inserted:

‘2a. In case of refusal to grant access through a link referred to in Article 48a (2) or (3), the receiving CSD shall provide a duly justified refusal via the central database to ESMA and to the requesting CSD. The refusal shall be based on a comprehensive risk assessment.

Within 30 working days from the notification of the refusal to ESMA and to the requesting CSD, the receiving CSD and the requesting CSD shall provide ESMA, via the central database, with their proposed measures to mitigate the risks underlying the refusal.

Within 90 working days from receipt by ESMA of the complete submission of proposed measures by the receiving and requesting CSDs, ESMA, in cooperation with the competent authority of the CSD not considered to be a CSD hub, where applicable, and taking into account those proposed measures, shall identify necessary measures to be taken to mitigate the risks underlying the refusal and shall issue an order, via the central database, to the receiving or requesting CSDs, as applicable, to adopt those necessary measures and set up the link referred to in Articles 48a(2) or (3), as applicable, by a certain date.’;

(48) Article 53 is amended as follows:

(a) paragraph 3 is amended as follows:

(i) the second and third subparagraphs are replaced by the following:

‘A party that refuses access shall provide the requesting party with full written reasons for such refusal based on a comprehensive risk assessment. In the case of a refusal, the requesting party has the right to complain to ESMA.

ESMA and the relevant authority referred to in Article 12(1), point (a), shall duly examine the complaint by assessing the reasons for refusal and shall provide the requesting party with a reasoned reply.’;

(ii) the fourth subparagraph is deleted;

(iii) the fifth subparagraph is replaced by the following:

‘Where the refusal by a party to grant access is deemed to be unjustified, ESMA shall issue an order requiring that party to grant access to its services within one month.’;

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

‘ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the risks to be taken into account by CSDs when carrying out a comprehensive risk assessment and the elements of the procedure referred to in paragraph 3.’;

(49) Article 54 is amended as follows:

(a) the title is replaced by the following:

‘Authorisation to provide banking-type ancillary services’

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(b) paragraphs 1 and 2 are replaced by the following:

‘1. A CSD that intends to settle the cash payments for all or part of its securities settlement systems through its own accounts as referred to in Article 40(3), or that otherwise intends to provide any other banking-type ancillary services set out in Section C of the Annex, shall obtain an authorisation to do so under the conditions specified in this Article and in accordance with the procedure set out in Article 55.

2. A CSD shall ensure that any information it provides to market participants about the risks and costs associated with settlement through the own accounts of the CSD is clear, fair and not misleading. A CSD shall make available sufficient information to clients or potential clients to allow them to identify and evaluate the risks and costs associated with settlement through the own accounts of the CSD and shall provide such information on request.’;

(c) paragraph 2a is deleted;

(d) paragraph 3 is amended as follows:

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

‘Where a CSD seeks to provide any services referred to in paragraph 1 from within the same legal entity as the legal entity operating the securities settlement system the authorisation referred to in paragraph 1 shall be granted only where the following conditions are met:’;

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

‘(c) the CSD only provides the banking-type ancillary services referred to in Section C of the Annex and does not carry out any other activities under the authorisation referred to in point (a) of this subparagraph;’;

(e) paragraph 4 is replaced by the following:

‘4. A CSD authorised to provide any banking-type ancillary services shall comply at all times with the conditions necessary for authorisation under this Regulation and shall, without delay, notify the competent authorities of any substantive changes affecting the conditions for authorisation.’;

(f) paragraph 4a is deleted;

(g) paragraph 5 is replaced by the following:

‘5. In addition to the provisions set out in paragraphs 1 to 4 of this Article and in Article 55, where a CSD intends to settle in e-money tokens through its own accounts, the provisions set out in Article 54c shall also apply.’;

(h) paragraphs 6 and 7 are deleted;

(i) in paragraph 8, the first subparagraph is replaced by the following:

‘EBA shall, in close cooperation with ESMA and the members of the ESCB, develop draft regulatory technical standards to determine the additional risk-based capital surcharge referred to in paragraph 3, point (d), of this Article and in Article 54b(5), point (d).’;

(j) paragraph 9 is deleted;

(50) the following Articles 54a, 54b and 54c are inserted:

‘*Article 54a*

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Authorisation to designate another CSD to provide banking-type ancillary services

1. A CSD that intends to settle the cash payments for all or part of its securities settlement systems through accounts opened with another CSD as referred to in Article 40(3) shall obtain an authorisation to designate that other CSD under the conditions specified in this Article and in accordance with the procedure set out in Article 55.

   For the purposes of the first subparagraph, a CSD may only designate one or more CSDs where those CSDs are authorised to provide banking-type ancillary services pursuant to Article 54.

2. A CSD shall ensure that information provided to market participants by the CSD itself or by the CSD it designated about the risks and costs associated with settlement through accounts opened with the designated CSD is clear, fair and not misleading. A CSD shall make available sufficient information to clients or potential clients to allow them to identify and evaluate the risks and costs associated with settlement through accounts opened with another CSD and shall provide such information on request.

3. Where a CSD is authorised to designate another CSD in accordance with paragraph 1, it may use such authorisation only for the purposes of the provision of the banking-type ancillary services referred to in Section C of the Annex, or of the services related to e-money tokens, required for the settlement of the payments for all or part of its securities settlement systems and not to carry out any other activities.

4. A CSD designated in accordance with paragraph 1 shall be considered to be a settlement agent.

5. Where a CSD seeks to designate another CSD in accordance with paragraph 1 to settle the cash payments for all or part of its securities settlement systems, such cash payments shall not be in a currency of the country where the designating CSD is established.

   The first subparagraph shall not apply if the total value of the settlement in cash or in e-money tokens through accounts opened with another CSD referred to in the first subparagraph does not exceed the threshold determined in accordance with Article 54b(12), point (a).

   The competent authority shall monitor at least once per year that the threshold referred to in the second subparagraph are respected. The competent authority shall transmit its findings together with the underlying data to ESMA and EBA. The competent authority shall also transmit its findings to the members of the ESCB.

   Without prejudice to Article 40, paragraphs 1 and 2, where the competent authority deems that the threshold determined in accordance with Article 54b(12), point (a), for settlement in cash or in e-money tokens has been exceeded, the competent authority shall require the CSD concerned to seek an authorisation in accordance with Article 54. The CSD concerned shall submit its application for authorisation within six months.

6. Where the competent authority considers that the exposure of a CSD designated by another CSD in accordance with paragraph 1 to the concentration of risks under Article 59(3) and (4) is not sufficiently mitigated, the competent authority may require the CSD to designate more than one CSD in accordance with paragraph 1 of

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this Article, or to designate a credit institution in accordance with Article 54b, in addition to the originally designated CSD.

7. Where a CSD intends to designate another CSD in accordance with paragraph 1 of this Article to settle the payments for all or part of its securities settlement systems in e-money tokens, in addition to the provisions set out in paragraphs 1 to 6 of this Article, the provisions set out in Article 54c shall also apply.

Article 54b

Authorisation to designate a credit institution to provide banking-type ancillary services

1. A CSD that intends to settle the payments in cash or in e-money tokens for all or part of its securities settlement systems through accounts opened with a credit institution authorised in accordance with Article 8 of Directive 2013/36/EU, as referred to in Article 40(3) of this Regulation, shall obtain an authorisation to designate that credit institution under the conditions specified in this Article and in accordance with the procedure set out in Article 55 of this Regulation.

2. A CSD shall ensure that information provided to market participants by the CSD or by the credit institution it designated about the risks and costs associated with settlement through accounts opened with that credit institution is clear, fair and not misleading. A CSD shall make available sufficient information to clients or potential clients to allow them to identify and evaluate the risks and costs associated with settlement through accounts opened with a credit institution and shall provide such information on request.

3. Where a CSD is authorised to designate a credit institution in accordance with paragraph 1, it may use such authorisation only for the purposes of the provision of the banking-type ancillary services referred to in Section C of the Annex or of the services related to e-money tokens, required for the settlement of the cash payments for all or part of its securities settlement systems, and not to carry out any other activities.

4. A credit institution designated in accordance with paragraph 1 shall be considered to be a settlement agent.

5. Where a CSD seeks to designate a credit institution to provide services pursuant to paragraph 1, the authorisation referred to in that paragraph shall be granted only where all of the following conditions are met:

   (a) the credit institution meets the prudential requirements laid down in Article 59(1), (3) and (4) and the supervisory requirements laid down in Article 60;

   (b) the credit institution does not itself carry out any of the core services referred to in Section A of the Annex;

   (c) the authorisation under Article 8 of Directive 2013/36/EU is used only to provide the banking-type ancillary services referred to in Section C of the Annex, or the services related to e-money tokens, required for the settlement of the cash payments for all or part of the securities settlement systems of the CSD seeking to use the services referred to in paragraph 1 and not to carry out any other activities;

   (d) the credit institution is subject to an additional capital surcharge that reflects the risks, including credit and liquidity risks, resulting from the provision of

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intra-day credit, inter alia, to the participants in a securities settlement system or other users of CSD services;

(e) the credit institution reports at least monthly to the competent authority and discloses to the public annually as a part of its public disclosure as required under Part Eight of Regulation (EU) No 575/2013 on the extent and management of intra-day liquidity risk in accordance with Article 59(4), point (j), of this Regulation;

(f) the credit institution has submitted to the competent authority an adequate recovery plan to ensure continuity of its critical operations, including in situations where liquidity or credit risk materialises as a result of the provision of banking-type ancillary services from within a separate legal entity.

6. Where a CSD seeks to designate a credit institution in accordance with paragraph 1 to settle the cash payments for all or part of its securities settlement systems, such cash payments shall not be in a currency of the country where the designating CSD is established.

7. Paragraph 5, point (c), shall not apply to a credit institution designated pursuant to paragraph 1 where all of the following conditions are met:

(a) the designation is for the purpose of settling cash payments in non-Union currencies;

(b) the designation is made to only provide one or more of the banking-type ancillary services listed in Section C, points (a), (b) and (c), of the Annex,;

(c) CSD operates in real-time gross settlement for such cash payments.

8. Paragraphs 5 and 6 shall not apply to a credit institution designated pursuant to paragraph 1 where the total value of settlement in cash and in e-money tokens through the accounts opened with the credit institution, calculated over a one-year period, does not exceed the threshold determined in accordance with paragraph 12.

The competent authority shall monitor at least once per year that the threshold referred to in the first subparagraph are respected. The competent authority shall transmit its findings together with the underlying data to ESMA and EBA. The competent authority shall also transmit its findings to the members of the ESCB.

Without prejudice to Article 40(1) and (2), where the competent authority deems that the threshold determined in accordance with paragraph 12 of this Article for settlement in cash or in e-money tokens has been exceeded, the competent authority shall require the CSD concerned to seek a new authorisation in accordance with paragraph 1 of this Article, or an authorisation in accordance with Article 54 or Article 54a. The CSD concerned shall submit its application for authorisation within six months.

9. Where the competent authority considers that the exposure of a credit institution designated by a CSD in accordance with paragraph 1 to the concentration of risks under Article 59(3) and (4) is not sufficiently mitigated, the competent authority may require the CSD to designate more than one credit institution in accordance with paragraph 1, or to designate another CSD in accordance with Article 54a, in addition to the originally designated credit institution.

10. A credit institution designated in accordance with paragraph 1 shall comply at all times with the conditions necessary for authorisation under this Regulation and shall,

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without delay, notify the competent authorities of any substantive changes affecting the conditions for authorisation.

11. Where a CSD intends to designate a credit institution in accordance with paragraph 1 to settle the payments for all or part of its securities settlement systems in e-money tokens, in addition to the provisions set out in paragraphs 1 to 10 of this Article, the provisions set out in Article 54c shall also apply.

12. EBA shall, in close cooperation with the members of the ESCB and ESMA, develop draft regulatory technical standards specifying all of the following:

(a) the threshold referred to in paragraph 8 of this Article and in Article 54a(5) for the settlement in cash or in e-money tokens through accounts opened with a credit institution or with another CSD;

(b) the appropriate risk management and prudential requirements to mitigate risks in relation to the designation of credit institutions in accordance with this Article or CSDs in accordance with Article 54a;

(c) the appropriate risk management and prudential requirements to mitigate risks in relation to the provision of cash settlement in e-money tokens as referred to in Article 54c;

(d) the criteria to assess whether the requirement under Article 54c (2), point (c), is considered fulfilled.

When developing those standards, EBA shall take into account the following:

(a) the implications for the market stability that could derive from a change of risk profile of CSDs and their participants, including the systemic importance of CSDs for the functioning of securities markets;

(b) the implications for the credit and liquidity risks for CSDs, for the designated credit institutions involved and for the CSD participants that result from the settlement of cash payments through accounts opened with credit institutions that are not subject to paragraph 5, and from the settlement of cash payments in e-money tokens;

(c) the possibility for CSDs to settle cash payments in several currencies;

(d) the need to avoid both an unintended shift from settlement in central bank money to settlement in commercial bank money or to settlement in e-money tokens and disincentives to the efforts of CSDs to settle in central bank money; and

(e) the need to ensure a level playing field amongst CSDs in the Union.

EBA shall submit those draft regulatory technical standards to the Commission by [OP insert date = 1 year after entry into force of this amending Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 54c

Additional requirements for settlement of cash payments in e-money tokens

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1. A CSD may offer to settle the cash payments for all or part of its securities settlement systems in e-money tokens. A CSD shall only be able to do so through any of the following:

(a) its own accounts in accordance with Article 54;

(b) accounts opened with another CSD in accordance with Article 54a;

(c) accounts opened with a credit institution in accordance with Article 54b.

2. Where a CSD intends to settle the cash payments for all or part of its securities settlement systems in e-money tokens, it shall ensure that all of the following conditions are met:

(a) the e-money token intended to be used for settlement of the cash leg is listed in the ESMA register established in accordance with Article 109 of Regulation (EU) 2023/1114 and is classified as a significant e-money token by EBA in accordance with Articles 56, or 57 of that Regulation;

(b) the settlement of such payments in e-money tokens takes place through pre-funded accounts;

(c) the e-money token intended to be used for the settlement in the CSD is accessible to the CSD's participants in a sufficient amount to meet the intended use in the securities settlement system operated by the CSD;

(d) the information provided by the CSD itself, or by the credit institution or CSD it designated, to market participants about the risks and costs associated with settlement in e-money tokens is clear, fair and not misleading;

(e) the CSD makes available sufficient information to clients or potential clients to allow them to identify and evaluate the risks and costs associated with settlement in e-money tokens and provides such information on request.

3. The competent authority shall monitor at least once per year that the use of e-money tokens referred to in paragraph 1 is compliant with the requirements laid down in paragraph 2, and report its findings, together with the underlying data, to ESMA and EBA.';

(51) Article 55 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. A CSD that intends to provide any banking-type ancillary services in accordance with Article 54 or that intends to designate another CSD in accordance with Article 54a or a credit institution in accordance with Article 54b shall submit an application for authorisation as required under the relevant Article, to its competent authority. The application shall be immediately shared with the registered recipients referred to in Article 21a and with the authorities referred to in paragraph 4 via the central database.';

(b) paragraph 2 is amended as follows:

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

'It shall contain a programme of operations setting out the banking-type ancillary services envisaged, the structural organisation of the relations between the CSD and, where applicable, the designated credit institution or CSD authorised to provide banking-type ancillary services and how that CSD and, where applicable, the designated credit institution or CSD authorised to

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provide banking-type ancillary services intend to meet the prudential requirements laid down in Article 59(1), (3), (4) and (4a) and the other conditions laid down in Article 54, 54a or 54b, and, where applicable, 54c.';

(ii) the following subparagraph is added:

Where e-money tokens are intended to be used, it shall include an explanation of how the CSD intends to meet the conditions laid down in Article 54c(2) of this Regulation and the latest version of the crypto-asset white paper as published by ESMA in accordance with Article 109(4), point (c), of Regulation (EU) 2023/1114 for such e-money token.';

(c) paragraph 3 is deleted;

(d) paragraph 4 is amended as follows:

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

'The competent authority shall immediately transmit the application referred to in paragraph 1 to the following authorities';

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

'(c) the competent authorities in the Member States where the CSD has established interoperable links with another CSD except where the CSD has established interoperable links referred to in Article 48(2a);';

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

'(d) where applicable, the members of the college referred to in Article 24a;';

(e) paragraph 5 is amended as follows:

(i) in the first subparagraph, the first sentence is replaced by the following:

'The authorities referred to in paragraph 4 may issue a reasoned opinion on the authorisation within two months of receipt of the application as referred to in that paragraph.';

(ii) the second, third and fourth subparagraphs are replaced by the following:

'Where an authority referred to in paragraph 4 issues a negative reasoned opinion, the competent authority intending to grant the authorisation shall, within 30 working days of receipt of that negative opinion, provide the authorities referred to in paragraph 4 with the reasons addressing the negative opinion.

Where, within 30 working days of those reasons being presented, any of the authorities referred to in paragraph 4 issues a negative opinion and the competent authority nevertheless intends to grant the authorisation, any of the authorities that issued a negative opinion may refer the matter to ESMA for assistance under Article 31(2), point (c), of Regulation (EU) No 1095/2010.

Where 30 working days after referral to ESMA the issue is not settled, the competent authority wishing to grant the authorisation shall take the final decision and provide a detailed explanation of its decision in writing to the authorities referred to in paragraph 4.';

(iii) the seventh subparagraph is deleted.

(f) the following paragraph 5a is inserted:

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‘5a. Within six months from the acknowledgement of receipt of the application referred to in Article 21a(2), the competent authority shall adopt its decision and transmit it to the registered recipients referred to in Article 21a, the authorities referred to in paragraph 4 and the applicant CSD via the central database. The decision shall include a fully reasoned explanation of whether the authorisation has been granted or refused. Where the decision of the competent authority does not reflect the opinion of any of the authorities referred to in paragraph 4, it shall contain a fully reasoned explanation of any significant deviation from those opinions or conditions or recommendations.

Where the competent authority does not comply or does not intend to comply with an opinion of ESMA or with any conditions or recommendations included therein, the Executive Board shall inform the Board of Supervisors. The information shall also include the reasoning from the competent authority for non-compliance or for its intention not to comply.’;

(g) in paragraph 7, the second subparagraph is replaced by the following:

‘ESMA shall submit those draft regulatory technical standards to the Commission by [OP insert date = one year after the entry into force of this amending Regulation].’;

(52) in Article 56, paragraph 1 is replaced by the following:

‘1. A CSD that intends to extend the banking-type ancillary services it provides itself or for which it designates a CSD or credit institution in accordance with Articles 54, 54a or 54b, as applicable, shall submit a request for extension to its competent authority.’;

(53) Article 57 is amended as follows:

(a) in paragraph 1, the introductory wording is replaced by the following:

‘Without prejudice to any remedial actions or measures under Title V, the competent authority of the CSD shall withdraw the authorisations referred to in Articles 54, 54a or 54b, as applicable, in any of the following circumstances:’;

(b) paragraph 3 is replaced by the following:

‘ESMA, any relevant authority under point (a) of Article 12(1) and any authority referred to in Article 60(1) or, respectively, the authorities referred to in Article 55(4) may, at any time, request that the competent authority of the CSD examine whether the CSD and where applicable the designated credit institution or designated CSD is still in compliance with the conditions under which the authorisation is granted.’;

(54) Article 58 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Decisions taken by competent authorities under Articles 54, 54a, 54b, 56 and 57 shall be notified to ESMA.’;

(b) paragraph 2 is amended as follows:

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

‘(a) the name of each CSD which was subject to a decision under Articles 54, 54a, 54b, 56 and 57;’;

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

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‘(c) the list of banking-type ancillary services that a CSD, a designated credit institution or a designated CSD is authorised to provide for the CSD’s participants in accordance with Articles 54, 54a, or 54b, as applicable.’;

(55) Article 59 is amended as follows:

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

‘1. A CSD authorised to provide banking-type ancillary services in accordance with Article 54, a CSD designated to provide those services in accordance with Article 54a or a credit institution designated to provide those services in accordance with Article 54b shall provide only the services set out in Section C of the Annex that are covered by the authorisation.

2. A CSD authorised to provide banking-type ancillary services in accordance with Article 54, a CSD designated to provide those services in accordance with Article 54a or a credit institution designated to provide those services in accordance with Article 54b shall comply with any present or future legislation applicable to credit institutions.’;

(b) in paragraph 3, the introductory wording is replaced by the following:

‘A CSD authorised to provide banking-type ancillary services in accordance with Article 54, a CSD designated to provide those services in accordance with Article 54a or a credit institution designated to provide those services in accordance with Article 54b shall comply with the following specific prudential requirements for the credit risks related to those services in respect of each securities settlement system:’;

(c) in paragraph 4, the introductory wording is replaced by the following:

‘A CSD authorised to provide banking-type ancillary services in accordance with Article 54, a CSD designated to provide those services in accordance with Article 54a, or a credit institution designated to provide those services in accordance with Article 54b shall comply with the following specific prudential requirements for the liquidity risks relating to those services in respect of each securities settlement system:’;

(d) paragraph 4a is replaced by the following:

‘4a. Where a CSD intends to provide banking-type ancillary services to other CSDs pursuant to Article 54a the CSD shall have in place clear rules and procedures addressing any potential credit, liquidity and concentration risks resulting from the provision of those services.’;

(e) in paragraph 5, the second subparagraph is replaced by the following:

‘EBA shall submit those draft regulatory technical standards to the Commission by [OP insert date = one year after the entry into force of this amending Regulation].’;

(56) in Article 60, paragraph 2 is amended as follows:

(a) in the first subparagraph, points (a) and (b) are replaced by the following:

‘(a) in the cases referred to in Articles 54a and 54b, whether all the necessary arrangements between the CSD and the designated CSDs or designated credit institutions allow them to meet their respective obligations as laid down in this Regulation;

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(b) in the case referred to in Article 54, whether the arrangements relating to the authorisation to provide banking-type ancillary services allow the CSD to meet its obligations as laid down in this Regulation.';

(b) the second and third subparagraphs are replaced by the following:

'The competent authority of the CSD shall regularly, and at least immediately after the end of every review and evaluation period, inform the authorities referred to in Article 55(4) and, where applicable, the college referred to in Article 24a, of the results, including any remedial actions or penalties, of its review and evaluation under this paragraph.

Where a CSD designates another CSD in accordance with Article 54a, or a credit institution in accordance with Article 54b, in view of the protection of the participants in the securities settlement systems it operates, a CSD shall ensure that it has access from the CSD or the credit institution it designates to all necessary information for the purpose of this Regulation and it shall report any infringements thereof to the competent authority of the CSD, to the relevant authorities and to competent authorities referred to in paragraph 1 of this Article.';

(57) in Article 62(1), fifth subparagraph, the third and fourth sentences are replaced by the following:

'ESMA shall maintain, in the central database, information on the sanctions communicated to it solely for the purposes of exchanging information between competent authorities. That information shall be accessible only to competent authorities.';

(58) Article 67 is amended as follows:

(a) the following paragraph 2b is inserted:

'2b. The power to adopt delegated acts referred to in Articles 9(5), 11(10), 11(11), 11a(6), 11b(3), 34(3) and 48a(9) shall be conferred on the Commission for an indeterminate period from [OP insert date = date of entry into force of this amending Regulation].';

(b) paragraph 3 is replaced by the following:

'3. The delegation of power referred to in Article 2(2), Article 7(5) and (9), Article 9(5), Article 11(10) and (11), and Articles 11a(6), 11b(3), 34(3) and 48a(9) may be revoked at any time by the European Parliament or by the Council. A decision of revocation 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.';

(59) Article 69 is amended as follows:

(a) paragraph 4a is amended as follows:

(i) the first and second subparagraphs are replaced by the following:

'4a. The national rules on recognition of third-country CSDs shall continue to apply until the date when a decision is made under this Regulation on the recognition of the third-country CSDs and of their activities, or until [OP insert date = three years after the entry into force of this amending Regulation], whichever is earlier.

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A third-country CSD that provides the core services referred to in Section A, points 1 and 2, of the Annex in relation to financial instruments governed by the law of a Member State as referred to in Article 25(2) point (b) pursuant to the applicable national rules on recognition of third-country CSDs, shall notify ESMA thereof within [OP insert date = two years after the entry into force of this amending Regulation].';

(ii) the fourth subparagraph is replaced by the following:

'ESMA shall submit those draft regulatory technical standards to the Commission by [OP insert date = one year after the entry into force of this amending Regulation].';

(b) paragraph 4b is replaced by the following:

'4b. A third-country CSD that provided the core service referred to in Section A, point 3, of the Annex in relation to financial instruments governed by the law of a Member State as referred to in Article 25(2a), before [OP insert date = two year after the entry into force of this amending Regulation] shall submit the notification referred to in Article 25(2a) by [OP insert date = two years after the entry into force of this amending Regulation].';

(c) paragraph 7 is replaced by the following:

'7. ESMA shall undertake the first assessment pursuant to Article 24a(1a), second subparagraph, by [OP insert date = 2 years after the entry into force of this Regulation]';

(d) the following paragraphs 9 and 10 are added:

'9. Until [OP insert date = 1 year after the entry into force of this amending Regulation] or 30 days after the announcement referred to in Article 21a(1), whichever date is earlier, the exchange of information, the submission of information and documentation, and notifications that are required to use the central database shall be carried out through the use of alternative arrangements.

10. CSDs that are authorised to outsource core services to other CSDs belonging to their group, and CSDs that are authorised to establish interoperable links including with third-country CSDs, by their national competent authorities before [OP insert date = date the entry into force of this amending Regulation], shall not seek a new authorisation pursuant to Articles 19(2), third subparagraph, 19a, or 48b, where the object of the previously granted authorisations has not changed.';

(60) Article 74 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (c) is replaced by the following:

'(c) the evolution of scale and scope of internalised settlement in the EU, in particular, a comparison of the number, volume and settlement efficiency of the transactions settled via internalised settlement with transactions settled via CSDs, as well as the evolution of pricing of CSDs and settlement internalisers. The report shall also assess the structure of the market and any potential risks to financial stability from internalised settlement;';

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

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‘(i) the procedures and conditions under which CSDs have been authorised to designate credit institutions or other CSDs, or have been authorised themselves, to provide banking-type ancillary services in accordance with Articles 54, 54a, or 54b, and 55, including an assessment of the effects that such provision may have on financial stability and competition for settlement and banking-type ancillary services in the Union;’;

(b) paragraph 5 is amended as follows:

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

‘That report shall take into account the findings related to the monitoring of the threshold by competent authorities referred to in Articles 54a(5) and 54b(8) and the credit and liquidity implications for CSDs providing banking-type ancillary services under such threshold.’;

(ii) the following subparagraph is added:

‘In the annual report referred to in the first subparagraph, the EBA shall also assess the use of e-money tokens for settlement in authorised CSDs, including the use of e-money tokens denominated in non-Union currencies.’;

(61) the Annex to Regulation (EU) No 909/2014 is amended in accordance with Annex VI to this Regulation.

Article 5

Amendments to Regulation (EU) 2015/2365

Regulation (EU) 2015/2365 is amended as follows:

(1) Article 9 is replaced by the following:

‘The powers conferred on ESMA in accordance with Articles 39a to 39m of Regulation (EU) No 1095/2010 and Articles 64, 65, 73 and 74 of Regulation (EU) No 648/2012 and, in conjunction with Annexes I and II thereto, shall also be exercised with respect to this Regulation. References to Article 81(1) and (2) of Regulation (EU) No 648/2012 in Annex I to that Regulation shall be construed as references to Article 12(1) and (2) of this Regulation respectively.’;

(2) in Article 11(1) the first subparagraph is replaced by the following:

‘ESMA shall charge the trade repositories fees in accordance with Article 39n of Regulation (EU) No 1095/2010 and the delegated acts adopted pursuant to paragraph 2 of this Article. Those fees shall be proportionate to the turnover of the trade repository concerned. In so far as Article 9(1) of this Regulation refers to Article 74 of Regulation (EU) No 648/2012, references to Article 72(3) of that Regulation shall be construed as references to paragraph 2 of this Article.’.

Article 6

Amendments to Regulation (EU) 2019/1156

Regulation (EU) 2019/1156 is amended as follows:

(1) Article 1 is replaced by the following:

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‘*Article 1*

Subject matter

This Regulation establishes uniform rules concerning the marketing of collective investment undertakings across the Union, the marketing communications addressed to investors, as well as common principles concerning fees and charges levied on collective investment undertakings in relation to their cross-border activities. It also provides for the establishment of a data platform on the cross-border marketing of collective investment undertakings.

Member States shall not add any further requirements in the field covered by this Regulation.’;

(2) Article 2 is amended as follows:

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

‘(b) UCITS management companies, including any investment company which has not designated a UCITS management company, pursuant to the second subparagraph of Article 30 of Directive 2009/65/EC[33]’;

(b) the following point (e) is added:

‘(e) UCITS’;

(3) in Article 3 the following points (i) to (p) are added:

‘(i) ‘UCITS home Member State’ means a Member State as defined in Article 2(1), point (e), of Directive 2009/65/EC;

(j) 'UCITS host Member State' means a Member State, other than the UCITS home Member State, in which the units of the UCITS are marketed;

(k) ‘host Member State of the AIFM’ means a Member State, other than the home Member State, in which an EU AIFM markets units or shares of an EU AIF;

(l)’EU AIFM’ means an AIFM as defined in Article 4(1), point (l), of Directive 2011/61/EU[34];

(m) ‘EU AIF’ means an AIF as defined in Article 4(1), point (k) of Directive 2011/61/EU;

(n) ‘marketing’ means a direct or indirect offering or placement at the initiative of the AIFM, the EuVECA manager, the EuSEF manager or the UCITS or on behalf of them

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33 Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), (OJ L 302, 17.11.2009, pp. 32–96), ELI: Directive - 2009/65 - EN - UCITS - EUR-Lex

34 Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010, (OJ L 174, 1.7.2011, pp. 1–73), ELI: Directive - 2011/61 - EN - aifmd - EUR-Lex

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of units or shares of an AIF or UCITS to or with investors domiciled or with a registered office in the Union;

(o) 'pre-marketing' means provision of information or communication, direct or indirect, on investment strategies or investment ideas by an EU AIFM or on its behalf, to potential professional investors domiciled or with a registered office in the Union in order to test their interest in an AIF or a compartment which is not yet established, or which is established, but not yet notified for marketing in accordance with Article 17f or 17g, in that Member State where the potential investors are domiciled or have their registered office, and which in each case does not amount to an offer or placement to the potential investor to invest in the units or shares of that AIF or compartment;

(p) 'professional investor' means an investor which is considered to be a professional client or may, on request, be treated as a professional client within the meaning of Annex II to Directive 2014/65/EU.';

(4) Article 4 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. AIFMs, EuVECA managers, EuSEF managers and UCITS shall ensure that all marketing communications they prepare and make available to investors are identifiable as such and describe the risks and rewards of purchasing units or shares of an AIF or units of a UCITS in an equally prominent manner, and that all information included in marketing communications is fair, clear and not misleading.';

(b) paragraph 2 is replaced by the following:

'2. UCITS shall ensure that marketing communications that contain specific information about a UCITS do not contradict or diminish the significance of the information contained in the prospectus referred to in Article 68 of Directive 2009/65/EC or the key information document referred to in Regulation (EU) No 1286/2014. UCITS shall ensure that all marketing communications indicate that a prospectus exists and that the key information document is available. Such marketing communications shall specify where, how and in which language investors or potential investors can obtain the prospectus and the key information document and shall provide hyperlinks to or website addresses for those documents.';

'The requirements of the first subparagraph shall apply mutatis mutandis to AIFs which publish a prospectus in accordance with Regulation (EU) 2017/1129 of the European Parliament and of the Council[35], or in accordance with national law, or are required to draw up a key information document in accordance with Regulation (EU) No 1286/2014.[36]';

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35 Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12, ELI: Regulation - 2017/1129 - EN - Prospectus Regulation - EUR-Lex).

36 Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), (*OJ L 352, 9.12.2014, pp. 1–23),* Regulation - 1286/2014 - EN - PRIIPs Regulation - EUR-Lex

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(c) paragraphs 3, 4 and 5 are replaced by the following:

‘3. Marketing communications referred to in paragraph 1 shall specify where, how and in which language investors or potential investors can obtain a summary of investor rights and shall provide a hyperlink to such a summary, which shall include, as appropriate, information on access to collective redress mechanisms at Union and national level in the event of litigation.

Such marketing communications shall also contain clear information that the AIFM, EuVECA manager, EuSEF manager or UCITS may decide to terminate the arrangements made for the marketing of AIFs and UCITS in accordance with Articles 17d and 17h.

4. AIFMs, EuVECA managers and EuSEF managers shall ensure that marketing communications comprising an invitation to purchase units or shares of an AIF that contain specific information about that AIF do not contradict or diminish the significance of the information which is to be disclosed to the investors in accordance with Article 23 of Directive 2011/61/EU, with Article 13 of Regulation (EU) No 345/2013 or with Article 14 of Regulation (EU) No 346/2013, or, where relevant, the information contained in the key information document drawn up in accordance with Regulation (EU) No 1286/2014 or in the prospectus drawn up in accordance with Regulation (EU) 2017/1129 of the European Parliament and of the Council[37].

5. AIFMs, EuVECA and EuSEF managers and UCITS management companies shall be liable for ensuring that the requirements of this Article are met where the marketing function is delegated to a third party, pursuant to Article 20 of Directive 2011/61/EU, Article 8 of Regulation (EU) No 345/2013, Article 8 of Regulation (EU) No 346/2013 and Article 13 of Directive 2009/65/EC.

Where the marketing function is performed by one or several distributors which are acting on their own behalf pursuant to Article 20 (6a) of Directive 2011/61/EU and Article 13(3) of Directive 2009/65/EC, those distributors shall be responsible to ensure that the marketing communications made available to investors comply with the requirements of this Article.’;

(d) the following paragraph 5a is inserted:

‘5a. Member States shall not impose additional requirements on the content and format of marketing communications as regards AIFs and UCITS marketed in their territory than those set out in this Article and in the delegated acts referred to in paragraph 6.’;

(e) paragraph 6 is replaced by the following:

‘6. The Commission shall adopt, by means of a delegated acts in accordance with

[37] Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12, ELI: Regulation - 2017/1129 - EN - Prospectus Regulation - EUR-Lex).

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Article 18b, measures specifying the content and format of the marketing communications referred to in paragraph 1. Those delegated acts shall specify the following:

(a) the scope of what is considered a marketing communication;

(b) principles on information that is fair, clear and not misleading;

(c) general principles for drafting marketing communications;

(d) the description of risks and rewards in marketing communications;

(e) principles on disclosures relating to costs and fees in marketing communications;

(f) information on past and future performance in marketing communications.';

(5) Articles 5 and 6 are deleted;

(6) Article 7 is replaced by the following:

'*Article 7*

Verification of marketing communications

1. The competent authorities of the host Member State shall not require the prior notification of marketing communications which AIFMs, EuVECA managers, EuSEF managers and UCITS intend to use directly or indirectly in their dealings with investors as a prior condition for the marketing of AIFs and UCITS in their territory.

2. Where the competent authorities of the host Member State have reasonable grounds to suspect that the marketing communications referred to in paragraph 1 do not comply with the requirements of Article 4, they may act in accordance with the powers referred to in Article 14a (5) and (7) and in Article 14b (5) and (7).';

(7) Article 8 is deleted;

(8) Article 9 is replaced by the following:

'*Article 9*

Common principles concerning fees or charges

1. Where fees or charges are levied by the competent authorities of host Member States for carrying out their duties in relation to the cross-border marketing of AIFs and UCITS in their territory, such fees or charges shall be consistent and justified with the overall cost relating to the performance of the functions of those competent authorities.

2. By [Please insert date = 36 months after the entry into force of this Regulation], and every two years thereafter, ESMA shall conduct a review of the fees or charges referred to in paragraph 1 that are imposed by host competent authorities in relation to the marketing of AIFs and UCITS in their territory and shall submit a report to the Commission indicating whether such fees or charges are consistent with the overall cost relating to the performance of the functions of those competent authorities.';

(9) Article 10 is replaced by the following:

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‘Article 10

Publication of competent authorities’ arrangements concerning fees or charges on ESMA’s website

1. In relation to the fees or charges referred to in Article 9(1), ESMA shall publish and maintain up-to-date information on its website, which shall include at least the following:

    (a) a list of competent authorities accompanied by an indication of whether fees or charges referred to in Article 9(1) are levied;

    (b) for each competent authority that imposes fees or charges as referred to in Article 9(1), the following information shall be provided:

        (a) the amount of applicable fees, including the applied fee structure;

        (b) the frequency and timing of such fees or charges;

        (c) the means and instructions of the payment of such fees or charges;

        (d) any other information that an AIFM, EuVECA manager, EuSEF manager and UCITS would require in order to ensure the accurate and timely payment of the fees or charges in accordance with the national rules and procedures of each competent authority.

2. Where fees or charges are levied by competent authorities in accordance with Article 9(1), AIFMs, EuVECA managers, EuSEF managers and UCITS shall arrange the payment of such fees or charges in accordance with the information provided on the website of ESMA as referred to in paragraph 1.

3. Competent authorities shall be responsible to provide ESMA with the information referred to in paragraph 1, including any updates thereof, in a timely manner and on an ongoing basis.

4. ESMA shall not be accountable for any incomplete or inaccurate information in respect of fees or charges on its website.’;

(10) Article 11 is deleted;

(11) Article 12 is replaced by the following:

‘Article 12

ESMA’s data platform for the exchange of information and documentation between competent authorities

1. In accordance with Article 35c of Regulation (EU) No 1095/2010, ESMA shall by [Please insert date = 24 months after the entry into force of this Regulation] develop a data platform, which shall include at least the following information:

    (a) in relation to UCITS that market their units in a Member State other than their home Member State, the UCITS home and host Member States, the UCITS management company, and the documentation referred to in paragraphs 1, 2 and 4 of Article 17c;

    (b) in relation to AIFMs that market in their home Member State units or shares of AIFs that are established in other Member States, the home

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Member States of the AIFM and the AIFs they market, and the documentation referred to in paragraphs 2 and 5 of Article 17f;

(c) in relation to AIFMs that market units or shares of AIFs in Member States other than their home Member State, the home and host Member States of the AIFM and the documentation referred to in paragraphs 2 and 4 of Article 17g;

(d) any material changes to the information and documentation referred to in points (a), (b) and (c); and

(e) the de-notifications transmitted in accordance with Articles 17d and 17h.

2. ESMA shall ensure that the relevant competent authorities have immediate access by electronic means through the data platform, to the information and documentation referred to in paragraph 1 and, where relevant, to any translations thereof.

3. ESMA shall ensure that the information and documentation transmitted to the data platform can be automatically translated by the competent authorities in any of the official languages of the Union.

ESMA shall not be held liable for any errors, omissions or inaccuracies arising from the automatic translation of the information and documentation referred to in the first subparagraph.

4. ESMA shall by [Please insert date = 24 months after the entry into force of this Regulation] publish on its website and make publicly available in a language customary in the sphere of international finance the following:

(a) all AIFs that are marketed in a Member State other than the home Member State of the AIFM, their AIFM, EuSEF manager or EuVECA manager, and the Member States in which they are marketed; and

(b) all UCITS that are marketed in a Member State other than the UCITS home Member State, their UCITS management company and the Member States in which they are marketed.

5. The obligations in this Article shall be without prejudice to the obligations related to the list referred to in the second subparagraph of Article 6(1) of Directive 2009/65/EC, to the central public register referred to in the second subparagraph of Article 7(5) of Directive 2011/61/EU, to the central database referred to in Article 17 of Regulation (EU) No 345/2013 and to the central database referred to in Article 18 of Regulation (EU) No 346/2013.

(12) the following Article 12a is inserted:

'Article 12a

Disclosure to investors

1. Where an AIFM or UCITS markets the units of an AIF or UCITS in a host Member State, it shall provide to investors within the territory of such Member State all information and documents which it is required to provide to investors in its home Member State pursuant to Chapter IX of Directive 2009/65/EC and Article 23 of Directive 2011/61/EU.

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2. The information and documents referred to in paragraph 1 shall be provided to investors in compliance with the following:

(a) the key information document as referred to in Regulation (EU) No 1286/2014 shall be translated in accordance with that Regulation ;

(b) information or documents other than that referred to in point (a) shall be translated into a language customary in the sphere of international finance;

(c) where relevant, translations of information or documents under paragraph 1 shall be produced under the responsibility of the AIFM or UCITS and shall faithfully reflect the content of the original information.

3. The requirements set out in points (a) to (c) of paragraph 2 shall also be applicable to any material changes to the information and documents referred to therein.

4. The frequency of the publication of the issue, sale, repurchase or redemption price of units of UCITS according to Article 76 of Directive 2009/65/EC shall be subject to the laws, regulations and administrative provisions of the UCITS home Member State.';

(13) Article 13 is deleted;

(14) Article 14, paragraph 2 is amended as follows:

'2. The powers conferred on competent authorities pursuant to Directives 2009/65/EC and 2011/61/EU, Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) 2015/760, including those related to penalties or other measures, shall also be exercised with respect to the entities referred to in Article 2 of this Regulation as regards the field covered by this Regulation.';

(15) The following Articles 14a to 14e are inserted:

'*Article 14a*

Powers of the competent authorities of the UCITS

1. The competent authorities of the UCITS home Member State shall be competent to supervise that UCITS for matters laid down in this Regulation and, where relevant, Article 19 of Directive 2009/65/EC.

2. By way of derogation from paragraph 1, the competent authorities of the UCITS host Member State shall be competent to supervise the compliance of UCITS marketed in their territory with the requirements set out in Articles 12a and 17b of this Regulation and with provisions falling outside the field governed by this Regulation and by Directive 2009/65/EC.

The competent authorities of the host Member State of the UCITS may require a UCITS marketed in their territory to provide the information necessary for the supervision of the UCITS compliance with the applicable rules for which those competent authorities are responsible, as referred to in the first subparagraph.

3. Only the competent authorities of the UCITS home Member State shall have the power to take action against that UCITS for the matters referred to in paragraph 1.

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However, the competent authorities of the UCITS host Member State may take action against that UCITS if it infringes the laws, regulations and administrative provisions referred to in the first subparagraph of paragraph 2 that are in force in that Member State.

By way of derogation from the second subparagraph, where the competent authorities of the UCITS host Member State are of the opinion that a UCITS does not comply with the requirements referred to in the first subparagraph of paragraph 2 and that for that reason they are to prevent any further marketing of that UCITS in their territory, they shall refer the matter to ESMA which shall act in accordance with the powers referred to in point (b) of Article 14c(4).

4. Where the competent authorities of the UCITS home Member State decide to withdraw the authorisation, or to suspend the issue, repurchase or redemption of the units of a UCITS, in accordance with the competencies laid down in paragraph 1, they shall communicate those decisions without delay to ESMA through the data platform referred to in Article 12.

The competent authorities of the UCITS host Member State shall immediately receive a notification from the data platform indicating the decisions referred to in the first subparagraph.

5. Where the competent authorities of the UCITS home Member State are competent to supervise the UCITS in accordance with paragraph 1, the competent authorities of the UCITS host Member State that have clear and demonstrable grounds for considering that a UCITS, the units of which are marketed within the territory of that Member State, is in breach of the obligations arising from this Regulation or the provisions adopted pursuant to Directive 2009/65/EC, shall refer those findings to ESMA through the data platform referred to in Article 12.

The competent authorities of the UCITS home Member shall immediately receive a notification from the data platform indicating the findings referred to in the first subparagraph and shall, without undue delay, take appropriate measures to remedy the situation.

The competent authorities of the UCITS host Member State may, where they have reasonable grounds for doing so, specifically request the competent authorities of the UCITS home Member State to exercise, without delay, powers pursuant to Article 98(2) of Directive 2009/65/EC, other than point (j) of that paragraph, specifying the reasons for their request in as specific a manner as possible and informing ESMA through the data platform referred to in Article 12 and, where there are potential risks to the stability and integrity of the financial system, the ESRB thereof.

6. Upon being informed in accordance with the third subparagraph of paragraph 5, the competent authorities of the UCITS home Member State shall, without undue delay, inform ESMA through the data platform referred to in Article 12, and, if there are potential risks to the stability and integrity of the financial system, the ESRB, of the powers exercised to remedy the situation identified by the competent authorities of the UCITS host Member State and of their findings.

The competent authorities of the UCITS host Member State shall immediately receive a notification from the data platform indicating those powers and findings.

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ESMA may request the competent authorities to submit to it, without undue delay, explanations in relation to specific cases which raise a serious threat to investor protection, to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system in the Union.

7. Where the competent authorities of the UCITS host Member State consider that despite the measures taken by the competent authorities of the UCITS home Member State or because of the absence of measures taken thereof, the UCITS persists in acting in a manner that is clearly prejudicial to the interests of the UCITS host Member State's investors, the competent authorities of the UCITS host Member State shall inform ESMA thereof through the data platform referred to in Article 12 and may request it to act in accordance with the powers referred to under Regulation (EU) No 1095/2010.

   The competent authorities of the UCITS home Member State shall immediately receive a notification from the data platform indicating the intention of the UCITS host Member State to request ESMA to resolve the issue pursuant to the first subparagraph.

8. The competent authorities of the UCITS host Member State may also request the competent authorities of the UCITS home Member State to exercise powers pursuant to Article 84(2), point (b) of Directive 2009/65/EC, specifying the reasons for the request and informing ESMA through the data platform referred to in Article 12 and, if there are potential risks to the stability and integrity of the financial system, the ESRB thereof.

9. Where the competent authorities of the UCITS home Member State do not agree with the request referred to in paragraph 8, they shall inform ESMA through the data platform referred to in Article 12, and, where the ESRB was informed of that request pursuant to paragraph 8, the ESRB thereof, stating the reasons for the disagreement.

   The requesting competent authorities shall immediately receive a notification from the data platform indicating the disagreement of the competent authorities of the UCITS home Member State and the reasons behind it.

10. On the basis of the information received pursuant to paragraphs 8 and 9, ESMA shall issue without undue delay an opinion to the competent authorities of the UCITS home Member State on the exercise of powers pursuant to Article 84(2), point (b) of Directive 2009/65/EC.

    ESMA shall communicate the opinion referred to in the first subparagraph to the competent authorities of the UCITS host Member State.

11. Where the competent authorities of the UCITS home Member State do not agree with ESMA’s opinion referred to in paragraph 10, they shall inform ESMA thereof through the data platform referred to in Article 12 and they shall request ESMA to resolve the issue in accordance with the powers conferred on it under Regulation (EU) No 1095/2010.

    The competent authorities of the UCITS host Member State shall immediately receive a notification from the data platform indicating the intention of the UCITS home Member State to request ESMA to resolve the issue pursuant to the first subparagraph.

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12. Member States shall ensure that within their territories it is legally possible to serve the legal documents necessary for the measures which may be taken by the UCITS host Member State in regard to UCITS pursuant to paragraph 3.

Article 14b

Powers of the competent authorities of the AIFM

1. The authorities of the home Member State of the AIFM shall be competent to supervise that AIFM for matters laid down in this Regulation including, where relevant, pursuant to Article 45 of Directive 2011/61/EU.

2. By way of derogation from paragraph 1, the competent authorities of the host Member State of the AIFM shall be competent to supervise the compliance of AIFs marketed in their territory and of AIFMs managing those AIFs with the requirements set out in Article 12a of this Regulation and with provisions falling outside the field governed by this Regulation and Directive 2011/61/EU.

   The competent authorities of the host Member State of the AIFM may require an AIFM marketing AIFs in their territory to provide the information necessary for the supervision of the AIF's and AIFM's compliance with the applicable rules for which those competent authorities are responsible, as referred to in the first subparagraph.

3. Only the competent authorities of the home Member State of the AIFM shall have the power to take action against that AIFM for the matters referred to in paragraph 1.

   However, the competent authorities of the host Member State of the AIFM may take action against that AIFM or against an AIF marketed in their territory if they infringe the laws, regulations and administrative provisions referred to in the first subparagraph of paragraph 2 that are in force in that Member State.

   By way of derogation from the second subparagraph, where the competent authorities of the host Member State of the AIFM are of the opinion that an AIF marketed in their territory or the AIFM that manages it does not comply with the requirements referred to in the first subparagraph of paragraph 2 and that for that reason they should they should prevent any further marketing of that AIF in their territory, they should refer the matter to ESMA which shall act in accordance with the powers referred to in point (b) of Article 14c(4).

4. Where the competent authorities of the home Member State of the AIFM decide to withdraw the authorisation, or to suspend the issue, repurchase or redemption of the units or shares of AIFs marketed in a host Member State, in accordance with the competencies laid down in paragraph 1, they shall communicate those decisions without delay to ESMA through the data platform referred to in Article 12.

   The competent authorities of the host Member State of the AIFM shall immediately receive a notification from the data platform indicating the decisions referred to in the first subparagraph.

5. Where the competent authorities of the home Member State of the AIFM are competent to supervise the AIFM and the AIFs marketed in their territory in accordance with paragraph 1, the competent authorities of the host Member State of the AIFM that have clear and demonstrable grounds for believing that an AIFM marketing units or shares of AIFs within the territory of that Member State is in breach the obligations arising from this Regulation or the provisions adopted

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pursuant to Directive 2011/61/EU shall refer those findings to ESMA through the data platform referred to in Article 12.

The competent authorities of the home Member State of the AIFM shall immediately receive a notification from the data platform indicating the findings referred to in the first subparagraph and shall, without undue delay, take appropriate measures to remedy the situation.

The competent authorities of the host Member State of the AIFM may, where they have reasonable grounds for doing so, specifically request the competent authorities of the home Member State of the AIFM to exercise, without delay, powers pursuant to Article 46(2) other than point (j) and Article 48 of Directive 2011/61/EU, specifying the reasons for their request in as specific a manner as possible and informing ESMA through the data platform referred to in Article 12 and, if there are potential risks to the stability and integrity of the financial system, the ESRB thereof.

6. Upon being informed pursuant to the third subparagraph of paragraph 5, the competent authorities of the home Member State of the AIFM shall, without undue delay, inform ESMA through the data platform referred to in Article 12, and, if there are potential risks to the stability and integrity of the financial system, the ESRB, of the powers exercised to remedy the situation identified by the competent authorities of the host Member State of the AIFM and of their findings.

The competent authorities of the host Member State of the AIFM shall immediately receive a notification from the data platform indicating those powers and findings.

ESMA may request the competent authorities to submit to it, without undue delay, explanations in relation to specific cases which raise a serious threat to investor protection, to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system in the Union.

7. Where the competent authorities of the host Member State of the AIFM believe that despite the measures taken by the competent authorities of the home Member State of the AIFM or because of the absence of measures taken thereof, the AIFM marketing an AIF in their territory or the AIF persists in acting in a manner that is clearly prejudicial to the interests of the host Member State's investors, the competent authorities of the host Member State of the AIFM shall inform ESMA thereof through the data platform referred to in Article 12 and may request it to act in accordance with the powers conferred on it under Regulation (EU) No 1095/2010.

The competent authorities of the home Member State of the AIFM shall immediately receive a notification from the data platform indicating the intention of the host Member State of the AIFM to request ESMA to resolve the issue pursuant to the first subparagraph.

8. The competent authorities of the host Member State of the AIFM may also request the competent authorities of the home Member State of the AIFM to exercise powers pursuant to Article 46(2), point (j) of Directive 2011/61/EU, specifying the reasons for the request and informing ESMA through the data platform referred to in Article 12 and, if there are potential risks to the stability and integrity of the financial system, the ESRB thereof.

9. Where the competent authorities of the home Member State of the AIFM do not agree with the request referred to in paragraph 8, they shall inform ESMA through the data platform referred to in Article 12, and, where the ESRB was informed of that

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request pursuant to paragraph 8, the ESRB thereof, stating the reasons for the disagreement.

The requesting competent authorities shall immediately receive a notification from the data platform indicating the disagreement of the competent authorities of the home Member State of the AIFM and the reasons behind it.

10. On the basis of the information received pursuant to paragraphs 8 and 9, ESMA shall issue without undue delay an opinion to the competent authorities of the home Member State of the AIFM on the exercise of powers pursuant to Article 46(2), point (j) of Directive 2011/61/EU. ESMA shall communicate that opinion to the competent authorities of the host Member State of the AIFM.

11. Where the competent authorities of the home Member State of the AIFM do not agree with ESMA's opinion referred to in paragraph 10, they shall inform ESMA thereof through the data platform referred to in Article 12 and they shall request ESMA to resolve the issue in accordance with the powers conferred on it under Regulation (EU) No 1095/2010.

The competent authorities of the host Member State of the AIFM shall immediately receive a notification from the data platform indicating the intention of the home Member State of the AIFM to request ESMA to resolve the issue pursuant to the first subparagraph.

12. Member States shall ensure that within their territories it is legally possible to serve the legal documents necessary for the measures which may be taken by the host Member State of the AIFM in regard to AIFMs or AIFs marketed in their territory, pursuant to paragraph 3.

Article 14c

Powers of ESMA to address cross-border issues

1. ESMA shall on an ongoing basis identify diverging, duplicative, redundant and deficient supervisory actions stemming from the home or host competent authorities and hindering the effective exercise of passporting rights by UCITS and AIFs marketed on a cross-border basis in accordance with this Regulation.

2. For the purpose of paragraph 1, ESMA shall engage with the competent authorities concerned, and, where applicable, collect additional information to identify existing or potential cross-border issues.

Where, pursuant to the first subparagraph, ESMA identifies existing or potential cross-border issues it shall propose corrective actions to the relevant competent authorities for their removal.

3. Where, despite the corrective actions referred to in paragraph 2 or because the relevant competent authorities fail to implement those corrective actions, the issues identified pursuant to paragraph 2 persist, ESMA shall, without undue delay exercise at least one of the powers conferred on it under Articles 17, 17aaa, 19 or 19a of Regulation (EU) No 1095/2010 in the following cases:

(a) the competent authorities of the host Member State of the UCITS or AIFM, EuVECA manager or EuSEF manager prevent or intend to prevent a UCITS or AIF from being marketed in their territory in accordance with Articles 14a(2) and 14b(2) of this Regulation, Article 18(3) of Regulation (EU) No 345/2013 and Article 19(3) of Regulation

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(EU) No 346/2013, or impose requirements on such marketing which are not compliant with Regulation (EU) 2019/1156;

(b) a UCITS or AIF is marketed or intended to be marketed on a cross-border basis while not being compliant with Union law.

The obligation to exercise at least one of the powers referred to in the first subparagraph shall be without prejudice to ESMA's capacity to use any of the powers conferred on it under Regulation (EU) No 1095/2010 outside the procedure laid down in this Article.

4. Notwithstanding the actions referred to in paragraph 3, ESMA may suspend a UCITS from being marketed in the territory of another Member State or an AIFM, EuVECA manager or EuSEF manager from marketing an AIF in another Member State where one of the following conditions are fulfilled:

(a) the competent authorities or stakeholders concerned fail to implement a decision, opinion, recommendation or action adopted or required by ESMA in accordance with paragraph 3 or an opinion issued by the Commission, in accordance with Article 17(4) of Regulation (EU) No 1095/2010;

(b) ESMA has concluded that a UCITS or AIF marketed on a cross-border basis no longer fulfils the requirements of this Regulation, of Directives 2009/65/EC and 2011/61/EU or of Regulations (EU) No 345/2013 and (EU) No 346/2013.

5. Before suspending the marketing as referred to in paragraph 4, ESMA shall send its draft findings to the UCITS, AIFM, EuVECA manager or EuSEF manager concerned and to the competent authorities of their home Member States. The competent authorities concerned may submit to ESMA a reasoned statement within 30 calendar days of the receipt of the draft findings.

6. ESMA shall promptly notify the UCITS, AIFM, EuVECA manager or EuSEF manager, as well as the competent authorities of their host Member States of the suspension of the ability to market units or shares of UCITS or AIFs on a cross-border basis. The suspension may start at the date of notification to the UCITS, AIFM, EuVECA manager or EuSEF manager and shall start no later than 30 calendar days following that notification.

7. ESMA shall publish a report on its activity in accordance with paragraphs 1 to 4 at least annually.

Article 14d

Dispute settlement

In case competent authorities disagree on an assessment, action or omission of one competent authority in areas where this Regulation requires cooperation or coordination between competent authorities from more than one Member State, one or more competent authorities may refer the matter to ESMA which shall act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

(16) The following Articles 17a to 17i are inserted:

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‘Article 17a

Conditions for the marketing of UCITS in the Union

1. UCITS shall be allowed to market their units in the Union outside their home Member State upon authorisation obtained from the competent authority of their home Member State in accordance with the procedure laid down in Article 17c.

2. For the purposes of paragraph 1, no additional requirements or administrative procedures shall be imposed on UCITS in respect of the fields governed by this Regulation and by Directive 2009/65/EC.

3. For the purposes of this Article and of Articles 17b, 17c and 17d, a UCITS shall include investment compartments thereof.

4. For the purpose of pursuing its activities in a host Member State, a UCITS may use the same reference to its legal form (such as investment company or common fund) in its designation in a UCITS host Member State as it uses in its home Member State.

Article 17b

Facilities in the UCITS host Member State

1. A UCITS shall make available, in each Member State where it intends to market its units, facilities to perform the following tasks:

   (a) process subscription, repurchase and redemption orders and make other payments to unit-holders relating to the units of the UCITS, in accordance with the conditions set out in the documents required pursuant to Chapter IX of Directive 2009/65/EC;

   (b) provide investors with information on how orders referred to in point (a) can be made and how repurchase and redemption proceeds are paid;

   (c) facilitate the handling of information and access to procedures and arrangements referred to in Article 15 of Directive 2009/65/EC relating to the investors' exercise of their rights arising from their investment in the UCITS in the Member State where the UCITS is marketed;

   (d) make the information and documents required pursuant to Chapter IX of Directive 2009/65/EC available to investors under the conditions laid down in Article 12a, for the purposes of inspection and obtaining copies thereof;

   (e) provide investors with information relevant to the tasks that the facilities perform in a durable medium; and

   (f) act as a contact point for communicating with the competent authorities.

2. Host Member States shall not require a UCITS to have a physical presence in their territory or to appoint a third party in that host Member State for the purposes of paragraph 1 or for any other purposes relating to the activities of the UCITS in that host Member State.

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3. UCITS shall ensure that the facilities to perform the tasks referred to in paragraph 1, including electronically, are provided:

(a) in the official language or one of the official languages of the UCITS host Member State, in a language approved by the competent authorities of that Member State, or in a language customary in the sphere of international finance;

(b) by the UCITS itself, by a third party which is subject to regulation and supervision governing the tasks to be performed, or by both.

For the purposes of point (b) of the first subparagraph, where the tasks are to be performed by a third party, the appointment of that third party shall be evidenced by a written contract, which specifies which of the tasks referred to in paragraph 1 are not to be performed by the UCITS and that the third party is to receive all the relevant information and documents from the UCITS.

The liability of the UCITS shall not be affected by the fact that the tasks referred to in paragraph 1 are performed by a third party in accordance with the second subparagraph of this paragraph.

Article 17c

Passporting based on authorisation of a UCITS

1. At the time of authorisation of a UCITS in accordance with Article 5 of Directive 2009/65/EC, where a UCITS proposes to market its units in a Member State other than its home Member State, it shall indicate those Member States in its application for authorisation to the competent authorities of its home Member State.

The application for authorisation shall include information on arrangements made for marketing units of the UCITS in the host Member States, including, where relevant, in respect of share classes and an indication that the UCITS is marketed by the management company that manages the UCITS.

The application for authorisation shall also include information on the facilities for performing the tasks referred to in Article 17b.

2. For the purposes of paragraph 1, a UCITS shall enclose with its application for authorisation the following:

(a) its fund rules or its instruments of incorporation;

(b) its prospectus and, where appropriate, its latest annual report;

(c) its key information document as referred to in Regulation (EU) No 1286/2014 translated in accordance with that Regulation; and

(d) where available, the marketing communications referred to in Article 4, accompanied by an attestation from the UCITS that it complies with the requirements of that Article.

The information referred to in points (a), and (b) and the attestation referred to in point (d) of the first subparagraph shall be provided at least in a language customary in the sphere of international finance.

3. The competent authorities of the UCITS home Member State shall verify whether the information and documentation submitted by the UCITS in accordance with paragraphs 1 and 2 is complete.

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4. Upon authorisation, the competent authorities of the UCITS home Member State shall prepare a letter of authorisation containing an Annex listing the host Member States in which the UCITS intends to market its units, together with a statement that the UCITS fulfils the conditions imposed by this Regulation and Directive 2009/65/EC.

5. Upon authorisation, the competent authorities of the UCITS home Member State shall notify ESMA by transmitting the documentation referred to in paragraphs 1, 2 and 4 to ESMA through the data platform referred to in Article 12. .

   The competent authorities of the UCITS host Member States shall immediately receive a notification from the data platform indicating that a new UCITS is to be marketed in their territory and shall have immediate and direct access to the documentation transmitted pursuant to the first subparagraph.

   The competent authorities of the UCITS home Member State shall promptly notify the UCITS of the transmission referred to in the first subparagraph. As of the date of that transmission, the UCITS may access the markets of the UCITS host Member States.

6. The competent authorities of the UCITS home Member State shall ensure that the letter of authorisation referred to in paragraph 4 is provided at least in a language customary in the sphere of international finance.

7. Where a UCITS has already been authorised and wishes to market its units or shares in a new Member State, it shall notify the competent authorities of its home Member State of the new host Member States in which it intends to market its units or shares and it shall include information on arrangements made for marketing and where available marketing communications referred to in Article 4, accompanied by an attestation from the UCITS that it complies with the requirements of that Article.

   The competent authorities of the UCITS home Member State shall update the Annex to the letter of authorisation, listing the new host Member States in which the UCITS intends to market its units and notify ESMA by transmitting the updated letter of authorisation and where relevant the updated information and documentation through the data platform referred to in Article 12.

   The competent authorities of the UCITS new host Member States shall immediately receive a notification from the data platform indicating that a new UCITS is to be marketed in their territory and shall have immediate and direct access to the documentation transmitted pursuant to the first and second subparagraphs of this paragraph.

   The competent authorities of the UCITS home Member State shall immediately notify the UCITS of the transmission referred to in the second subparagraph. As of the date of that transmission, the UCITS may access the markets of the new host Member States.

8. For the purpose of the procedure set out in this Article, the competent authorities of the host Member State in which the UCITS proposes to market its units shall not request or require any additional documents, certificates or information other than those referred to in paragraphs 1, 2 and 4 of this Article.

9. In the event of a material change to the information and documentation submitted to the competent authorities of the UCITS home Member State pursuant to paragraphs

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1 and 2, the UCITS shall give written notice thereof to the competent authorities of its home Member State at least 15 working days before implementing that change.

10. Where, pursuant to a change as referred to in paragraph 9, the UCITS would no longer comply with this Regulation or with Directive 2009/65/EC, the competent authorities of the UCITS home Member State shall inform the UCITS within 10 working days of receipt of the information that it is not to implement that change. In that case, the competent authorities of the UCITS home Member State shall notify ESMA accordingly through the data platform referred to in Article 12.

The competent authorities of the UCITS host Member States shall immediately receive a notification from the data platform with the information referred to in the first subparagraph.

11. Where a material change referred to in paragraph 9 is implemented after information has been transmitted in accordance with paragraph 10 and where pursuant to that change the UCITS no longer complies with this Regulation or Directive 2009/65/EC, the competent authorities of the home Member State of the UCITS shall take all appropriate measures in accordance with Article 98 of Directive 2009/65/EC, including, where necessary, the express prohibition of marketing of the UCITS. The competent authorities of the UCITS home Member State shall notify ESMA of such measures without delay through the data platform referred to in Article 12.

The competent authorities of the UCITS host Member States shall immediately receive a notification from the data platform, indicating the measures referred to in the first subparagraph.

12. If, despite the measures taken by the competent authorities of the home Member State of the UCITS or because such measures prove to be inadequate, the competent authorities of the host Member State have clear and demonstrable grounds to consider that, further to the changes referred to in paragraph 9, the UCITS continues to be in breach of the requirements of this Regulation or of Directive 2009/65/EC in a manner that is clearly prejudicial to the interests of the host Member State's investors, the competent authorities of the UCITS host Member State, may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Regulation (EU) No 1095/2010.

Article 17d

Arrangements to de-notify the marketing of UCITS

1. Where a UCITS intends to terminate the marketing of its units including, where relevant, in respect of share classes, in a Member State in respect of which it has made a notification in accordance with Article 17c, it shall submit a de-notification to the competent authorities of its home Member State, which shall include the intention to terminate arrangements made for marketing such units in that Member State. Such intention shall be made public by electronic means, which is customary for marketing UCITS and suitable for a typical UCITS investor.

The information referred to in the first subparagraph shall be provided at least in a language customary in the sphere of international finance.

2. The competent authorities of the UCITS home Member State shall verify whether the de-notification submitted by the UCITS in accordance with paragraph 1 is complete.

The competent authorities of the UCITS home Member State shall, no later than 5 working days from the receipt of a complete de-notification, transmit that de-

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notification to ESMA through the data platform referred to in Article 12 and promptly notify the UCITS of that transmission.

The competent authorities of the host Member State identified in the de-notification shall immediately receive a notification from the data platform, indicating the intention of a UCITS to terminate marketing arrangements in that Member State in accordance with paragraph 1.

As of the date of the transmission referred to in the second subparagraph, the UCITS shall cease any new or further, direct or indirect, offering or placement of its units in the Member State in respect of which it has submitted a de-notification in accordance with paragraph 1.

Article 17e

Pre-marketing in the Union by an EU AIFM

1. An EU AIFM shall be allowed to engage in pre-marketing in the Union.

2. EU AIFMs shall ensure that investors do not acquire units or shares in an AIF through pre-marketing and that investors contacted as part of pre-marketing may only acquire units or shares in that AIF through marketing permitted under Articles 17f or 17g.

3. A third party shall only engage in pre-marketing on behalf of an authorised EU AIFM where it is authorised as an investment firm in accordance with Directive 2014/65/EU of the European Parliament and of the Council[38], as a credit institution in accordance with Directive 2013/36/EU of the European Parliament and of the Council[39], as a UCITS management company in accordance with Directive 2009/65/EC, as an AIFM in accordance with Directive 2011/61/EU, or acts as a tied agent in accordance with Directive 2014/65/EU. Such a third party shall be subject to the conditions set out in this Article.

4. Member States shall not impose any additional requirements on the pre-marketing of UCITS and AIFs in their territory than those set out in this Article.

Article 17f

Passporting based on authorisation for an EU AIFM marketing units or shares of EU AIFs in its home Member State

1. Where at the time of authorisation of an EU AIFM in accordance with Article 7 of Directive 2011/61/EU, that AIFM proposes to market to professional investors in its home Member State the units or shares of an EU AIF it intends to manage, it shall

[38] 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).

[39] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

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indicate this in its application for authorisation to the competent authorities of its home Member State.

Where the EU AIF is a feeder AIF the right to market referred to in the first subparagraph is subject to the condition that the master AIF is also an EU AIF which is managed by an authorised EU AIFM.

2. For the purposes of paragraph 1, the AIFM shall enclose with its application for authorisation, the following:

(a) a programme of operations identifying the EU AIF that the AIFM intends to market in its home Member State and information on where the EU AIF is established;

(b) the EU AIF rules or instruments of incorporation;

(c) identification of the depositary of the EU AIF;

(d) information on where the master AIF is established if the EU AIF is a feeder AIF;

(e) any additional information referred to in Article 23 (1) of Directive 2011/61/EU for each EU AIF that the AIFM intends to market;

(f) where relevant, for each EU AIF that the AIFM intends to market, its prospectus and offering documents;

(g) where relevant, information on the arrangements established to prevent units or shares of the EU AIF from being marketed to retail investors, including in the case where the AIFM relies on activities of independent entities to provide investment services in respect of the EU AIF; and

(h) where available, for each EU AIF that the AIFM intends to market, the marketing communications referred to in Article 4, accompanied by an attestation from the AIFM that it complies with the requirements of that Article.

The information referred to in the first subparagraph shall be provided at least in a language customary in the sphere of international finance.

3. The competent authorities of the home Member State of the AIFM shall verify whether the information and documentation submitted by the AIFM in accordance with paragraph 2 is complete.

4. From the date of authorisation of the AIFM and provided that the condition set out in paragraph 3 is met, the AIFM may start marketing the EU AIF identified in the application for authorisation in its home Member State.

5. Where the EU AIF identified in the application for authorisation is established in a Member State other than the home Member State of the AIFM, the competent authorities of the home Member State of the AIFM shall, in addition to the requirements referred to in paragraphs 2, 3 and 4, prepare a letter of authorisation containing an Annex listing the EU AIFs which the AIFM intends to market in its home Member State, as well as the Member States of those EU AIFs together with a statement that the AIFM fulfils the conditions of this Regulation and of Directive 2011/65/EC.

Upon authorisation, the competent authorities of the home Member State of the AIFM shall notify ESMA, by transmitting the information referred to in paragraph 2

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and the first subparagraph of this paragraph through the data platform referred to in Article 12.

The competent authorities of the home Member State of the EU AIF shall immediately receive a notification from the data platform, indicating the AIFM's intention to market the EU AIF in the AIFM's home Member State and shall have immediate and direct access to the documentation transmitted pursuant to the second subparagraph.

6. The competent authorities of the home Member State of the AIFM shall ensure that the letter of authorisation referred to in the first subparagraph of paragraph 5 is provided at least in a language customary in the sphere of international finance.

7. Where the AIFM proposes to market to professional investors in its home Member State the units or shares of an EU AIF it intends to manage, in accordance with this Article, the competent authorities of the home Member State of the AIFM and the home Member State of the EU AIF shall not request or require any additional documents, certificates or information other than those referred to in paragraphs 2 and 5.

8. Where an AIFM has already been authorised and wishes to market to professional investors in its home Member State the units or shares of new EU AIFs, than those referred to in its application for authorisation, it shall notify the competent authorities of its home Member State of the new EU AIFs which it intends to market, in accordance with the procedure set out in this Article, and it shall provide the information and documentation referred to in paragraph 2.

The competent authorities of the home Member State of the AIFM shall verify whether the information and documentation submitted by the AIFM in accordance with the first subparagraph is complete.

The AIFM shall be able to market the new EU AIFs in its home Member State as of the date of the notification referred to in the first subparagraph, provided that the condition referred to in the second subparagraph is met.

For the purposes of the first subparagraph, the AIFM shall not be required to submit to the competent authorities of its home Member State information or documentation that it has already provided for the purpose of its authorisation and that has not been materially amended since then.

9. Where the AIFM intends to market in its home Member State new EU AIFs that are established in Member States other than the home Member State of the AIFM, in addition to the procedure referred to in the paragraph 8, the competent authorities of the home Member State of the AIFM shall update the Annex to the letter of authorisation referred to in paragraph 5, listing the new EU AIFs which the AIFM markets in its home Member State, as well as the Member States of those new EU AIFs and shall notify ESMA by transmitting the updated letter of authorisation through the data platform referred to in Article 12.

The competent authorities of the Member States of the new EU AIFs shall immediately receive a notification from the data platform, indicating the AIFM's intention to market those EU AIFs in its home Member State and shall have immediate and direct access to the documentation transmitted pursuant to the first subparagraph.

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The competent authorities of the home Member State of the AIFM shall promptly notify the AIFM of the transmission referred to in the first subparagraph. As from the date of that transmission, the AIFM shall be able to market the new EU AIFs in its home Member State.

10. In the event of a material change to the information and documentation submitted to the competent authorities of the home Member State of the AIFM in accordance with this Article, the AIFM shall give written notice thereof to the competent authorities of its home Member State at least 15 working days before implementing that change.

11. Where, pursuant to a change as referred to in the first subparagraph, the AIFM would no longer comply with this Regulation or with Directive 2011/61/EU, the competent authorities of the home Member State of the AIFM shall inform the AIFM within 10 working days of receipt of the information that it is not to implement that change.

Where the AIFM markets in its home Member State an EU AIF that is established in a Member State other than the home Member State of the AIFM, the competent authorities of the home Member State of the AIFM shall notify ESMA accordingly through the data platform referred to in Article 12.

The competent authorities of the home Member State of the EU AIF shall immediately receive a notification from the data platform with the information referred to in the first subparagraph.

12. Where a change referred to in the paragraph 10 is implemented after information has been transmitted in accordance with paragraph 11 and pursuant to that change the AIFM or the AIFM's management of the EU AIF no longer complies with this Regulation or Directive 2011/61/EU, the competent authorities of the home Member Stat of the AIFM shall take all appropriate measures in accordance with Article 46 of Directive 2011/61/EU, including, where necessary, the express prohibition of marketing of the EU AIF.

Where the AIFM markets in its home Member State an EU AIF that is established in a Member State other than the home Member State of the AIFM, the competent authorities of the home Member State of the AIFM shall notify without delay ESMA of such measures through the data platform referred to in Article 12.

The competent authorities of the home Member State of the EU AIF shall immediately receive a notification from the data platform, indicating the measures referred to in the first subparagraph.

13. Where the AIFM markets in its home Member State an EU AIF that is established in a Member State other than the home Member State of the AIFM and the competent authorities of the home Member State of the EU AIF have clear and demonstrable reasons not to agree with the measures taken by the competent authorities of the home Member State of the AIFM pursuant to paragraph 12, or with the absence of those measures, the competent authorities of the home Member State of the EU AIF, may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Regulation (EU) No 1095/2010.

Article 17g

Passporting based on authorisation for an EU AIFM marketing units or shares of EU AIFs in a Member State other than the home Member State of the AIFM

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1. At the time of authorisation of an EU AIFM in accordance with Article 7 of Directive 2011/61/EU, where an EU AIFM proposes to market to professional investors in another Member State than the home Member State of the AIFM the units or shares of an EU AIF that it intends to manage, it shall indicate this in its application for authorisation to the competent authorities of its home Member State.

   Where the EU AIF is a feeder AIF the right to market referred to in the first subparagraph is subject to the condition that the master AIF is also an EU AIF and is managed by an authorised EU AIFM.

2. For the purposes of paragraph 1, the AIFM shall enclose with its application for authorisation, the following, where appropriate:

   (a) a programme of operations identifying the EU AIF that the AIFM intends to market and information on where the EU AIF is established;

   (b) the EU AIF rules or instruments of incorporation;

   (c) identification of the depositary of the EU AIF;

   (d) information on where the master AIF is established if the AIF is a feeder AIF;

   (e) any additional information referred to in Article 23 (1) of Directive 2011/61/EU for each EU AIF that the AIFM intends to market;

   (f) where relevant, for each EU AIF that the AIFM intends to market, its prospectus and offering documents;

   (g) the indication of the Member State in which it intends to market the units or shares of the EU AIF to professional investors;

   (h) information about arrangements made for the marketing of EU AIFs and, where relevant, information on the arrangements established to prevent units or shares of the EU AIF from being marketed to retail investors, including in the case where the AIFM relies on activities of independent entities to provide investment services in respect of the EU AIF;

   (i) the details necessary, including the address, for the invoicing or for the communication of any applicable regulatory fees or charges by the competent authorities of the host Member State; and

   (j) where available, for each EU AIF that the AIFM intends to market, the marketing communications referred to in Article 4, accompanied by an attestation from the AIFM that it complies with the requirements of that Article.

   The information referred to in the first subparagraph shall be provided at least in a language customary in the sphere of international finance.

3. The competent authorities of the home Member State of the AIFM shall verify whether the information and documentation submitted by the AIFM in accordance with paragraph 2 is complete.

4. Upon authorisation, the competent authorities of the home Member State of the AIFM shall prepare a letter of authorisation containing an Annex listing the EU AIFs which the AIFM intends to market, as well as the host Member States where it is intended that the EU AIFs be marketed, together with a statement that the AIFM fulfils the conditions imposed by this Regulation and Directive 2011/61/EU.

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5. Upon authorisation, the competent authorities of the home Member State of the AIFM shall notify ESMA by transmitting the documentation referred to in paragraphs 2 and 4 through the data platform referred to in Article 12.

The competent authorities of the host Member State of the AIFM shall immediately receive a notification from the data platform, indicating the AIFM's intention to market an EU AIF in their territory and shall have immediate and direct access to the documentation transmitted pursuant to the first subparagraph.

The competent authorities of the home Member State of the AIFM shall promptly notify the AIFM of the transmission referred to in the first subparagraph. As from the date of that transmission, the AIFM may access the markets of the host Member States.

6. The competent authorities of the home Member State of the AIFM shall ensure that the letter of authorisation referred to in paragraph 4 is provided at least in a language customary in the sphere of international finance.

7. For the purpose of the procedure set out in this Article, the competent authorities of the home and host Member States shall not request or require any additional documents, certificates or information other than those referred to in paragraphs 2 and 4 of this Article.

Host Member States shall not require an AIFM to have a physical presence in their territory or to appoint a third party in that host Member State for the purposes of marketing EU AIFs in that host Member State or for any other purposes relating to the activities of the AIFM in that host Member State.

8. Where an AIFM has already been authorised and wishes to market to professional investors in a new host Member State that is not referred to in its application for authorisation the units or shares of EU AIFs, or it wishes to market in a host Member State that is already referred to in its application for authorisation new EU AIFs that are not referred to in its application for authorisation, it shall notify the competent authorities of its home Member State of the new host Member States in which it intends to market or the new EU AIFs which it intends to market, in accordance with the procedure set out in this Article, and it shall provide the information and documentation referred to in paragraph 2.

The competent authorities of the home Member State of the AIFM shall verify whether the information and documentation submitted by the AIFM in accordance with the first subparagraph is complete.

The competent authorities of the home Member State of the AIFM shall update the Annex to the letter of authorisation referred to in paragraph 4, listing the new EU AIFs which the AIFM intends to market or the new host Member States in which the AIFM intends to market and shall notify ESMA by transmitting the updated letter of authorisation and the information and documentation referred to in paragraph 2 through the data platform referred to in Article 12.

The competent authorities of the host Member States shall immediately receive a notification from the data platform, indicating the AIFM's intention to market EU AIFs in their territory and shall have immediate and direct access to the documentation transmitted pursuant to the third subparagraph.

The competent authorities of the home Member State of the AIFM shall promptly notify the AIFM of the transmission referred to in the third subparagraph. As from

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the date of that transmission, the AIFM shall be able to market the new EU AIFs in the host Member States or the EU AIFs in the new host Member States.

For the purposes of the first subparagraph, the AIFM shall not be required to submit to the competent authorities of its home Member State information or documentation that it has already provided for the purpose of its authorisation and that has not been materially amended since then.

9. In the event of a material change to the information and documentation submitted to the competent authorities of the home Member State of the AIFM in accordance with paragraph 2, the AIFM shall give written notice thereof to the competent authorities of its home Member State at least 15 working days before implementing that change.

10. Where, pursuant to a change as referred to in paragraph 9, the AIFM would no longer comply with this Regulation or with Directive 2011/61/EU, the competent authorities of the home Member State of the AIFM shall inform the AIFM within 10 working days of receipt of the information that it is not to implement that change. In that case, the competent authorities of the home Member State of the AIFM shall notify ESMA accordingly through the data platform referred to in Article 12.

The competent authorities of the of the host Member State of the AIFM shall immediately receive a notification from the data platform with the information referred to in the first subparagraph.

11. Where a change referred to in the paragraph 9 is implemented after information has been transmitted in accordance with paragraph 10 and pursuant to that change the AIFM or the AIFM's management of the EU AIF no longer complies with this Regulation or Directive 2011/61/EU, the competent authorities of the home Member State of the AIFM shall take all appropriate measures in accordance with Article 46 of Directive 2011/61/EU, including, where necessary, the express prohibition of marketing of the EU AIF. The competent authorities of the home Member State of the AIFM shall notify ESMA of such measures without delay through the data platform referred to in Article 12.

The competent authorities of the host Member State of the AIFM shall immediately receive a notification from the data platform, indicating the measures referred to in the first subparagraph.

12. Where the competent authorities of the host Member State of the AIFM have clear and demonstrable reasons not to agree with the measures taken by the competent authorities of the home Member State of the AIFM pursuant to paragraph 11, or with the absence of those measures, the competent authorities of the host Member State of the AIFM, may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Regulation (EU) No 1095/2010.

Article 17h

Arrangements to de-notify the marketing of AIFs

1. Where an EU AIFM intends to terminate the marketing of the units or shares of some or all of the EU AIFs it manages in a Member State in respect of which it has made a notification in accordance with Article 17g, it shall submit a de-notification to the competent authorities of its home Member State, which shall include the intention to terminate arrangements made for marketing units or shares of some or all of the EU

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AIFs it manages in that Member State. Such intention shall be made public by electronic means.

The information referred to in the first subparagraph shall be provided at least in a language customary to the sphere of international finance.

2. The competent authorities of the home Member State of the AIFM shall verify whether the de-notification submitted by the AIFM in accordance with paragraph 1 is complete.

The competent authorities of the home Member State of the AIFM shall, no later than 5 working days from the receipt of the complete de-notification, transmit the de-notification to ESMA through the data platform referred to in Article 12 and promptly notify the AIFM of that transmission.

The competent authorities of the host Member State identified in the de-notification shall immediately receive a notification from the data platform, indicating the intention of an AIFM to terminate marketing arrangements in that Member State in accordance with paragraph 1.

As of the date of the transmission referred to in the second subparagraph, the AIFM shall cease any new or further, direct or indirect, offering or placement of units or shares of the EU AIFs it manages in the Member State in respect of which it has submitted a de-notification in accordance with paragraph 1.

Article 17i

ESMA fees

1. ESMA shall charge fees to AIFMs and UCITS for the expenditure relating to the passporting and de-notification procedures referred to in Articles 17c to 17h, including an appropriate share of the maintenance costs of the data platform used for that purpose, as referred to in Article 12(1).

The fees referred to in the first subparagraph shall be paid by an AIFM or UCITS where they propose to market the units or shares of AIFs or UCITS in a Member State other than their home Member State in accordance with the procedures laid down in Articles 17c and 17g of this Regulation.

2. The Commission shall adopt, by means of a delegated acts in accordance with Article 18b, measures specifying the arrangements for the levy and payment of the fees referred to in paragraph 1. Those delegated acts shall specify, in particular:

(a) the amount of fees payable to ESMA;

(b) the methodology to calculate the maximum amount of those fees in accordance with a tiered charging structure based on the number of host Member States where the AIFM or UCITS proposes to market the units or shares of AIFs or UCITS;

(c) the matters in respect of which those fees are due;

(d) the manner in which those fees are to be paid;

(e) the frequency and timing of those fees.';

(17) Article 18 is replaced by the following:

'By [entry into application + 5 years] the Commission shall, on the basis of a public consultation and in light of discussions with ESMA and competent authorities, conduct an

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evaluation of the application of this Regulation.'

(18) The following Articles 18a and 18b are inserted:

'Article 18a

Transitional provisions

Articles 17f and 17g shall not apply to the marketing of units or shares of AIFs that are subject to a current offer to the public under a prospectus that has been drawn up and published in accordance with Directive 2003/71/EC before 22 July 2013 for the duration of validity of that prospectus.

Article 18b

Delegation of powers

1. The power to adopt delegated acts referred to in Article 4 and Article 17i is conferred on the Commission subject to the conditions laid down in this Article.

   The powers to adopt delegated acts referred to in Article 4 and Article 17i shall be conferred on the Commission for a period of 4 years from [Please insert date of entry into force of this Regulation].

   The Commission shall draw up a report in respect of the delegated powers no later than 6 months before the end of the 4-year period. The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with paragraph 5.

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

3. A delegated act adopted pursuant to paragraph 1 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 of the Council.

4. The delegation of power referred to in paragraph 1 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.';

Article 7

Amendments to Regulation (EU) 2021/23

Regulation (EU) 2021/23 is amended as follows:

(1) Article 2 is amended as follows:

   (a) point 7 is replaced by the following:

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‘(7) ‘competent authority’ means a CCP’s competent authority as defined in Article 2, point (13a) of Regulation (EU) No 648/2012;’;

(b) the following point 55 is added:

‘(55) ‘significant CCP’ means a significant CCP as defined in Article 2, point (1a), of Regulation (EU) No 648/2012;’;

(2) in Article 4(3), the first subparagraph is replaced by the following:

‘ESMA, where it is a member of the college pursuant to point (n), EBA and the authorities referred to in points (d), (e), (k) and (l) of paragraph 2 shall not have voting rights in resolution colleges.’;

(3) in Article 5(1), the first subparagraph is replaced by the following:

‘ESMA shall create a resolution committee (the ‘ESMA Resolution Committee’) pursuant to Article 41 of Regulation (EU) No 1095/2010 for the purpose of preparing the decisions entrusted to ESMA in this Regulation, except for the decisions to be adopted pursuant to Article 11 of this Regulation or adopted in the exercise of its function as the competent authority of a significant CCP.’;

(4) in Article 6, paragraph 1 is replaced by the following:

‘1. Competent authorities, resolution authorities and ESMA shall cooperate closely for the purposes of this Regulation. In particular, during the recovery phase, the competent authority and the members of the supervisory college or relevant authorities as defined in Article 2, point (13c), of Regulation (EU) No 648/2012, as applicable, should cooperate and communicate effectively with the resolution authority, to enable the resolution authority to act in a timely manner.’;

(5) the following Article 6a is inserted:

‘*Article 6a*
Significant CCPs

Articles 9 to 20, 70 and 79 of this Regulation shall apply to significant CCPs as follows:

(a) for the purpose of Articles 9, 10, 13, 18, 19 and 70 of this Regulation, references to supervisory colleges shall be construed as references to the relevant authorities as defined in Article 2, point (13c), of Regulation (EU) No 648/2012;

(b) the obligations laid down in Articles 18, 19 and 79 of this Regulation on the competent authority to notify ESMA shall not apply;

(c) for the purpose of Article 10(2), (7), (9) and (10) of this Regulation, and by way of derogation from Article 11, ESMA shall coordinate with the relevant authorities, as defined in Article 2, point (13c), of Regulation (EU) No 648/2012 in accordance with the following coordination procedure:

(a) the relevant authorities as defined in Article 2, point (13c), of Regulation (EU) No 648/2012 shall examine the recovery plan and, where any authority considers that there are material deficiencies in the recovery plan or any material impediment to its implementation, that authority shall make recommendations to

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ESMA with regard to those matters within two months of the transmission of the recovery plan by ESMA;

(b) ESMA shall take decisions on the issues referred to in Article 11(2), points (a) and (b) taking into account the views of the relevant authorities as defined in Article 2, point (13c), of Regulation (EU) No 648/2012;

(c) the cooperation arrangement referred to in Article 23(3), of Regulation (EU) No 648/2012 may specify procedural steps and arrangements concerning the coordination between ESMA and the relevant authorities as defined in Article 2, point (13c), of that Regulation.'.

Article 8

Amendments to Regulation (EU) 2022/858

Regulation (EU) 2022/858 is amended as follows:

(1) Article 1 is replaced by the following:

'*Article 1*

Subject matter and scope

This Regulation lays down requirements in relation to distributed ledger technology (DLT) market infrastructures and their operators in respect of:

(a) granting and withdrawing specific permissions to operate DLT market infrastructures and provide DLT notary and DLT central account maintenance services in accordance with this Regulation;

(b) granting, modifying and withdrawing exemptions related to specific permissions;

(c) mandating, modifying and withdrawing the conditions attached to exemptions and in respect of mandating, modifying and withdrawing compensatory or corrective measures;

(d) operating DLT market infrastructures and providing DLT notary and DLT central account maintenance services;

(e) supervising DLT market infrastructures and providers of DLT notary and DLT central account maintenance services; and

(f) cooperation between operators of DLT market infrastructures, competent authorities and the European Supervisory authority (European Securities and Markets authority) established by Regulation (EU) No 1095/2010 (ESMA).';

(2) Article 2 is amended as follows:

(a) point (5) is replaced by the following:

'(5) 'DLT market infrastructure' means a DLT trading venue, a DLT settlement system or a DLT trading and settlement system;',

(b) point (6) is replaced by the following:

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‘(6) ‘DLT trading venue’ or ‘DLT TV’ means a multilateral trading facility or an organised trading facility that only admits to trading DLT financial instruments;’

(c) point (10) is replaced by the following:

‘(10) ‘DLT trading and settlement system’ or ‘DLT TSS’ means a DLT TV or DLT SS that combines services performed by a DLT TV and a DLT SS;’,

(d) point (13) is replaced by the following:

‘(13) ‘multilateral trading facility’ or ‘MTF’ means a multilateral trading facility as defined in Article 4(1), point (22), of directive 2014/65/EU;’,

(e) the following point (13a) is inserted:

‘(13a) ‘organised trading facility’ or ‘OTF’ means an organised trading facility as defined in Article 4(1), point (23) of Directive 2014/65/EU;’

(f) point 20 is replaced by the following:

‘(20) ‘market operator’ means a market operator as defined in Article 2(1), point (10), of Regulation (EU) No 600/2014;’,

(g) point 21 is replaced by the following:

‘(21) competent authority’ means:

(a) one or more competent authorities as defined Article 4(1), point (26), of Directive 2014/65/EU or ESMA, in the cases set out in Articles 2u(1), 2v(1), 2x(1) and Article 38a of Regulation (EU) No 600/2014;

(b) one or more competent authorities designated in accordance with Articles 10 and 11 of Regulation (EU) No 909/2014;

(c) ESMA for crypto-asset service providers;

(d) one or more competent authorities otherwise designated by a Member State to oversee the application of this Regulation.’

(h) the following points (21a) to (21n) are added:

‘(21a)‘crypto-asset service provider’ or ‘CASP’ means a crypto-asset service provider as defined in Article 3(1), point (15), of Regulation (EU) 2023/1114 of the European Parliament and of the Council([40]);

(21b) ‘CASP trading platform’ means a CASP authorised to operate a trading platform for crypto-assets as defined in Article 3(1), point(16), of Regulation (EU) 2023/1114;

(21c) ‘DLT notary service’ means the notary service as referred to in, Section A, point 1 of the Annex to Regulation (EU) No 909/2014, in relation to DLT financial instruments;

(21d) ‘DLT notary’ means the provider of DLT notary services, authorised under this Regulation or as a CSD under Regulation (EU) No 909/2014;

[40] Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (OJ L 150 9.6.2023, p. 40)

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(21e) ‘DLT central maintenance service’ means the central maintenance service as referred to in Section A, point 2 of the Annex to Regulation (EU) No 909/2014, in relation to DLT financial instruments;

(21f) ‘DLT account keeper’ means the provider of DLT central maintenance services, authorised under this Regulation or as a CSD under Regulation (EU) No 909/2014;

(21g) ‘settlement scheme’ means the set of rules and procedures authorised for the purpose of settling DLT financial instruments in accordance with Article 10c between at least two entities authorised to provide DLT central account maintenance services;

(21h) ‘small and medium-sized enterprises’ or ‘SME’ means small and medium-sized enterprises as defined in Article 4(1) point 13 of Directive 2014/65/EU;

(21i) ‘home Member State’ means the Member State where a DLT notary or a DLT account keeper has its registered office;

(21j) ‘host Member State’ means the Member State where a DLT notary or a DLT account keeper provides its services, where different from the home Member State;

(21k) ‘simplified regime’ means the set of provisions under this Regulation applicable to DLT market infrastructures operating subject to thresholds laid down in Article 3(2b) and in accordance with Article 7a;

(21l) ‘regular regime’ means the set of provisions under this Regulation applicable to DLT market infrastructures that are not eligible to participate in the simplified regime and operate subject to thresholds laid down in Article 3(2);

(21m)‘delivery versus payment’ or ‘DVP’ means a securities settlement mechanism as referred to in Article 2(1), point (27), of Regulation (EU) No 909/2014;

(21n) ‘commercial bank money’ means commercial bank money as defined in Article 2(1), point (8b) of Regulation (EU) No 909/2014.

(21o) ‘transfer order’ means transfer order as defined in Article 2(1) point 20 of the Regulation (EU) …/… on settlement finality and repealing Directive 98/26/EC and amending Directive 2002/47/EC on financial collateral arrangements’;

(3) Article 3 is amended as follows:

(a) paragraph 1 is deleted:

(b) paragraph 2 is replaced by the following:

‘2. The aggregate market value of all the DLT financial instruments that are admitted to trading on a DLT market infrastructure or that are recorded on a DLT market infrastructure shall not exceed EUR 100 billion at the moment of admission to trading, or initial recording, of a new DLT financial instrument.

Where the admission to trading or initial recording of a new DLT financial instrument would result in the aggregate market value referred to in the first subparagraph reaching EUR 100 billion, the DLT market infrastructure shall not admit that DLT financial instrument to trading or record it.

DLT market infrastructures operating in the regular regime that are part of the same group shall ensure that the threshold referred to in the first subparagraph is not exceeded on the basis of the consolidated situation of the group.’;

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

‘2a. Where the aggregate market value of all the DLT financial instruments that are admitted to trading or recorded on a DLT market infrastructure that operates under the regular regime has reached EUR 150 billion, the operator of the DLT market infrastructure shall activate the transition strategy referred to in Article 7(7). The operator of the DLT market infrastructure shall notify the competent authority of the activation of its transition strategy and of the timescale for the transition in the monthly report provided for in paragraph 5.

2b. The aggregate market value of all the DLT financial instruments that are admitted to trading or recorded on a DLT market infrastructure that operates under the simplified regime shall not exceed EUR 10 billion at the moment of admission to trading or initial recording of a new DLT financial instrument.

Where the admission to trading or initial recording of a new DLT financial instrument would result in the aggregate market value referred to in the first subparagraph reaching EUR 10 billion, the DLT market infrastructure shall not admit that DLT financial instrument to trading or record it, unless the DLT market infrastructure transitions to the regular regime.

DLT market infrastructures operating in the simplified regime that are part of the same group shall ensure that the threshold referred to in the first subparagraph is not exceeded on the basis of the consolidated situation of the group.’

(d) Paragraph 3 is replaced by the following:

‘3. Where the aggregate market value of all the DLT financial instruments that are admitted to trading or recorded on a DLT market infrastructure that operates under the simplified regime has reached EUR [15] billion, the operator of the DLT market infrastructure shall activate the transition strategy referred to in Article 7(7). The operator of the DLT market infrastructure shall notify the competent authority of the activation of its transition strategy and of the timescale for the transition in the monthly report provided for in paragraph 5.”

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

‘On the basis of the monthly average calculated in accordance with the first subparagraph, the operator of the DLT market infrastructure shall:

(a) assess, on a monthly basis, whether the aggregate market value of DLT financial instruments reaches the threshold referred to in paragraphs 2, 2a, 2b or 3 of this Article; and

(b) activate the transition strategy referred to in Article 7(7) in accordance with paragraph 2a or 3 of this Article.’,

(f) paragraph 5 is replaced by the following:

‘5. The operator of a DLT market infrastructure shall submit monthly reports to its competent authority demonstrating that all DLT financial instruments that are admitted to trading or recorded on the DLT market infrastructure do not exceed the thresholds set out in paragraphs 2, 2a, 2b and 3.’

(g) paragraph 7 is replaced by the following:

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‘7. Regulation (EU) No 596/2014 applies to DLT financial instruments admitted to trading on a DLT TV or on a DLT TSS, including those that are operated by a CASP trading platform in accordance with this Regulation.’

(h) the following paragraph 7a is added:

‘7a. The Commission is empowered to adopt a delegated act according to Article 15a to amend paragraphs 2 and 2b of this Article by adjusting the thresholds specified therein in light of market developments.

When considering the adjustment of thresholds set out in paragraphs 2 and 2b, the Commission shall take into account the following:

(a) whether an adjustment or omission of adjustment poses risks to financial stability;

(b) whether an adjustment entails other material risks for the financial market that may not be sufficiently addressed by other mitigating measures foreseen in this Regulation or related rules;

(c) whether market conditions and demonstrated market demand justify an adjustment.’;

(4) Article 4 is amended as follows:

(a) The title of the Article is amended as follows:

‘**Requirements and exemptions regarding DLT TVs**’;

(b) paragraph 1 is amended as follows:

(a) the first subparagraph is replaced by the following:

‘A DLT TV that is an MTF or an OTF shall be subject to the requirements that apply to a multilateral trading facility or an organised trading facility, under Regulation (EU) No 600/2014 and Directive 2014/65/EU, respectively.’

(b) in the second subparagraph, the introductory wording is replaced by the following:

‘The first subparagraph does not apply in respect of those requirements from which the investment firm or market operator operating the DLT TV has been exempted under paragraphs 2 and 3 of this Article, provided that that investment firm or market operator complies with:’;

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

‘1a. A CASP trading platform operating a DLT TV shall be subject to:

(a) *mutatis mutandis*, the requirements that apply to a multilateral trading facility under Regulation (EU) No 600/2014 and Directive 2014/65/EU where it operates the DLT TV as an MTF, with the exception of Articles 5 to 13 and Article 15 of that Directive; or

(b) *mutatis mutandis*, the requirements that apply to an organised trading facility under Regulation (EU) No 600/2014 and Directive 2014/65/EU where it operates the DLT TV as an OTF, with the exception of Articles 5 to 13 and Article 15 of that Directive.

The first subparagraph shall not apply in respect of those requirements from which the CASP trading platform operating a DLT TV has been exempted

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pursuant to paragraphs 2 and 3 of this Article, provided that the CASP complies with:

(a) Article 7;

(b) the requirements set out in paragraphs 2, 3 and 4 of this Article; and

(c) any compensatory measures that the competent authority deems appropriate in order to meet the objectives of the provisions in respect of which an exemption has been requested or in order to ensure investor protection, market integrity or financial stability.

1b. The first subparagraph of paragraphs 1 and the first subparagraph of paragraph 1a shall not apply, respectively, in respect of those requirements from which the investment firm, market operator or a CASP operating a DLT TV has been exempted under Article 4a, provided that the investment firm, market operator or a CASP complies with:

(a) Article 7;

(b) any compensatory measures set out in accordance with Article 4a.';

(d) paragraph 2 is replaced by the following:

'2. In addition to the persons specified in Article 53(3) of Directive 2014/65/EU, if requested by an operator of a DLT TV, the competent authority may permit that operator to admit natural and legal persons to deal on own account as members or participants, provided that such persons fulfil the following requirements:

(a) they are of sufficient good repute;

(b) they have a sufficient level of trading ability, competence and experience, including knowledge of the functioning of distributed ledger technology;

(c) they are not market makers on the DLT TV;

(d) they do not use a high-frequency algorithmic trading technique on the DLT TV;

(e) they do not provide other persons with direct electronic access to the DLT TV;

(f) they do not deal on their own account when executing client orders on the DLT market infrastructure; and

(g) they have given informed consent to trading on the DLT TV as members or participants and have been informed by the DLT TV of the potential risks of using its systems to trade DLT financial instruments.

Where the competent authority grants the exemption referred to in the first subparagraph of this paragraph, it may require additional measures for the protection of natural persons admitted to the DLT TV as members or participants. Such measures shall be proportionate to the risk profile of those members or participants.'

(e) paragraph 3 is replaced by the following:

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‘3. At the request of an operator of a DLT TV, the competent authority may exempt that operator or its members or participants from Article 26 of Regulation (EU) No 600/2014.

Where the competent authority grants an exemption as referred to in the first subparagraph of this paragraph, the DLT TV shall keep records of all transactions executed through its systems. Those records shall contain all the details specified in Article 26(3) of Regulation (EU) No 600/2014 that are relevant, having regard to the system used by the DLT TV and the member or participant executing the transaction. The DLT TV shall also ensure that the competent authorities entitled to receive the data directly from the trading venue in accordance with Article 26 of that Regulation have direct and immediate access to those details. In order to access those records, such competent authority shall be admitted to the DLT TV as a regulatory observer participant.

The competent authority shall make available any information it has accessed in accordance with this Article to ESMA without undue delay.’

(f) paragraph 4 is replaced by the following:

‘4. Where an operator of a DLT TV requests an exemption under paragraph 2 or 3, it shall demonstrate that the exemption requested is:

(a) proportionate to, and justified by, the use of DLT; and

(b) limited to the DLT TV and does not extend to any other multilateral trading facility or organised trading facility operated by that operator.’;

(c) paragraph 5 is replaced by the following:

‘5. Paragraphs 2, 3 and 4 of this Article and Article 4a apply, mutatis mutandis, to a CSD operating a DLT TSS in accordance with Article 6(2).’;

(5) the following Article 4a is inserted:

‘Article 4a

Other exemptions regarding DLT TV

1. At the request of a DLT TV operator, the competent authority may exempt that DLT TV from specific provisions of Titles I and II of Directive 2014/65/EU or Titles Ia, II, IV, V and VI of Regulation (EU) No 600/2014 other than those covered by Article 4 provided that, for each of the provision in respect of which an exemption has been requested, all of the following conditions are met:

(a) compliance with the provision in respect of which an exemption has been requested is incompatible or highly disproportionate with the use of distributed ledger technology;

(b) the exemption requested is limited to the DLT TV and does not extend to a trading venue that is operated by the same entity;

(c) the exemption requested, when assessed together with associated compensatory measures, does not undermine the objectives for which the provision has been adopted;

(d) the exemption requested does not undermine financial stability, market integrity and investor protection;

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(e) the operator of the DLT TV complies with compensatory measures that the competent authority deems appropriate to meet the objectives of the provision in respect of which an exemption has been requested.

2. The DLT TV operator shall submit a request for exemptions in writing for approval to the competent authority. That request shall include:

(a) list of exemptions requested and how the exemptions requested, taken individually and together, fulfil the conditions specified in paragraph 1 points (a), (c) and (d); and

(b) proposed compensatory measures to meet the objectives of the provisions in respect of which an exemption has been requested.

The competent authority may request any further information that is necessary to complete its assessment of the request.

The competent authority shall inform the applicant when it considers the request to be complete.

3. Within two months of declaring the request complete, the competent authority shall submit a draft assessment of the request referred to in paragraph 2 to ESMA, together with the complete request. Within two months of receiving the draft assessment, ESMA shall provide the competent authority with a non-binding opinion on the draft assessment and the exemptions requested, including, where it deems necessary, recommendations for additional compensatory measures.

The competent authority shall give that opinion due consideration and shall provide ESMA with a statement regarding any significant deviations from that opinion if ESMA so requests. ESMA's opinion and the competent authority's statement shall not be made public.

The competent authority shall, within five months of declaring the request complete inform the undertaking of its approval or rejection of the request and of the compensatory measures the competent authority deems appropriate to meet the objectives of the provisions in respect of which exemptions have been granted.'

(6) Article 5 is amended as follows:

(a) Paragraphs 1 to 8 are replaced by the following:

'1. An operator of a DLT SS shall be subject to the requirements that apply to a CSD operating a securities settlement system under Regulation (EU) No 909/2014.

The first subparagraph does not apply in respect of those requirements from which the operator of a DLT SS has been exempted under paragraphs 2 to 9 of this Article, provided that that DLT SS complies with:

(a) Article 7;

(b) paragraphs 2 to 10 of this Article; and

(c) any compensatory measures that the competent authority deems appropriate in order to meet the objectives of the provisions in respect of which an exemption has been requested or in order to ensure investor protection, market integrity or financial stability.

The first subparagraph shall not apply, respectively, in respect of those requirements from which the operator of a DLT SS has been exempted under

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Article 4a, provided that the investment firm, market operator or a CASP complies with:

(a) Article 7;

(b) any compensatory measures set out in accordance with Article 5a.

2. At the request of an operator of a DLT SS, the competent authority may exempt that operator from Article 2(1), points (4), (9) or (28), or Article 3, 37 or 38 of Regulation (EU) No 909/2014, provided that the operator of a DLT SS:

(a) demonstrates that the use of a 'securities account' as defined in Article 2(1), point (28), of that Regulation or the use of the book-entry form as provided for in Article 3 of that Regulation is incompatible with the use of the particular distributed ledger technology;

(b) proposes compensatory measures to meet the objectives of the provisions in respect of which an exemption has been requested, and ensures at a minimum that:

  (a) the DLT financial instruments are recorded on the distributed ledger;

  (b) the number of DLT financial instruments in an issue or in part of an issue recorded by the DLT SS is equal to the total number of DLT financial instruments making up such issue or part of an issue that are recorded on the distributed ledger at any given time;

  (c) it keeps records that enable the operator of the DLT SS at any given time to segregate the DLT financial instruments of a member, participant, issuer or client from those of any other member, participant, issuer or client without delay; and

  (d) it does not allow securities overdrafts, debit balances or the improper creation or deletion of securities.

3. At the request of an operator of a DLT SS, the competent authority may exempt that operator from Article 6 or 7 of Regulation (EU) No 909/2014 provided that that operator ensures, at a minimum, by means of robust procedures and arrangements, that the DLT SS:

(a) enables clear, accurate and timely confirmation of the details of transactions in DLT financial instruments, including any payments made in respect of DLT financial instruments, as well as the discharge of any collateral in respect of those instruments or calls for collateral in respect of DLT financial instruments; and

(b) either prevents settlement fails or addresses settlement fails if it is not possible to prevent them.

4. At the request of an operator of a DLT SS, the competent authority may exempt that operator from Article 19 of Regulation (EU) No 909/2014 in relation only to the outsourcing of a core service to a third party, provided that the application of that Article is incompatible with the use of distributed ledger technology as envisaged by the operator of the DLT SS.

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5. At the request of an operator of a DLT SS, the competent authority may permit that operator of a DLT SS to admit natural and legal persons in addition to those listed in Article 2(1), point (15), of the Regulation (EU) …/… on settlement finality and repealing Directive 98/26/EC and amending Directive 2002/47/EC on financial collateral arrangements as participants in the DLT SS, provided that such persons:

(a) are of sufficient good repute;

(b) have a sufficient level of ability, competence, experience and knowledge in relation to settlement, the functioning of distributed ledger technology, and risk assessment; and

(c) have given informed consent to be included in the pilot regime provided for in this Regulation and are adequately informed of its experimental nature and the potential risks associated with it.

6. At the request of an operator of a DLT SS, the competent authority may exempt that operator from Article 33, 34 or 35 of Regulation (EU) No 909/2014, provided that that operator proposes compensatory measures to meet the objectives of those Articles and, at a minimum, ensures that:

(a) the DLT SS publicly discloses criteria for participation that allow fair and open access for all persons that intend to become participants, and that those criteria are transparent, objective, and non-discriminatory; and

(b) the DLT SS publicly discloses prices and fees associated with the settlement services that it provides.

7. At the request of an operator of a DLT SS, the competent authority may exempt that operator from Article 39 of Regulation (EU) No 909/2014, provided that that DLT SS proposes compensatory measures to meet the objectives of that Article, and ensures at a minimum, by means of robust procedures and arrangements, that:

(a) the DLT SS settles transactions in DLT financial instruments at close to real time or intraday and in any case no later than on the second business day after the conclusion of the trade;

(b) the DLT SS publicly discloses the rules governing the settlement system; and

(c) the DLT SS mitigates any risk arising from the non-designation of the DLT SS as a designated system under Article 3 of the Regulation (EU) …/… on settlement finality and repealing Directive 98/26/EC and amending Directive 2002/47/EC on financial collateral arrangements, in particular with regard to insolvency proceedings.

For the purposes of operating a DLT SS, the definition of a CSD in Regulation (EU) No 909/2014 as a legal person who operates a securities settlement system shall not result in Member States being required to designate a DLT SS as a designated system under Article 3 of the Regulation (EU) …/… on settlement finality and repealing Directive 98/26/EC and amending Directive 2002/47/EC on financial collateral arrangements. However, Member States shall not be precluded from designating a DLT SS as a designated system under the Regulation (EU) …/… on settlement finality and repealing Directive

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98/26/EC and amending Directive 2002/47/EC on financial collateral arrangements where the DLT SS fulfils the requirements of that Regulation.

Where a DLT SS is not designated as a designated system under Article 3 of the Regulation (EU) …/… on settlement finality and repealing Directive 98/26/EC and amending Directive 2002/47/EC on financial collateral arrangements, the operator of a DLT SS shall propose compensatory measures to mitigate risks arising from insolvency.

8. At the request of an operator of a DLT SS, the competent authority may exempt that operator from Article 40 and Title IV of Regulation (EU) No 909/2014, provided that that operator settles on the basis of delivery versus payment and complies with paragraphs 8a to 8f.';

(b) The following paragraphs 8a to 8h are inserted:

'8a. The settlement of payments shall be carried out through central bank money, including in tokenised form, where practical and available or, where not practical and available, through commercial bank money, including in tokenised form, using the accounts of a CSD or a credit institution, or using 'e-money tokens.

8b. Where the settlement of payments is carried out in commercial bank money through the accounts of a CSD, it shall be done in accordance with Title IV of Regulation (EU) No 909/2014.

8c. Where the settlement of payments is carried out in commercial bank money through the accounts of a credit institution, Title IV of Regulation (EU) No 909/2014 shall apply to the operator of the DLT SS and the designated credit institution, with the exception of Article 54b(5), point (c).

Where the designated credit institution provides the DLT notary and the DLT central account maintenance service in accordance with Articles 10b or 10c, the credit institution shall be additionally exempted from Article 54b(5), point (b), of Regulation (EU) No 909/2014.

By way of derogation from the first subparagraph of this paragraph, Title IV of Regulation (EU) No 909/2014 shall not apply to a credit institution when it provides the settlement of payments using commercial bank money to a DLT market infrastructure operated under the simplified regime.

When the settlement of payments is carried out using representations in the DLT TSS of prefunded commercial bank money held in one or more accounts at a credit institution, it shall be considered settlement in the accounts of the credit institution, provided that the following conditions are met:

(a) where the DLT TSS is operated under the simplified regime:

  (1) the DLT TSS operator is authorised as an investment firm; and

  (2) the DLT TSS operator identifies, measures, monitors, manages, and minimises any risks arising from this settlement model;

(b) where the DLT TSS is operated under the regular regime:

  (1) the DLT TSS operator is authorised as an investment firm;

  (2) the DLT TSS operator identifies, measures, monitors, manages, and minimises any risks arising from this settlement model;

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(3) the credit institution holding the accounts with prefunded commercial bank money is subject to Title IV of Regulation (EU) No 909/2014, with the exception of Article 54b(5), point (c).

8d. Settlement of payments in e-money tokens shall be carried out only in an e- money token referencing the value of an official EU currency, except where carried out for the settlement of a DLT financial instrument denominated in a non-EU currency.

8e. Where the settlement of payments is carried out in e-money tokens, the service of providing cash accounts for e-money tokens may be provided by the operator of a DLT SS, a credit institution, a CASP authorised to provide custody of e-money tokens in accordance with Regulation (EU) 2023/1114 or by any other financial entity permitted to provide custody of e-money tokens in accordance with Article 60 of that Regulation, subject to the notification procedure specified in that article.

Services related to e-money tokens, other than providing cash accounts for e-money tokens and processing of payments of e-money tokens, that amount to services listed in Section C of the Annex to Regulation (EU) No 909/2014 shall be provided by a credit institution complying with Title IV of Regulation (EU) No 909/2014, with the exception of Article 54b(5), point (c).

Where the credit institution provides the DLT notary and the DLT central account maintenance service in accordance with Articles 10b or 10c, the credit institution shall be additionally exempted from Article 54b(5), point (b), of Regulation (EU) No 909/2014.

By way of derogation from the second subparagraph of this paragraph, Title IV of Regulation (EU) No 909/2014 shall not apply to a credit institution providing services listed in Section C of the Annex to Regulation (EU) No 909/2014 to a DLT market infrastructure operating in the simplified regime.

8f. Where the settlement occurs using commercial bank money provided by a credit institution to which Title IV of Regulation (EU) No 909/2014 does not apply by virtue of the second subparagraph of paragraph 8c, or where the settlement of payments occurs using ‘e-money tokens’, the DLT SS shall identify, measure, monitor, manage, and minimise any risks arising from the use of such means.

8g. At the request of a DLT SS operator, the competent authority may exempt that DLT SS from Article 45a of Regulation (EU) No 909/2014, provided that that DLT SS demonstrates compliance with Article 7.

8h. At the request of a DLT SS operator, the competent authority may exempt that DLT SS from Article 48a of Regulation (EU) No 909/2014, provided that that DLT SS commits to the participation in the industry group referred to in Article 10g. The competent authority shall maintain the exemption so long as the DLT SS operators demonstrates its participation in the industry group until the group delivers the technical standards referred to in Article 10g.’;

(c) paragraphs 9 and 10 are replaced by the following:

‘9. At the request of a DLT SS operator, the competent authority may exempt that DLT SS from Articles 50, 51 or 53 of Regulation (EU) No 909/2014,

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provided that that DLT SS demonstrates that the use of DLT is incompatible with legacy systems of other CSDs or other market infrastructures or that granting access to another CSD or access to another market infrastructure using legacy systems would trigger disproportionate costs, given the scale of the activities of the DLT SS.

Where a DLT SS has been exempted in accordance with the first subparagraph of this paragraph, it shall give other operators of DLT SSs or other operators of DLT TSSs access to its DLT SS. The DLT SS shall inform the competent authority of its intention to give such access. The competent authority may prohibit such access to the extent that such access would be detrimental to the stability of the Union financial system, or the financial system of the Member State concerned.

10. Where a DLT SS requests an exemption under paragraphs 2 to 9, it shall demonstrate that the exemption requested is:

(a) proportionate to, and justified by, the use of DLT; and

(b) limited to the DLT SS and does not extend to a securities settlement system that is operated by the same CSD.';

(7) The following Article 5a is inserted:

'Article 5a
Other exemptions regarding DLT SS

1. At the request of a DLT SS operator, the competent authority may exempt that DLT SS from specific provisions of Titles II and III of Regulation (EU) No 909/2014, other than those covered by Article 5 provided that, for each of the provision in respect of which an exemption has been requested, all of the following conditions are met:

(a) compliance with the provision in respect of which an exemption has been requested is incompatible or highly disproportionate with the use of DLT:

(b) the exemption requested is limited to the DLT SS and does not extend to a securities settlement system that is operated by the same CSD;

(c) the exemption requested does not undermine financial stability, market integrity and investor protection;

(d) the DLT SS complies with compensatory measures that the competent authority deems appropriate to meet the objectives of the provision in respect of which an exemption has been requested.

2. The DLT SS operator shall submit a request in writing for approval to the competent authority. That request shall include:

(a) the list of exemptions requested and how the exemptions requested, taken individually and together, fulfil the conditions specified in paragraphs 1(a) and 1(c); and

(b) proposed compensatory measures to meet the objectives of the provisions in respect of which an exemption has been requested.

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The competent authority may request any further information that is necessary to complete its assessment of the request.

The competent authority shall inform the applicant when it considers the request to be complete.

3. Within two months of declaring the request complete, the competent authority shall submit a draft assessment of the request referred to in paragraph 2 to ESMA, together with the complete application. Within two months of receiving the draft assessment, ESMA shall provide the competent authority with a non-binding opinion on the draft assessment and the exemptions requested, including, where it deems necessary, recommendations for additional compensatory measures.

The competent authority shall give that opinion due consideration and shall provide ESMA with a statement regarding any significant deviations from that opinion if ESMA so requests. ESMA's opinion and the competent authority's statement shall not be made public.

The competent authority shall, within four months of declaring the request complete inform the undertaking of its approval or rejection of the request and of the compensatory measures the competent authority deems appropriate to meet the objectives of the provisions in respect of which exemptions have been granted.';

(8) Article 6 is replaced by the following:

'Article 6

Requirements and exemptions regarding DLT TSSs

4. An investment firm, market operator or a CASP operating a DLT TSS shall be subject to:

(a) the requirements that apply to a multilateral trading facility under Regulation (EU) No 600/2014 and Directive 2014/65/EU where it operates the DLT TSS as an MTF; or

(b) the requirements that apply to an organised trading facility under Regulation (EU) No 600/2014 and Directive 2014/65/EU where it operates the DLT TSS as an OTF; and

(c) *mutatis mutandis*, the requirements that apply to a CSD under Regulation (EU) No 909/2014, with the exception of Articles 9, 16, 17, 18, 20, 26, 27, 28, 31, 42, 43 and 44, of that Regulation.

By way of derogation from points (a) and (b) of the first subparagraph, a CASPs operating a DLT TSS shall not be subject to Articles 5 to 13 and Article 15 of Directive 2014/65/EU.

Capital held in accordance with capital requirements applicable to an investment firm, market operator or a CASP operating a DLT TSS under Directive 2014/65/EU or Regulation (EU) 2023/1114, respectively, may count towards the capital required under Article 47 of Regulation (EU) No 909/2014.

The first subparagraph does not apply in respect of those requirements from which the investment firm or market operator operating the DLT TSS has been exempted under Article 4(2) and (3) and Article 5(2) to (9), provided that that investment firm or market operator or CASP complies with:

(a) Article 7;

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(b) Article 4(2), (3) and (4) and Article 5(2) to (10); and

(c) any compensatory measures that the competent authority deems appropriate in order to meet the objectives of the provisions in respect of which an exemption has been requested, or in order to ensure investor protection, market integrity or financial stability.

The first subparagraph shall not apply in respect of those requirements from which the investment firm or market operator operating the DLT TSS has been exempted under Articles 4a or 5a, provided that the investment firm, market operator or a CASP complies with:

(a) Article 7; and

(b) any compensatory measures set out in accordance with Articles 4a or 5a.

5. A CSD operating a DLT TSS shall be subject to:

(a) the requirements that apply to a CSD under Regulation (EU) No 909/2014; and

(b) mutatis mutandis, the requirements that apply to a multilateral trading facility under Regulation (EU) No 600/2014 and Directive 2014/65/EU, with the exception of Articles 5 to 13 of that Directive, where it operates the DLT TSS as an MTF; or

(c) mutatis mutandis, the requirements that apply to an organised trading facility under Regulation (EU) No 600/2014 and Directive 2014/65/EU, with the exception of Articles 5 to 13 of that Directive, where it operates the DLT TSS as an OTF.

The first subparagraph does not apply in respect of those requirements from which the CSD operating the DLT TSS has been exempted under Article 4(3) and (4), Article 5(2) to (9) and Article 5a, provided that that CSD complies with:

(a) Article 7;

(b) any compensatory measures that the competent authority deems appropriate in order to meet the objectives of the provisions in respect of which an exemption has been requested or in order to ensure investor protection, market integrity or financial stability.

The first subparagraph shall not apply in respect of those requirements from which the CSD operating the DLT TSS has been exempted under Articles 4a or 5a, provided that the investment firm, market operator or a CASP complies with:

(a) Article 7; and

(b) any compensatory measures set out in accordance with Articles 4a or 5a.';

(9) Article 7 is amended as follows:

(a) in paragraph 6, the third subparagraph is replaced by the following:

'A competent authority may decide, on a case-by-case basis, to require additional prudential safeguards from the operator of a DLT market infrastructure in the form of own funds or an insurance policy if the competent authority determines that potential liabilities for damages to clients of the operator of the DLT market infrastructure as a result of any of the

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circumstances referred to in the first subparagraph of this paragraph are not adequately covered by the prudential requirements provided for in Regulation (EU) No 909/2014, Regulation (EU) 2019/2033 of the European Parliament and of the Council ([41]), Regulation (EU) 2023/1113 of the European Parliament and of the Council, Directive 2014/65/EU or Directive (EU) 2019/2034 of the European Parliament and of the Council ([42]), in order to ensure investor protection.';

(b) paragraph 7 is amended as follows:

(a) in the first subparagraph. point (a) is replaced by the following:

'(a) that the threshold referred to in Article 3(2a) or (3), as applicable, has been exceeded;';

(b) the fourth subparagraph is replaced by the following:

'The transition strategy shall specify what is to be done in the event that the threshold referred to in Article 3(2a) or 3(3), as applicable, is exceeded.';

(c) the following subparagraph is added:

'Compliance with requirements under Article 20(5) of Regulation (EU) No 909/2014 shall form a part of the transition strategy of an operator of DLT SS or a DLT TSS. By way of derogation from Article 20(5) of Regulation (EU) No 909/2014, the operator of a DLT SS or a DLT TSS may, in addition to another CSD, establish, implement and maintain adequate procedures ensuring the timely and orderly settlement and transfer of the assets of clients and participants also to another operator of a DLT SS, a DLT TSS or a settlement scheme.';

(c) paragraphs 8, 9 and 10 are deleted;

(10) the following Article 7a is inserted:

'Article 7a

Simplified regime

1. Where the market value of DLT financial instruments recorded with a DLT TSS is expected to remain below the threshold laid down in Article 3(2b) of this Regulation, an investment firm, market operator or a CASP applying for a specific permission to operate a DLT TSS in accordance with Article 10, shall be allowed to participate in the simplified regime under the conditions laid down in this Article.

2. Where the market value of DLT financial instruments recorded with a DLT SS or a DLT TSS are expected to remain below the threshold laid down in Article 3(2b) of this Regulation, a CSD applying for a specific permission to operate a DLT SS in

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41 Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, p. 1).

42 Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (OJ L 314, 5.12.2019, p. 64).

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accordance with Article 9 or a DLT TSS in accordance with Article 10, as applicable, shall be able to participate in the simplified regime as laid down in this Article.

3. Where a legal person applies for a CSD authorisation under Regulation (EU) No 909/2014 for the purpose of participating in the simplified regime as a DLT SS or a DLT TSS,, the competent authority shall not assess whether that legal person fulfils those requirements of Regulation (EU) No 909/2014 which do not apply to the DLT SS or a DLT TSS in accordance with paragraph 5.

By derogation from Article 17 of Regulation (EU) No 909/2014, where the relevant authority decides to issue a reasoned opinion within its area of competence, it shall do so within two months of the receipt of information by the relevant authority.

By derogation from Article 17 of Regulation (EU) No 909/2014, the competent authority shall inform the applicant about the outcome of the authorisation application within four months from the submission of a complete application.

The authorisation granted under Regulation (EU) No 909/2014 in accordance with this paragraph shall only cover CSD services provided under this Regulation in the capacity of a DLT SS or a DLT TSS operator.

4. A CSD authorised for the purpose of participating in the simplified regime shall have sufficient prudential safeguards to ensure that it is adequately protected against operational, legal, custody, investment and business risks so that it can continue to provide services as a going concern, and taking into account the limited scale of its operations.

The European Banking Authority shall, in close cooperation with ESMA and the members of the European System of Central Banks, develop draft regulatory technical standards specifying the capital requirements regarding prudential safeguards referred to in the first subparagraph, taking into account the limited scale of activities undertaken by those entities.

EBA shall submit those draft regulatory technical standards to the Commission by [OP insert date corresponding to 8 months after date of entry into force of this amending Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph by means of a delegated act pursuant to Article 290 TFEU in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

5. By way of derogation from the requirements of Regulation (EU) No 909/2014 that apply to a DLT SS or a DLT TSS by virtue of Article 5(1), first subparagraph 6(1), first subparagraph, point (c), and Article 6(2), first subparagraph, point (a), of this Regulation, entities operating in the simplified regime shall not be subject to the following parts of Regulation (EU) No 909/2014:

(a) Title II, Chapter III and Chapter IV, with the exception of Articles 6(3) and 6(4), 7(1) and 7(7) and 8;

(b) Article 22a(2) to (7) and 24a;

(c) Title III, Chapter II, with the exception of Articles 26(1) to 26(3), 26(5), 26(7), 27(1), 27(3), 27(5) to 27(7), 27a(1), 29(1) to 29(2), 30(1) to 30(3), 30(5), 32, 33(1), 36, 37, 38(1), 38(2), 39(3), 39(5), 40(1), 40(3), 41(1), 42 to 44, 45 (1) to (3), 45(6); and

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(d) Title VI.

Those entities shall be able to request exemptions under Articles 4, 4a, 5, 5a or 6, as applicable to the type of DLT market infrastructure they operate. They shall be subject to the requirements specified in those Articles.

6. To further specify the requirements applicable to entities operating in the simplified regime set out in paragraph 5, ESMA shall, in close cooperation with the ECSB, develop draft regulatory technical standards to amend, where necessary, regulatory technical standards adopted under Regulation (EU) No 909/2014 with regards to entities operating in the simplified regime in order to:

(a) adapt them to the requirements applicable to those entities in accordance with paragraph 5; and

(b) ensure regulatory technical stsandards applicable to those entities are proportionate to the size, risk and nature of activities undertaken by those entities.

ESMA shall submit those draft regulatory technical standards to the Commission by [OP insert date corresponding to 8 months after date of entry into force of this amending Regulation] months after entry into force of this Regulation.

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. Where an entity operating in the simplified regime intends to transition to the regular regime, it shall comply with Article 47 of Regulation (EU) No 909/2014 as follows:

(a) at the latest upon reaching the threshold laid down in Article 3(2b) it shall comply with 50 % of the capital requirements calculated in accordance with Article 47 of Regulation (EU) No 909/2014, as specified under Commission Delegated Regulation (EU) 2017/390([43]).

(b) at the latest upon reaching the threshold laid down in Article 3(3), it shall comply with 100 % of the capital requirements calculated in accordance with Article 47 of Regulation (EU) No 909/2014, as specified under Delegated Regulation (EU) 2017/390.

8. Where requesting for a specific permission to operate a DLT SS under Article 9 or to operate a DLT TSS under Article 10, the entities intending to operate in the simplified regime shall notify the competent authority of their intention to benefit from the simplified regime and provide a business plan demonstrating that the activities of the DLT SS or the DLT TSS are expected to remain below the threshold laid down in Article 3(2b).

The competent authority shall approve or refuse the request to benefit from the simplified regime as part of the procedures to obtain the specific permission to operate a DLT SS laid down in Article 9 and in Article 10, respectively.

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[43] Commission Delegated Regulation (EU) 2017/390 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on certain prudential requirements for central securities depositories and designated credit institutions offering banking-type ancillary services (OJ L 65, 10.3.2017, pp. 9–43)

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9. Where the calculation according to Article 3(4) of this Regulation demonstrates that the activity of the operator has reached EUR 8 billion, the operator of a DLT market infrastructure shall accompany the monthly report to its competent authority submitted in accordance with Article 3(5) of this Regulation by a notification on whether the operator intends to transition to the regular regime.

10. Where the operator does not intend to transition to the regular regime, it shall demonstrate to the competent authority without undue delay and at the latest within two months from the date of the notification pursuant to paragraph 9 the measures it will implement to ensure that its business operations do not exceed the threshold referred to in Article 3(2b).

Where the operator notifies the competent authority of its intention to transition to the regular regime, the operator shall comply with the requirements of the regular regime within two months from the date on which it reaches the threshold laid down in Article 3(2b), except for the requirements in respect of which the operator has been granted an exemption in accordance with this Regulation.

The operator shall submit a plan to transition to the regular regime to the competent authority without undue delay and at the latest within 2 months from the date of submitting the notification under paragraph 10. This plan shall include the necessary information to enable the competent authority to assess whether the operator shall be able to comply with the requirements of the regular regime within the period referred to in the first subparagraph. The operator shall notify the competent authority of any material changes to the plan to transition to the regular regime.

Where there are strong indications that the operator will be unable to complete the transition within the period referred to in second subparagraph, the competent authority may require the temporary cessation of the operator's activities until such time as the operator demonstrates compliance with the relevant requirements. The competent authority shall only exercise this power where the temporary cessation is proportionate to ensure the orderly functioning of the business and maintain market integrity and investor protection.

11. By [OP insert date = 8 months after entry into force of this amending Regulation], ESMA shall develop guidelines to establish standard forms, formats and templates for the application for authorisation under the simplified regime referred to in paragraph 4.

12. The operator of a DLT SS or a DLT TSS that has been authorised under this Regulation before the entry into application of this Article shall be deemed, with regards to the provision of CSD services, to operate under the simplified regime as long as it remains below the threshold laid down in Article 3(2b) and Article 3(3) of this Regulation, as applicable.

Where the operator of a DLT SS or a DLT TSS referred to in the first subparagraph intends to transition into the regular regime it shall do so in accordance with this Article.';

(11) Article 8 is amended as follows:

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

'**Specific permission to operate DLT TV**'

(b) paragraph 1 is replaced by the following:

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‘1. A legal person who is authorised as an investment firm, authorised to operate a regulated market, under directive 2014/65/EU, or authorised as a CASP trading platform may apply for a specific permission to operate a DLT TV under this Regulation.’;

(c) paragraph 2 is replaced by the following:

‘(2) Where a legal person applies for authorisation as an investment firm or for authorisation to operate a regulated market under directive 2014/65/EU and, simultaneously, applies for a specific permission under this Article, for the sole purpose of operating a DLT TV, the competent authority shall not assess whether the applicant fulfils the requirements of directive 2014/65/EU in respect of which the applicant has requested an exemption in accordance with Article 4 of this Regulation.’;

(d) paragraph 3a is inserted:

‘3a. Where a legal person simultaneously applies for authorisation as a CASP and for a specific permission, it shall submit in its application the information required under Article 62 of Regulation (EU) 2023/1114.’;

(e) paragraph 4 is amended as follows:

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

‘4. An application for a specific permission to operate a DLT TV under this Regulation shall contain the following information:’;

(ii) points (a) to (g) are replaced by the following:

‘(a) the applicant’s business plan, the rules of the DLT TV and any legal terms as referred to in Article 7(1), as well as information regarding the functioning, services and activities of the DLT TV as referred to in Article 7(3);

(b) a description of the functioning of the distributed ledger technology used, as referred to in Article 7(2);

(c) a description of the applicant’s overall IT and cyber arrangements as referred to in Article 7(4);

(d) evidence that the applicant has in place sufficient prudential safeguards to meet its liabilities and to compensate its clients, as referred to in Article 7(6), third subparagraph;

(e) where applicable, a description of the safekeeping arrangements for clients’ DLT financial instruments as referred to in Article 7(5);

(f) a description of the arrangements for ensuring investor protection and a description of the mechanisms for handling client complaints and redress, as referred to in Article 7(6), second subparagraph;

(g) the exemptions that the applicant is requesting under Article 4, the justification for each exemption requested and any compensatory measures proposed and the means by which it intends to comply with the conditions attached to those exemptions.’;

(f) the following paragraph 4a is inserted:

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‘4a. In addition to the information referred to in paragraph 4 of this Article, an applicant that intends to operate a DLT TV as a CASP trading platform shall submit the information on how it intends to comply with the applicable requirements of Directive 2014/65/EU and Regulation (EU) No 600/2014 as referred to in Article 4(2) of this Regulation, except for information that would be necessary to demonstrate compliance with requirements in respect of which the applicant has requested an exemption in accordance with Article 4 or has been granted an exemption in accordance with Article 4a.’;

(g) in paragraph 6, the first subparagraph is replaced by the following:

‘Within 30 working days of the date of receipt of an application for a specific permission to operate a DLT TV, the competent authority shall assess whether the application is complete. If the application is not complete, the competent authority shall set a time limit by which the applicant is to provide the missing or any additional information. The competent authority shall inform the applicant when the competent authority considers the application to be complete.’;

(h) in paragraph 8, point (a) is replaced by the following:

‘(a) exemptions granted to operators of DLT TVs throughout the Union, including in the context of evaluating the adequacy of different types of distributed ledger technology used by operators of DLT TVs for the purposes of this Regulation; and’;

(i) paragraphs 9 to 13 are replaced by the following:

‘9. Within 90 working days of the date of receipt of a complete application for a specific permission to operate a DLT TV, the competent authority shall carry out an assessment of the application and decide whether to grant the specific permission. Where an applicant applies simultaneously for authorisation under Directive 2014/65/EU or Regulation (EU) 2023/1114 and for a specific permission under this Regulation, the assessment period may be extended for a further period up to that specified in Article 7(3) of Directive 2014/65/EU or Article 63(9) of Regulation (EU) 2023/1114, respectively.

10. Without prejudice to Articles 7 and 44 of Directive 2014/65/EU, the competent authority shall refuse to grant a specific permission to operate a DLT TV if there are grounds for believing that:

(a) there are significant risks to investor protection, market integrity or financial stability that are not properly addressed and mitigated by the applicant;

(b) the specific permission to operate a DLT TV and the exemptions requested are being sought for the purpose of circumventing legal or regulatory requirements; or

(c) the operator of the DLT TV will not be able to comply, or will not allow its users to comply, with applicable provisions of Union law.

11. The specific permission shall specify the exemptions that are granted in accordance with Article 4, any compensatory measures and any lower thresholds set by the competent authority in accordance with Article 3(6).

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The competent authority shall inform ESMA of the grant, refusal or withdrawal of a specific permission under this article without delay, including any information specified under the first subparagraph of this paragraph.

ESMA shall publish on its website:

(a) the list of DLT TVs, the start dates of their specific permissions, the list of exemptions granted to each of them, and any lower thresholds set by competent authorities for each of them; and

(b) the total number of requests for exemptions that have been made under Article 4, indicating the number and types of exemptions granted or refused, together with the justifications for any refusals.

The information referred to in the third subparagraph, point (b), shall be published on an anonymous basis.

12. Without prejudice to Articles 8 and 44 of Directive 2014/65/EU, the competent authority shall withdraw a specific permission or any related exemptions where:

(a) a flaw has been discovered in the functioning of the distributed ledger technology used, or in the services and activities provided by the operator of the DLT TV, that poses a risk to investor protection, market integrity or financial stability, and the risk outweighs the benefits of the services and activities under experimentation;

(b) the operator of the DLT TV has breached the conditions attached to the exemptions;

(c) the operator of the DLT TV has admitted to trading financial instruments that do not fulfil the conditions set out in Article 3(1);

(d) the operator of the DLT TV has exceeded the threshold referred to in Article 3(2) or 3(2b), as applicable;

(e) the operator of the DLT TV has exceeded the threshold referred to in Article 3(2a) or 3(3) and has not activated the transition strategy; or

(f) the operator of the DLT TV obtained the specific permission or related exemptions on the basis of misleading information or a material omission.

13. Where an operator of a DLT TV intends to introduce a material change to the functioning of the distributed ledger technology used, or to the services or activities of that operator, and that material change requires a new specific permission, a new exemption, or the modification of one or more of the operator's existing exemptions or of any conditions attached to an exemption, the operator of the DLT TV shall request a new specific permission, exemption or modification.

Where an operator of a DLT TV requests a new specific permission, exemption or modification, the procedure set out in Article 4 shall apply. That request shall be processed by the competent authority in accordance with this Article.';

(12) Article 9 is amended as follows:

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

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‘2. Where a legal person applies for authorisation as a CSD under Regulation (EU) No 909/2014 and simultaneously applies for a specific permission under this Article, for the sole purpose of operating a DLT SS, the competent authority shall not assess whether the applicant fulfils those requirements of Regulation (EU) No 909/2014 in respect of which the applicant has requested an exemption in accordance with Article 5 or has been granted an exemption in accordance with Article 5a of this Regulation.

3. Where, as referred to in paragraph 2 of this Article, a legal person simultaneously applies for authorisation as a CSD and for a specific permission, it shall submit in its application the information referred to in article 17(2) of Regulation (EU) No 909/2014, except for information that would be necessary to demonstrate compliance with the requirements in respect of which the applicant has requested an exemption in accordance with Article 5 or has been granted an exemption in accordance with Article 5a of this Regulation.’;

(b) in paragraph 4, point (h) is replaced by the following:

‘(h) the exemptions that the applicant is requesting under Article 4 or 5a, the justification for each exemption requested and any compensatory measures proposed and the means by which it intends to comply with the conditions attached to those exemptions.’;

(c) in paragraph 10, point (c), is replaced by the following:

‘(c) the DLT SS will not be able to comply, or will not allow its users to comply, with applicable provisions of Union law or provisions of national law falling outside the scope of Union law.’;

(d) paragraph 11 is amended as follows:

(a) first subparagraph is replaced by the following:

‘The specific permission shall specify the exemptions that are granted in accordance with Article 5, any compensatory measures, any lower thresholds set by the competent authority in accordance with article 3(6) and whether the DLT SS operates under the simplified regime.’

(b) in the third subparagraph, point a is replaced by the following:

‘(a) the list of DLT SSs, the start date of their specific permissions, the list of exemptions granted to each of them, and any lower thresholds set by the competent authorities for each of them; and’;

(e) paragraphs 12 and 13 are replaced by the following:

‘12. Without prejudice to Article 20 of Regulation (EU) No 909/2014, the competent authority shall withdraw a specific permission or any related exemptions where:

(a) a flaw has been discovered in the functioning of the distributed ledger technology used, or in the services and activities provided by the DLT SS, that poses a risk to investor protection, market integrity or financial stability, and the risk outweighs the benefits of the services and activities under experimentation;

(b) the DLT SS has breached the conditions attached to the exemptions;

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(c) the DLT SS has recorded financial instruments that do not fulfil the conditions set out in Article 3(1);

(d) the DLT SS has exceeded the threshold referred to in Article 3(2) or 3(2b) as applicable;

(e) the DLT SS has exceeded the threshold referred to in Article 3(2a) or 3(3), as applicable, and has not activated the transition strategy; or

(f) the DLT SS obtained the specific permission or related exemptions on the basis of misleading information or a material omission.

13. Where a DLT SS intends to introduce a material change to the functioning of the distributed ledger technology used, or to the services or activities of that DLT SS, and that material change requires a new specific permission, a new exemption, or the modification of one or more of its existing exemptions or of any conditions attached to an exemption, the DLT SS shall request a new specific permission, exemption or modification.

Where a DLT SS requests a new specific permission, exemption or modification, the procedure set out in Article 5 shall apply. That request shall be processed by the competent authority in accordance with this Article.';

(13) Article 10 is amended as follows:

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

'1. An investment firm, or a market operator , or as a CASP trading platform under Regulation (EU) 2023/1114, or authorised as a CSD under Regulation (EU) No 909/2014, may apply for a specific permission to operate a DLT TSS under this Regulation.

2. Where a legal person applies for authorisation as an investment firm or for authorisation to operate a regulated market under Directive 2014/65/EU, or Regulation (EU) No 600/2014, or as a CSD under Regulation (EU) No 909/2014, or as a CASP trading platform under Regulation 2023/1114 and, simultaneously, applies for a specific permission under this Article, for the sole purpose of operating a DLT TSS, the competent authority shall not assess whether the applicant fulfils those requirements of Directive 2014/65/EU or Regulation (EU) No 600/2014, or those of Regulation (EU) No 909/2014 in respect of which the applicant has requested an exemption in accordance with Article 6 of this Regulation.

3. Where, as referred to in paragraph 2 of this Article, a legal person simultaneously applies for authorisation as an investment firm or for authorisation to operate a regulated market, or for authorisation as a CSD, or for authorisation of a CASP, and for a specific permission, it shall submit in its application the information required under Article 7 of Directive 2014/65/EU or Article 17 of Regulation (EU) No 909/2014 or Article 7a of this Regulation or Article 62 of Regulation 2023/1114 respectively, except for information that would be necessary to demonstrate compliance with the requirements in respect of which the applicant has requested an exemption in accordance with Article 6 of this Regulation.';

(b) paragraph 5 is replaced by the following:

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‘5. In addition to the information referred to in paragraph 4 of this Article, an applicant that intends to operate a DLT TSS as an investment firm, market operator or a CASP shall submit the information on how it intends to comply with the applicable requirements of Regulation (EU) No 909/2014 as referred to in Article 6(1) of this Regulation, or where applicable, requirements under the simplified regime, except for information that would be necessary to demonstrate compliance with requirements in respect of which the applicant has requested an exemption in accordance with that Article.

In addition to the information referred to in paragraph 4 of this Article, an applicant that intends to operate a DLT TSS as a CSD shall submit the information on how it intends to comply with the applicable requirements of Directive 2014/65/EU or Regulation (EU) No 600/2014 as referred to in Article 6(2) of this Regulation, except for information that would be necessary to demonstrate compliance with requirements in respect of which the applicant has requested an exemption in accordance with that Article.’;

(c) paragraph 9 is replaced by the following:

‘9. Within 90 working days of the date of receipt of a complete application for a specific permission to operate a DLT TSS, the competent authority shall carry out an assessment of the application and decide whether to grant the specific permission. Where the applicant applies simultaneously for authorisation under Directive 2014/65/EU, Regulation (EU) No 909/2014 or Regulation (EU) 2023/1114 and for a specific permission under this Article, the assessment period may be extended for a further period up to that specified in Article 7(3) of Directive 2014/65/EU, Article 17(8) of Regulation (EU) No 909/2014 or Article 63(9) of Regulation 2023/1114 respectively.’;

(d) Paragraph 10 first subparagraph introductory sentence is replaced by the following:

‘10. Without prejudice to Article 7 of Directive 2014/65/EU and to Article 2a of Regulation (EU) No 600/2014, and Article 17 of Regulation (EU) No 909/2014 and Article 63 of Regulation (EU) 2023/1114, the competent authority shall refuse to grant a specific permission to operate a DLT TSS if there are grounds for believing that:’;

(e) paragraph 11 is amended as follows:

(a) the first subparagraph is replaced by the following:

‘11. The specific permission shall specify the exemptions that are granted in accordance with Article 6, any compensatory measures and any lower thresholds set by the competent authority in accordance with Article 3(6) and whether the DLT TSS operates under the simplified regime.’;

(b) in the third subparagraph, point (a) is replaced by the following:

‘(a) the list of DLT TSSs, the start of their specific permissions, the list of exemptions granted to each of them, and any lower thresholds set by competent authorities for each of them; and’;

(f) paragraph 12 is amended as follows:

(a) first subparagraph introductory wording is replaced by the following:

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‘12. Without prejudice to Article 8 of Directive 2014/65/EU, Article 2c of Regulation (EU) No 600/2014, Article 20 of Regulation (EU) No 909/2014 and Article 64 of Regulation (EU) 2023/1114, the competent authority shall withdraw a specific permission or any related exemptions where:’

(b) points (d) and (e) are replaced by the following:

‘(d) the operator of the DLT TSS has exceeded the threshold referred to in Article 3(2) or 3(2b), as applicable;’

‘(e) the operator of the DLT TSS has exceeded the threshold referred to in Article 3(2a) or 3(3), as applicable, and has not activated the transition strategy; or’;

(14) The following Articles 10a to 10g are inserted:

‘Article 10a

Specific permission to provide individual CSD services

1. An authorised investment firm, regulated market, credit institution, CSD, or a CASP may apply to its competent authority for a specific permission to provide, on an individual basis, the DLT notary service or the DLT central maintenance service and non-banking type ancillary services of CSDs associated with those services as specified in Section B of Annex to Regulation (EU) No 909/2014.

2. An application for a specific permission to provide the DLT notary service or the DLT central maintenance shall contain the following information:

(a) the applicant’s business plan, including a description of planned business relationships with other CSD service providers or market infrastructures, including trading venues, CCPs, CSDs operating solely under Regulation (EU) No 909/2014, DLT market infrastructures and other financial entities of importance for the provision of CSD services;

(b) a description of the functioning of the distributed ledger technology used, as referred to in Article 7(2);

(c) a description of the applicant’s overall IT and cyber arrangements, as referred to in Article 7(4);

The application shall also contain all the information necessary for the competent authority to assess compliance with the requirements of this Regulation and the provisions of Regulation (EU) No 909/2014 applicable to the DLT notary or the DLT account keeper in accordance with Article 10b(1).

3. Within 20 working days of receiving the application for a specific permission, the competent authority shall assess whether the application is complete. If the application is not complete, the competent authority shall set a time limit by which the applicant is to provide the missing or any additional information. The competent authority shall inform the applicant when the competent authority considers the application to be complete.

4. Within 40 working days of the date of receipt of a complete application for a specific permission to operate a DLT SS, the competent authority shall carry out an assessment of the application and decide whether to grant the specific permission.

Where the competent authority grants the specific permission, it shall share the complete application for the specific permission and the information related to the

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permission with the central bank in the Union issuing the currency in which the DLT financial instruments that are intended to be serviced by the DLT notary or the DLT account keeper are denominated.

5. Competent authorities may withdraw the specific permission where the DLT notary or the DLT account keeper systematically infringes the provisions of this Regulation.

6. ESMA may develop guidelines to establish standard forms, formats and templates for the purpose of the application referred to in paragraph 1.

Article 10b

Provision of individual CSD services

1. DLT notary and DLT account keeper shall be subject to the provisions of Title III of Regulation (EU) No 909/2014 that govern the application of the notary and central maintenance service referred to in section A of the Annex to Regulation (EU) No 909/2014, respectively, as specified and supplemented in accordance with paragraph 10.

2. DLT notary and DLT account keeper shall comply with the requirements set out in Article 7(1), first subparagraph, Article 7(2), (4) and (5) and Article 7(6), first and second subparagraphs.

3. An issuer established in the Union that issues or has issued DLT financial instruments which are admitted to trading or traded on trading venues shall be deemed to comply with Article 3(1) of Regulation (EU) No 909/2014, where the securities are represented on a distributed ledger used by a DLT notary for the initial recording of those securities.

   By way of derogation from Article 3(2) of Regulation (EU) No 909/2014, where transactions in DLT financial instruments issued under this Regulation take place on a trading venue, they shall be recorded on or before the intended settlement date by a DLT notary, a DLT SS, a DLT TSS or a CSD operating solely under Regulation (EU) No 909/2014.

4. Transactions in DLT financial instruments maintained in securities accounts managed by DLT account keepers in accordance with this Article shall be settled through a DLT SS, DLT TSS, a CSD operating solely under Regulation (EU) No 909/2014.

5. A DLT SS, DLT TSS or a CSD operating solely under Regulation (EU) No 909/2014 may admit for settlement DLT financial instruments maintained in securities accounts managed by DLT account keepers that have an aggregate market value that amounts to no more than the amount specified under Article 3(2b) at the time of settlement of the first transaction.

   By derogation from the first subparagraph, a DLT SS, DLT TSS or a CSD operating solely under Regulation (EU) No 909/2014 may admit for settlement DLT financial instruments maintained in securities accounts managed by DLT account keepers that have an aggregate market value that amounts to no more than the EUR 30 billion at the time of settlement of the first transaction, where such DLT financial instruments are transferable securities issued by SMEs.

6. By way of derogation from paragraph 4, DLT account keepers may settle DLT financial instruments outside a DLT SS, DLT TSS, or a CSD operating solely under

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Regulation (EU) No 909/2014, where they comply with the requirements for such settlement laid down in Article 10c.

7. Where a DLT notary or a DLT account keeper provides CSD core services jointly with a DLT SS, TSS or a CSD operating solely under Regulation (EU) No 909/2014, the DLT SS, TSS or CSD operating solely under Regulation (EU) No 909/2014 shall not be liable for compliance with those requirements of Regulation (EU) No 909/2014 that shall apply to a DLT notary or a DLT account keeper in accordance with paragraph 1.

The division of liabilities referred to in the first subparagraph shall be applicable only with regards to those DLT financial instruments that are serviced by a DLT notary or a DLT account keeper in accordance with paragraph 1.

8. The DLT notary, DLT account keeper and the DLT SS, TSS or a CSD operating solely under Regulation (EU) No 909/2014, that provide CSD core services jointly, shall specify their roles and responsibilities in providing those services in a legally binding written agreement. Each of them shall notify that written agreement to their respective competent authorities, together with clear information on which entity provides CSD core services for which DLT financial instruments, or categories of DLT financial instruments.

9. ESMA shall enter the information concerning DLT notaries and DLT account keepers in the CSD register maintained under Article 21 of Regulation (EU) No 909/2014.

10. ESMA shall develop regulatory technical standards to specify the provisions of Title III of Regulation (EU) No 909/2014 that apply to each of the DLT notary and the DLT central maintenance service, and, where necessary, supplement the non-essential elements of the provisions of that title and amend regulatory technical standards to adapt them to the use of DLT and the specificities of business models involving the distributed provision of CSD core services.

In complying with the first subparagraph, ESMA shall ensure that the rules applicable to individual services are:

(a) consistent with the objectives and principles laid down in Regulation (EU) No 909/2014 applicable to the notary and central account maintenance services;

(b) proportionate to the risk profile of the DLT notary and the DLT central account maintenance service.

ESMA shall submit those draft regulatory technical standards to the Commission by [OP: please add date corresponding to 8 months after entry into force of this amending Regulation]

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 10c

Settlement within a settlement scheme

1. DLT account keepers shall settle transactions in DLT financial instruments under Article 10b(5) only within a settlement scheme authorised under Article 10d.

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DLT account keepers shall only settle transactions with other DLT account keepers that are part of the same settlement scheme.

2. DLT account keepers settling transactions within a settlement scheme shall ensure that:

   (a) all transactions are settled only with central bank deposits that the DLT account keepers hold with the central bank of issue of the relevant currency;

   (b) all transactions in DLT financial instruments that involve a cash leg are settled on a DVP basis;

   (c) the settlement scheme provides adequate settlement finality of transfers of cash and DLT financial instruments, ensuring:

      (i) settlement finality is achieved at least on the day of the settlement date;

      (ii) moments of entry and of irrevocability of transfer orders are clearly defined

   (d) the settlement scheme effectively manages its legal, business and operational risks.

3. DLT account keepers settling transactions within a settlement scheme shall ensure that the settlement scheme they are a part of, and each DLT account keeper participating in the settlement scheme, complies with the following principles:

   (a) ensuring safe, efficient and smooth settlement;

   (b) ensuring robust risk management of operations, including management of credit and liquidity risk as specified in paragraphs 5 and 6; and

   (c) ensuring protection of assets of clients of DLT account keepers.

4. DLT account keepers participating in a settlement scheme shall identify sources of operational risk to the functioning of the settlement scheme, both internal and external, and minimise their impact through the deployment of appropriate ICT tools, processes and policies set up and managed in accordance with Regulation (EU) 2022/2554 of the European Parliament and of the Council, as well as through any other relevant appropriate tools, controls and procedures for other types of operational risk.

5. DLT account keepers participating in a settlement scheme shall establish, implement and maintain an adequate business continuity policy and disaster recovery plan, including ICT business continuity policy and ICT response and recovery plans established in accordance with Regulation (EU) 2022/2554, to ensure the preservation of settlement activities within the settlement scheme and the timely recovery of its operations.

   DLT account keepers participating in a settlement scheme shall identify, monitor and manage the risks that service and utility providers might pose to its operations.

6. Each DLT account keeper providing banking services to their clients, related to the settlement activity within the settlement scheme, shall comply with the following specific prudential requirements for the credit risks related to those services:

   (a) it shall establish a robust framework to manage the corresponding credit risks;

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(b) it shall regularly identify the sources of such credit risks, measure and monitor corresponding credit exposures and use appropriate risk-management tools to control those risks;

(c) it shall fully cover corresponding credit exposures to individual borrowing participants using highly liquid collateral, or other collateral to which it shall apply appropriate haircuts, and other equivalent financial resources;

(d) it shall set appropriate limits on credit exposures to individual clients;

(e) it shall provide credit only to participants that have cash accounts with it; and

(f) it shall provide for effective reimbursement procedures of intra-day credit

7. Each DLT account keeper providing banking services to their clients, related to the settlement activity within the settlement scheme, shall comply with the following specific prudential requirements for the liquidity risks related to those services:

(a) it shall have a robust framework and tools to measure, monitor, and manage its liquidity risks, including intra-day liquidity risks, for each currency of the settlement scheme in which it settles transactions;

(b) it shall measure and monitor on an ongoing basis its liquidity needs and the level of liquid assets it holds;

(c) it shall have sufficient liquid resources in all relevant currencies for timely settlement of DLT financial instruments under a wide range of potential stress scenarios including, but not limited to the liquidity risk generated by the default of at least one participant, including its parent undertakings and subsidiaries, to which it has the largest exposures;

(d) where prearranged funding arrangements are used, it shall select only creditworthy financial institutions as liquidity providers and establish and apply appropriate concentration limits for each of the corresponding liquidity providers including its parent undertaking and subsidiaries;

(e) it shall have prearranged arrangements to ensure that it can liquidate in a timely fashion the collateral provided to it by a defaulting client.

8. DLT account keepers participating in a settlement scheme shall enter into a legally binding written agreement clearly specifying the roles and responsibilities of the DLT account keepers within the settlement scheme.

A DLT account keeper shall be a member of no more than two settlement schemes.

A settlement scheme shall comprise at least two DLT account keepers.

9. Each settlement scheme may admit for settlement DLT financial instruments maintained in securities accounts managed by its participating DLT account keepers that have an aggregate market value that amounts to no more than the amount specified under Article 3(2b) at the time of settlement of the first transaction.

Where the aggregate market value of all the DLT financial instruments that are admitted to settlement by a settlement scheme has reached the amount specified under Article 3(3), the DLT account keepers shall activate the transition strategy referred to in Article 10(e). The DLT account keepers shall notify ESMA of the activation of its transition strategy and of the timescale for the transition.

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By derogation from the first subparagraph, each settlement scheme may admit for settlement DLT financial instruments maintained in securities accounts managed by DLT account keepers that have an aggregate market value that amounts to no more than EUR 30 billion at the time of settlement of the first transaction, where such DLT financial instruments are transferable securities issued by SMEs. The DLT account keepers shall activate its transition strategy when the market value of those transferable securities reaches EUR 45 billion.

10. DLT account keepers shall report to ESMA on a monthly basis the following information:

(a) transfers that take place with the settlement scheme they participate to, including aggregate volumes;

(b) the aggregate market value of DLT financial instruments admitted for settlement, calculated in accordance with Article 3(4);

(c) most common issues that result in settlement fails;

(d) the extent and management of intra-day liquidity risk by each DLT account keeper;

(e) reporting on peak credit exposures to their clients, the type of collateral accepted, haircuts applied and collateral concentration.

DLT account keepers shall report sufficiently detailed information for ESMA to verify compliance of the settlement scheme and participating DLT account keepers with this Article.

The reporting requirement may be discharged by any DLT account keeper participating in the settlement scheme on behalf of other participants. All participants remain individually responsible for the completeness and veracity of information reported on their behalf.

11. ESMA may develop guidelines to establish standard forms, formats and templates for the following purposes:

(a) to establish standard forms, formats and templates for application for authorisation under Article 10d;

(b) to establish standard forms, formats and templates for the purpose of paragraph 10.

Article 10d

Authorisation and supervision of the settlement scheme

1. DLT account keepers intending to settle transactions in a settlement scheme shall submit the settlement scheme for authorisation to ESMA in accordance with this Article before settling any transaction in that settlement scheme.

DLT account keepers taking part in the settlement scheme shall submit to ESMA the following information:

(a) programme of operations of the settlement scheme, setting out in particular information about participating DLT account keepers, DLT notaries and other financial or non-financial entities providing important services to the settlement scheme and their relationships within the scheme;

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(b) the written agreement referred to in Article 10c(7);

(c) information about trading venues, CCPs and other key market infrastructures connected to the settlement scheme;

(d) how each of the participating DLT account keepers, and the settlement scheme as a whole, intends to comply with Article 10(2) to (5);

(e) a description of the functioning of the distributed ledger technology used, as referred to in Article 7(2);

(f) a description of the applicant's overall IT and cyber arrangements, as referred to in Article 7(4);

(g) transition strategy of the settlement scheme.

DLT account keepers shall notify ESMA without undue delay of any material changes to the information previously notified about the settlement scheme.

Where additional DLT account keepers join the settlement scheme after the start of its operations, they shall submit to ESMA information about the new composition of the settlement scheme at least one month before they begin settling DLT financial instruments.

2. Within 30 working days from the receipt of the application, ESMA shall assess whether the application for authorisation of the settlement scheme is complete. If the application is not complete, ESMA shall set a time limit by which participating DLT account keepers have to provide additional information.

3. Without undue delay after declaring the application complete, ESMA shall transmit the application to each central bank of issue of the currency relied on for settlement within a settlement scheme.

The central bank of issue may issue a reasoned opinion within its area of competence to ESMA within two months of receipt of the application from ESMA.

4. Within five months from the submission of a complete application, ESMA shall inform the applicant DLT account keepers in writing with a fully reasoned decision whether the authorisation has been granted or refused.

5. ESMA shall refuse the authorisation where the application for authorisation concerns a new settlement scheme that is substantively similar to a settlement scheme that has already been authorised and where there are reasonable doubts that the application is submitted to circumvent the threshold under Article 10c(6).

6. ESMA shall withdraw the authorisation of the settlement scheme if the settlement scheme:

(a) has not settled transactions for nine consecutive months;

(b) has been authorised by irregular means, such as by making false statements in the process of its authorisation;

(c) no longer meets the conditions under which the authorisation was granted and its participants have not taken remedial action requested by ESMA;

(d) fails to adhere to the requirements set out in Article 10c(4) or its participating DLT account keepers commit repeated infringements of this Regulation.

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7. With regards to settlement schemes, ESMA shall be responsible for carrying out the functions and duties provided for in this Article and to:

(a) supervise the compliance with the requirements laid down in this Regulation;

(b) adopt decisions, conduct supervisory assessments and take other measures in relation to Articles 10(c) to 10(e); and

(c) ensure ongoing compliance with Articles 10(c) to 10(e).

In order to perform its duties under this Article, ESMA shall have the supervisory and investigative powers over the DLT account keepers participating in the settlement scheme provided for in Chapter IIa of Regulation (EU) No 1095/2010 and in this Regulation.

In addition to the supervisory measures referred to in Article 39h of Regulation (EU) No 1095/2010, ESMA may take the following measures:

(a) suspend the participation of a DLT account keeper in the settlement scheme where it infringes the requirements of Article 10c;

(b) require a DLT account keeper to take remedial action to bring its participation in the settlement scheme back into compliance with Article 10c;

(c) suspend the participation of a DLT account keeper in the settlement scheme where it infringes the requirements of Article 10c;

(d) require a DLT account keeper to present a plan to restore compliance with supervisory requirements and set a deadline for its implementation;

(e) suspend the authorisation of the settlement scheme or the participation of an individual DLT account keeper participating in the scheme for a maximum of 30 consecutive working days on any single occasion, where there are reasonable grounds for suspecting that Article 10c has been seriously infringed;

(f) exclude a DLT account keeper from participation in a settlement scheme where that DLT account keeper repeatedly infringes the requirements of Article 10c;

(g) adopt a decision requiring a DLT account keeper to bring an infringement listed in the Annex to an end;

(h) impose additional or more frequent reporting requirements or require additional disclosures, in cases where ESMA has evidence that the arrangements, strategies, processes and mechanisms implemented by the settlement scheme or its participants do not ensure a sound management and coverage of its risks.

8. ESMA shall charge fees to the DLT account keepers that participate in them in accordance with this Regulation and Article 39n of Regulation (EU) No 1095/2010 and in accordance with the delegated acts adopted pursuant to paragraph 10.

9. The amount of any fee charged to DLT account keeper participating in the settlement scheme shall be proportionate to the turnover of the settlement scheme concerned and the type of authorisation and supervision exercised by ESMA.

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10. The Commission shall adopt a delegated act in accordance with Article 15a to specify 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 10e

Transition strategy for the settlement scheme

1. DLT account keepers participating in a settlement scheme shall establish and make publicly available a clear and detailed transition strategy for reducing the activity of a particular settlement scheme, in the event:

   (a) that the threshold referred to in Article 3(3), has been exceeded;

   (b) that the authorisation granted to the settlement scheme under this Regulation is withdrawn or otherwise discontinued; or

   (c) of any voluntary or involuntary cessation of the business of the settlement scheme.

   The transition strategy shall be ready to be deployed in a timely manner.

2. The transition strategy shall set out how participants, issuers and clients of participants are to be treated in the event of a withdrawal or discontinuation of the settlement scheme authorisation or the cessation of the business. The transition strategy shall set out how clients, in particular retail investors, are to be protected from any disproportionate impact from the withdrawal or discontinuation of an authorisation or the cessation of the business of the settlement scheme. The transition strategy shall be updated on an ongoing basis subject to the prior approval of ESMA.

3. The settlement scheme shall establish, implement and maintain adequate procedures ensuring the timely and orderly settlement of assets of clients and participants in another settlement scheme, DLT SS, DLT TSS or a CSD operating solely under Regulation (EU) No 909/2014 in the event of a withdrawal of authorisation referred to in paragraph 1. Those procedures shall form a part of the transition strategy.

Article 10f

Cross-border provision of individual CSD services

1. DLT notaries and DLT account keepers may provide DLT notary and DLT central maintenance services throughout the Union, either through the right of establishment, including through a branch, or through the freedom to provide services. DLT notaries and DLT account keepers that provide services on a cross-border basis shall not be required to have a physical presence in the territory of a host Member State.

2. A DLT notary or a DLT account keeper that intends to provide its service in more than one Member State shall submit the following information to the competent authority of the home Member State:

   (a) a list of the Member States in which the DLT notary or the DLT account keeper intends to provide CSD services;

   (b) services that the DLT notary or the DLT account keeper intends to provide on a cross-border basis;

   (c) the starting date of the intended provision of services;

   (d) The competent authority of the home Member State shall, within 10 working days of receipt of the information referred to in the first sub-

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paragraph, communicate that information to the competent authorities of the host Member States.

3. The competent authority of the home Member State shall inform the DLT notary or the DLT account keeper concerned of the communication referred to in paragraph 2 second sub-paragraph without delay.

4. A DLT notary or a DLT account keeper may begin to provide its services in a Member State other than its home Member State from the date of receipt of the communication referred to in paragraph 2 second sub-paragraph or at the latest from the 15th calendar day after having submitted the information referred to in paragraph 2.

5. Where the competent authority of a host Member State has clear and demonstrable grounds for suspecting that there are irregularities in the activities of DLT account keeper or DLT notary, it shall notify the competent authority of the home Member State and ESMA thereof.

6. Where, despite the measures taken by the competent authority of the home Member State, the irregularities referred to in paragraph 5 persist, amounting to an infringement of this Regulation, the competent authority of the host Member State, after informing the competent authority of the home Member State and ESMA shall take appropriate measures in order to protect clients of crypto-asset service providers and holders of crypto-assets, in particular retail holders. Such measures include preventing the DLT account keeper or the DLT notary from conducting further activities in the host Member State. The competent authority shall inform ESMA thereof without undue delay. ESMA shall inform the Commission accordingly without undue delay.

Article 10g

Interoperability between DLT market infrastructures

1. Operators of a DLT SS, a DLT TSS and DLT account keepers participating in settlement schemes shall form an industry group and develop industry standards that facilitate settlement of DLT financial between the members of the group, including standards for establishing links between those entities within the meaning of Article 2(1) point (29) of Regulation (EU) No 909/2014.

CSDs operating solely under Regulation (EU) 2023/1114 that provide CSD core services on DLT, DLT account keepers and DLT notaries that are not part of settlement schemes may request to be a part of the group referred to in the first subparagraph. Operators of a DLT SS, a DLT TSS and DLT account keepers participating in a settlement schemes shall admit eligible entities into the group.

The procedural rules of the industry group shall ensure that:

(a) the group is open to participation to any entity with a demonstrated interest in drawing up industry standards referred to in the first subparagraph;

(b) risk of breaching competition law is sufficiently mitigated.

In developing the industry standards, the industry group shall periodically consult the ECSB and ESMA, and take into account their views.

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The members of the industry group shall implement the industry standards in the appropriate segments of their operations, unless they have a clear justification for not doing so.

2. Entities participating in the establishment of industry standards under paragraph 1 shall submit to ESMA the following:

(a) at the latest within 12 months of entry into application of this Regulation, a detailed description of the types of industry standards that must be agreed on for the purpose of paragraph 1, challenges in agreeing on them and potential ways to resolve those challenges;

(b) at the latest within 30 months of entry into application of this Regulation, the technical standards referred to in paragraph 1 and the progress.

3. Within 40 months of entry into application of this Regulation, ESMA shall submit to the Commission technical advice on supporting interoperability between DLT market infrastructures, in particular assessing:

(a) the role of data standardisation in supporting interoperability between DLT market infrastructures, especially in view of financial use cases attracting most market interest and activity and the industry standards referred to in paragraph 1;

(b) the role of regulated and non-regulated entities in ensuring interoperability between DLT market infrastructures.';

(15) Article 11 is amended as follows:

(a) in paragraph 1 first subparagraph is replaced by the following:

'1. Without prejudice to Regulation (EU) No 909/2014, Regulation (EU) 2023/1114 and directive 2014/65/EU, operators of DLT market infrastructures shall cooperate with the competent authorities.';

(b) in paragraph 4 point (b) is replaced by the following:

'(b) the number and value of DLT financial instruments admitted to trading on the DLT TV or DLT TSS and the number and value of DLT financial instruments recorded by the operator of the DLT SS or DLT TSS;';

(c) in paragraph 4 point (c) is replaced by the following:

'(c) the number and value of transactions traded on the DLT TV or DLT TSS and settled by the operator of the DLT SS or DLT TSS;';

(16) The following Articles 11a and 11b are inserted:

'Article 11a

College of supervisors for DLT market infrastructures

1. A college of supervisors shall be established in accordance with Article 24a of Regulation (EU) No 909/2014 for CSD activities of a DLT SS or a DLT TSS in relation to which the conditions set out in that Article are fulfilled.

2. In addition to authorities that are members of the college of supervisors pursuant to Article 24a(4), the following authorities may request to be members of the college of supervisors established in accordance with the subparagraph 1 shall:

(a) competent authorities of DLT account keepers and DLT notaries providing the DLT central maintenance service and the DLT notary

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service with regards to DLT financial instruments settled by the DLT SS or DLT TSS;

(b) EBA, where e-money tokens are used for the settlement of payments.

Article 11b

College of supervisors for settlement schemes

1. ESMA shall establish a college of supervisors to carry out the tasks referred to in paragraph 10d(7) in relation to DLT account keepers that are part of a settlement scheme.

2. The college shall be established within one month of the date when the settlement scheme has been authorised under Article 10d.

3. ESMA shall manage and chair the college.

4. The college shall consist of:

(a) ESMA;

(b) the competent authority of a DLT account keeper participating in the settlement scheme;

(c) the central bank in the Union of the currency that is or will be used for the settlement of cash payments in the settlement scheme

5. Competent authorities of DLT notaries participating in the settlement scheme shall be able to participate in the college upon their request.

6. ESMA shall publish on its website without undue delay the list of the members of the college and keep that list updated.

7. A competent authority that is not a member of the college may request from the college any information relevant for the performance of its supervisory duties.

8. The college shall, without prejudice to the responsibilities of competent authorities under this Regulation, ensure:

(a) the exchange of information;

(b) efficient supervision by avoiding unnecessary duplicative supervisory actions, such as information requests;

(c) agreement on the voluntary entrustment of tasks among its members;

(d) the exchange of information on the organisational structure of any member of the settlement scheme, including information on group structure, management, and shareholders;

(e) the exchange of information on processes or arrangements that have a significant impact on governance or risk management standards in the settlement scheme;

9. ESMA may invite additional participants to the discussions of the college on an ad hoc basis on specific topics.

The members of a college other than ESMA may decide not to participate in a meeting of the college.

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10. The functioning of the college shall be based on a written agreement between all of its members.

That agreement shall determine the practical arrangements for the functioning of the college, including the cadence of the meetings of the college, the modalities of communication amongst members of the college, and may determine tasks to be entrusted to them.';

(17) Article 12 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The competent authority for an investment firm operating a DLT TV or DLT TSS shall be the competent authority designated by the Member State determined in accordance with Article 4(1), points (55)(a)(ii) and (iii), of Directive 2014/65/EU.';

(b) the following paragraph 1a is added:

'1a. The competent authority for a CASP operating a DLT TV or DLT TSS shall be the competent authority designated by the Member State determined in accordance with Article 3 (1), point (33) (f) of Regulation (EU) 2023/1114.';

(c) the following paragraph 2 is replaced by the following:

'2. The competent authority for a market operator operating a DLT TV or DLT TSS shall be the competent authority designated by the Member State in which the registered office of the market operator operating the DLT TV or DLT TSS is situated or, if in accordance with the law of that Member State the market operator has no registered office, the Member State in which the head office of the market operator operating the DLT TV or DLT TSS is situated.';

(d) the following paragraph 3a is added:

'3a. The competent authority for a DLT notary and the DLT account keeper shall be the authority competent for the supervision of the entity that applied for the specific permission in accordance with Article 10a.';

(18) Article 14 is amended as follows:

(a) paragraph 1 is amended as follows:

(1) the introductory wording is replaced by the following:

'By 24 March 2030, ESMA shall present a report to the Commission on:';

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

'(a) the functioning of DLT market infrastructures throughout the Union and appropriate metrics describing their activities;';

(3) points (b), (d) and (e) are deleted;

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

'(h) any risks, vulnerabilities or inefficiencies posed by the use of distributed ledger technology to investor protection, market integrity or financial stability;'

(5) point (j) is deleted;

(6) point (k) is replaced by the following:

'(k) any benefits and costs resulting from the use of a distributed ledger technology in financial markets;'

(7) point (n) is replaced by the following:

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‘(n) the appropriateness of the thresholds referred to in Article 3, including the potential implications resulting from an increase of those thresholds, taking into account, in particular, systemic considerations and different types of distributed ledger technology;’;

(8) point (o) is replaced by the following:

‘(o) an overall assessment of the costs and benefits of the pilot regime provided for in this Regulation;’;

(b) paragraph 2 is replaced by the following:

‘2. On the basis of the report referred to in paragraph 1, the Commission shall assess whether the pilot regime provided for in this Regulation should be integrated into other sectoral legislation and submit, where appropriate, a legislative proposal to the European Parliament and to the Council.’;

(19) Article 15 is replaced by the following:

‘Article 15

Interim reports

Every two years ESMA shall publish interim reports in order to provide market participants with information on the functioning of the markets, to address incorrect behaviour of operators of DLT market infrastructures, to provide clarifications on the application of this Regulation and to update previous indications based on the evolution of distributed ledger technology. Those reports shall also provide an overall description of the application of the pilot regime provided for in this Regulation, focusing on trends and emerging risks, and shall be submitted to the European Parliament, the Council and the Commission. The first such report shall be published by 24 March 2028.’;

(20) Article 15a is inserted:

‘Article 15a

Exercise of the delegation

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

2. The power to adopt delegated acts referred to in Articles 3(7) and 10(d)(10) shall be conferred on the Commission for an indeterminate period from [OP to put the date of entry into force of the amending Regulation].

3. The delegation of power referred to in Article 3(7) and 10(d)(10) may be revoked at any time by the European Parliament or by the Council. A decision of revocation 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 of 13 April 2016 on Better Law-Making.

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 3(7) and 10(d)(10) shall enter into force only if no objection has been expressed either by the European Parliament or the

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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 of the Council.';

(21) Annex IV to this Regulation is added as an Annex to Regulation (EU) 2022/858.

Article 9

Amendments to Regulation (EU) 2023/1114

Regulation (EU) 2023/1114, is amended as follows:

(1) in Article 3(1), point (35) is amended as follows:

(a) Point (a) is replaced by the following:

'(a) designated by each Member State in accordance with Article 93 concerning offerors, persons seeking admission to trading of crypto-assets other than asset-referenced tokens and e-money tokens, and issuers of asset-referenced tokens;'

(b) The following point (c) is added:

'(c) ESMA for:

(i) crypto-asset service providers authorised pursuant to Article 63;

(ii) entities allowed to provide crypto-asset services pursuant to Article 60(2) to (6), whose main activity is the provision of crypto-asset services as referred to in Article 138a(2).'

(2) Article 59 is amended as follows:

(a) Paragraph 6 is replaced by the following:

'6. The authorisation granted in accordance with Article 63 shall specify the crypto-asset services that crypto-asset service providers are authorised to provide.'

(b) paragraph 7 is replaced by the following:

'7. Crypto-asset service providers shall be allowed to provide crypto-asset services throughout the Union, either through the right of establishment, including through a branch, or through the freedom to provide services. Crypto-asset service providers that provide crypto-asset services in Member States other than their home Member State, shall not be required to have a physical presence in the territory of a host Member State.'

(c) Paragraph 8 is replaced by the following:

'8. Crypto-asset service providers seeking to add crypto-asset services to their authorisation as referred to in Article 63 shall request ESMA for an extension of their authorisation by complementing and updating the information referred to in Article 62. The request for extension shall be processed in accordance with Article 63.'

(3) in Article 60, the following paragraph 6a is inserted:

'6a. The entities referred to in paragraphs 2 to 6 shall be required to submit yearly to their competent authority and ESMA information on their total annual turnover, in particular, the percentage of their total annual turnover according to the last available

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financial statements approved by their management body, which is generated from the provision of crypto-asset services.'

(4) Article 62 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Legal persons or other undertakings that intend to provide crypto-asset services shall submit their application for an authorisation as a crypto-asset service provider to ESMA.'

(b) paragraph 4 is deleted.

(5) Article 63 is amended as follows:

(a) the title is replaced by the following:

'Assessment of the application for authorisation and grant or refusal of authorisation by ESMA';

(b) paragraphs 1 to 9 are replaced by the following:

1. ESMA shall promptly, and in any event within five working days of receipt of an application under Article 62(1), acknowledge receipt thereof in writing to the applicant crypto-asset service provider.

2. ESMA shall, within 25 working days of receipt of an application under Article 62(1), assess whether that application is complete by checking that the information listed in Article 62(2) has been submitted.

Where the application is not complete, ESMA shall set a deadline by which the applicant crypto-asset service provider is to provide any missing information.

3. ESMA may refuse to review applications where such applications remain incomplete after the expiry of the deadline set by them in accordance with paragraph 2, second subparagraph.

4. Once an application is complete, ESMA shall promptly notify the applicant crypto-asset service provider thereof.

5. Before granting or refusing authorisation as a crypto-asset service provider, ESMA shall consult the competent authorities of a Member State where the applicant crypto-asset service provider is in one of the following positions in relation to a credit institution, a central securities depository, an investment firm, a market operator, a UCITS management company, an alternative investment fund manager, a payment institution, an insurance undertaking, an electronic money institution or an institution for occupational retirement provision, authorised in that Member State:

(a) it is its subsidiary;

(b) it is a subsidiary of the parent undertaking of that entity; or

(c) it is controlled by the same natural or legal persons who control that entity.

6. Before granting or refusing an authorisation as a crypto-asset service provider, ESMA:

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(a) may consult the competent authorities for anti-money laundering and counter-terrorist financing and financial intelligence units of the home Member State, in order to verify that the applicant crypto-asset service provider has not been the subject of an investigation into conduct relating to money laundering or terrorist financing;

(b) may consult the competent authorities for anti-money laundering and counter-terrorist financing of the home Member State, to ensure that the applicant crypto-asset service provider that operates establishments or relies on third parties established in high-risk third countries identified pursuant to [Article 9 of Directive (EU) 2015/849 complies with the provisions of national law transposing Articles 26(2), 45(3) and 45(5) of that Directive];

(c) shall, where appropriate, consult the competent authorities for anti-money laundering and counter-terrorist financing of the home Member State to ensure that the applicant crypto-asset service provider has put in place appropriate procedures to comply with the provisions of national law transposing [Article 18a(1) and (3) of Directive (EU) 2015/849].

7. Where close links exist between the applicant crypto-asset service provider and other natural or legal persons, ESMA shall grant authorisation only if those links do not prevent the effective exercise of its supervisory functions.

8. ESMA shall refuse authorisation if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the applicant crypto-asset service provider has close links, or difficulties involved in their enforcement, prevent the effective exercise of its supervisory functions.

9. ESMA shall, within 40 working days from the date of receipt of a complete application, assess whether the applicant crypto-asset service provider complies with this Title and shall adopt a fully reasoned decision granting or refusing an authorisation as a crypto-asset service provider. ESMA shall notify the applicant of its decision within five working days of the date of that decision. That assessment shall take into account the nature, scale and complexity of the crypto-asset services that the applicant crypto-asset service provider intends to provide.';

(c) The following paragraph 9a is inserted:

'9a. ESMA may, during the assessment period provided for in paragraph 9, and no later than on the 20th working day of that period, request any further information that is necessary to complete the assessment. Such request shall be made in writing to the applicant crypto-asset service provider and shall specify the additional information needed.

The assessment period under paragraph 9 shall be suspended for the period between the date of request for missing information by ESMA and the receipt by ESMA of a response thereto from the applicant crypto-asset service provider. The suspension shall not exceed 20 working days. Any further requests by ESMA for completion or clarification of the information shall be at

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its discretion but shall not result in a suspension of the assessment period under paragraph 9.';

(d) in paragraph 10, the introductory wording is replaced by the following:

'ESMA shall refuse authorisation as a crypto-asset service provider where there are objective and demonstrable grounds that:';

(e) paragraphs 11 and 12 are deleted;

(f) in paragraph 13, the first two sentences are deleted;

(6) Article 64 is amended as follows:

(a) paragraphs 1, 2, 3 and 4 are replaced by the following:

1. 'ESMA shall withdraw the authorisation referred to in Article 63 of a crypto-asset service provider in the cases referred to in Article [39h(2)] of Regulation (EU) No 1095/2010 and in addition, if the crypto-asset service provider does any of the following:

(a) has not used its authorisation within 12 months of the date of the authorisation;

(b) has not provided crypto-asset services for nine consecutive months;

(c) fails to have in place effective systems, procedures and arrangements to detect and prevent money laundering and terrorist financing in accordance with [Directive (EU) 2015/849];

2. ESMA may withdraw authorisation as a crypto-asset service provider in any of the following situations:

(a) it has been informed by the relevant competent authority for the supervision of [Directive (EU) 2015/849] that the crypto-asset service provider has infringed the provisions of national law transposing [Directive (EU) 2015/849];

(b) the crypto-asset service provider has lost its authorisation as a payment institution or its authorisation as an electronic money institution, and that crypto-asset service provider has failed to remedy the situation within 40 calendar days.

3. Where ESMA withdraws an authorisation as a crypto-asset service provider, it shall make such information available in the register referred to in Article 109.

4. ESMA may limit the withdrawal of authorisation to a particular crypto-asset service.'

(b) paragraph 5 is deleted.

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

'6. Before withdrawing an authorisation as a crypto-asset service provider, ESMA may consult the authority competent for supervising compliance of the crypto-asset service provider with the rules on anti-money laundering and counter-terrorist financing.

7. EBA and the competent authorities of the Member States where the crypto-asset service provider provides crypto-asset services may at any time request

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that ESMA examine whether the crypto-asset service provider still complies with the conditions under which the authorisation under Article 63 was granted, when there are grounds to suspect it may no longer be the case.'

(7) Article 65 is amended as follows:

(a) the title is replaced by the following:

'Provision of crypto-asset services in Member States other than the home Member State'

(b) paragraph 1 is amended as follows:

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

'A crypto-asset service provider authorised pursuant to Article 63 that intends to provide crypto-asset services in the Union shall submit the following information to ESMA:';

(ii) the following subparagraph is added:

'The crypto-asset service provider shall inform ESMA of any change in the information submitted in accordance with the first subparagraph.';

(c) paragraphs 2, 3 and 4 are replaced by the following:

'2. ESMA shall, within 10 working days of receipt of the information referred to in paragraph 1, communicate that information to the competent authorities of Member States in which the crypto-asset service provider intends to provide crypto-asset services and to EBA.

3. ESMA shall inform the crypto-asset service provider concerned of the communication referred to in paragraph 2 without delay.

4. The crypto-asset service provider may begin to provide crypto-asset services from the date of receipt of the communication referred to in paragraph 3 or at the latest from the 15th calendar day after having submitted the information referred to in paragraph 1.';

(8) Article 68 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. Where the influence exercised by the shareholders or members, whether direct or indirect, that have qualifying holdings in a crypto-asset service provider is likely to be prejudicial to the sound and prudent management of that crypto-asset service provider, ESMA shall take appropriate measures to address those risks.';

(b) in paragraph 8, first subparagraph, the first sentence is replaced with the following:

'8. Crypto-asset service providers shall have in place mechanisms, systems and procedures as required by Regulation (EU) 2022/2554, as well as effective procedures and arrangements for risk assessment, to comply with the provisions of national law transposing [Directive (EU) 2015/849] in their home Member State.';

(c) paragraph 9 is replaced by the following:

'9. Crypto-asset service providers shall arrange for records to be kept of all crypto-asset services, activities, orders, and transactions undertaken by them. Those records shall be sufficient to enable ESMA to fulfil its supervisory tasks and to take

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enforcement measures, and in particular to ascertain whether crypto-asset service providers have complied with all obligations including those with respect to clients or prospective clients and to the integrity of the market.

The records kept pursuant to the first subparagraph shall be provided to clients upon request and shall be kept for a period of five years and, where requested by competent authorities or ESMA for crypto-asset service providers authorised pursuant to Article 63, before five years have elapsed, for a period of up to seven years.'

(9) The title and Article 69 are replaced by the following:

'**Information to ESMA**

Crypto-asset service providers shall notify ESMA without delay of any changes to their management body, prior to the exercise of activities by any new members, and shall provide ESMA with all of the necessary information to assess compliance with Article 68.'

(10) Article 73 is amended as follows:

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

'(d) third parties involved in the outsourcing cooperate with ESMA and the outsourcing does not prevent the exercise of the supervisory functions of ESMA including on-site access to acquire any relevant information needed to fulfil those functions;'

(b) paragraph 4 is replaced by the following:

'4. Crypto-asset service providers and third parties shall, upon request, make available to ESMA and other relevant authorities all information necessary to enable those authorities to assess compliance of the outsourced activities with the requirements of this Title.';

(11) Article 76 is amended as follows:

(a) paragraph 8, is replaced by the following:

'8. Crypto-asset service providers operating a trading platform for crypto-assets shall inform ESMA and their competent authority, if different from ESMA, when they identify cases of market abuse or attempted market abuse occurring on or through their trading systems.';

(b) paragraph 15, is replaced by the following:

'15. Crypto-asset service providers operating a trading platform shall keep at the disposal of ESMA and their competent authority, if different from ESMA, for at least five years, the relevant data relating to all orders in crypto-assets that are advertised through their systems, or give ESMA and their competent authority, if different from ESMA access to the order book so that ESMA and their competent authority is able to monitor the trading activity. That relevant data shall contain the characteristics of the order, including those that link an order with the executed transactions that stem from that order.';

(12) In Article 81(7), the second sentence is replaced by the following:

'ESMA shall publish the criteria to be used for assessing such knowledge and competence.';

(13) In Article 84, paragraph 3 is replaced with the following:

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‘3. ESMA shall not impose any prior conditions in respect of the level of qualifying holding that is required to be acquired under this Regulation nor examine the proposed acquisition in terms of the economic needs of the market.’;

(14) Article 85 is deleted;

(15) Article 92 is amended as follows:

(a) Paragraph 1 is replaced as follows:

‘1. Any person professionally arranging or executing transactions in crypto-assets shall have in place effective arrangements, systems and procedures to prevent and detect market abuse. That person shall without delay report to ESMA any reasonable suspicion regarding an order or transaction, including any cancellation or modification thereof, and other aspects of the functioning of the distributed ledger technology such as the consensus mechanism, where there might exist circumstances indicating that market abuse has been committed, is being committed or is likely to be committed.

ESMA shall transmit such information immediately to any other relevant competent authority.’;

(b) Paragraph 3 is deleted;

(16) in Article 93 paragraph 1 is replaced by the following:

‘1. Member States shall designate the competent authorities responsible for carrying out the functions and duties provided in this Regulation in relation to offerors, persons seeking admission to trading of crypto-assets other than asset-referenced tokens and e-money tokens, issuers of asset-referenced tokens and issuers of e-money tokens. Member States shall notify those competent authorities to EBA and ESMA.’;

(17) in Article 94, paragraph 3 is deleted;

(18) Article 102 is amended as follows:

(a) in paragraph 1, the first subparagraph is replaced by the following:

‘1. Where the competent authority of a host Member State has clear and demonstrable grounds for suspecting that there are irregularities in the activities of an offeror or person seeking admission to trading of crypto-assets, an issuer of an asset-referenced token or e-money token, or a crypto-asset service provider, it shall notify the competent authority of the home Member State and ESMA thereof.

Where ESMA is responsible for carrying out the functions and duties provided for in the Regulation in respect of crypto-asset service providers, the competent authority of the home or the host Member State that has clear and demonstrable grounds for suspecting that there are irregularities in the activities of such a crypto-asset service provider, shall inform ESMA.’;

(b) paragraph 2 is replaced by the following:

‘2. Where, despite the measures taken by the competent authority of the home Member State, or ESMA, where applicable, the irregularities referred to in paragraph 1 persist, amounting to an infringement of this Regulation, the competent authority of the host Member State, or the home Member State, depending on the case, after informing the competent authority of the home Member State, ESMA and, where appropriate, EBA, shall take appropriate

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measures in order to protect clients of crypto-asset service providers and holders of crypto-assets, in particular retail holders. Such measures should be taken as a last resort and include preventing the offeror, person seeking admission to trading, the issuer of the asset-referenced token or e-money token or the crypto-asset service provider from conducting further activities in the host Member State. The competent authority shall inform ESMA and, where appropriate, EBA thereof without undue delay. ESMA, and, where involved, EBA, shall inform the Commission accordingly without undue delay.';

(c) in paragraph 3, the following subparagraph is added:

'Where ESMA disagrees with any of the measures taken by the competent authority of a home or a host Member State in relation to a crypto-asset service provider pursuant to paragraph 2 of this Article, it may bring the matter to the attention of the Commission.';

(19) in Article 109(5), point (c) is deleted;

(20) In Article 111(1), points (e) and (f) are deleted;

(21) in Article 119, paragraph 2 is amended as follows:

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

'(d) the competent authorities of the most relevant credit institutions or investment firms ensuring the custody of the reserve assets in accordance with Article 37 or of the funds received in exchange of the significant e-money tokens;';

(b) point (e) is deleted;

(22) in Title VII, the following Chapter 6 is inserted:

'CHAPTER 6
Supervisory responsibilities, powers and competences of ESMA with respect to crypto-asset service providers

Article 138a

Supervisory responsibilities of ESMA with respect to crypto-asset service providers

1. ESMA shall be responsible for carrying out the functions and duties provided for in the Regulation with regards to crypto-asset service providers authorised pursuant to Article 63.

2. ESMA shall be responsible for the ongoing supervision and carrying out the supervisory functions and duties provided in this Regulation, as well as the supervisory functions and duties provided in other Union legislative acts on financial services for entities allowed to provide crypto-asset services pursuant to Article 60(2) to (6), whose main activity is the provision of crypto asset services.

An entity shall be considered to be providing crypto asset services as its main activity when more than 50% of its total annual turnover according to the last available financial statements approved by the management body, is generated from the provision of crypto-asset services, for at least 2 consecutive years.

In the case of the entities referred to in the first subparagraph, ESMA shall enter into cooperation agreements with the competent authorities that authorised those entities

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under other Union legislative acts on financial services. On the basis of the cooperation agreement, those competent authorities shall provide support and assistance to ESMA in the supervision of the activities that are not covered by this Regulation.

3. For the purposes of ensuring supervision of activities under Regulation (EU) No 909/2014, Directive 2014/65/EU, Directive (EU) 2009/110/EC, Directive 2009/65/EC and Directive 2011/61/EU as provided for in paragraph 2, ESMA shall be conferred the powers granted to competent authorities pursuant to Regulation (EU) No 909/2014, Directive 2014/65/EU, Directive (EU) 2009/110/EC, Directive 2009/65/EC and Directive 2011/61/EU, respectively.

Article 138b

Request for information from ESMA

In accordance with the procedure set out in Article [39b] of Regulation (EU) No 1095/2010, ESMA may by simple request or by decision require the persons referred to in Article [39b(1)] of Regulation (EU) No 1095/2010, or the following persons to provide all information necessary to enable ESMA to carry out its duties under this Regulation:

(a) a crypto-asset service provider or a person controlling or being directly or indirectly controlled by a crypto-asset service provider;

(b) legal representatives and employees of entities to which a crypto-asset service provider has an outsourcing arrangement referred to in Article 73;

(c) persons ensuring custody of clients assets;

(d) any person directly involved in the crypto-asset activities of the crypto-asset service provider;

(e) the management body of the persons referred to in points (a) to (d).

Article 138c

Exchange of information with ESMA

1. In order to carry out ESMA's supervisory responsibilities under Article 138a and without prejudice to Article 96, ESMA and the other competent authorities shall upon request, provide each other with the information required for the purposes of carrying out their duties under this Regulation without undue delay. For that purpose, the other competent authorities and ESMA shall exchange, as appropriate, information related to:

(a) a crypto-asset service provider or a person controlling or being directly or indirectly controlled by a crypto-asset service provider;

(b) legal representatives and employees of entities to which a crypto-asset service provider has an outsourcing arrangement referred to in Article 73;

(c) persons ensuring custody of clients' assets;

(d) any person directly involved in the crypto-asset activities of the crypto-asset service provider;

(e) the management body of the persons referred to in points (a) to (d).

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2. A competent authority may refuse to act on a request to exchange information as provided for in paragraph 1 of this Article or a request for cooperation in carrying out an investigation or an on-site inspection as provided for in Articles 138d and 138e, respectively, only where:

(a) complying with the request is likely to adversely affect its own investigation, enforcement activities or, where applicable, criminal investigation;

(b) judicial proceedings have already been initiated in respect of the same actions and against the same natural or legal persons before the courts of the Member State addressed;

(c) a final judgment has already been delivered in relation to such natural or legal person for the same actions in the Member State addressed.

Article 138d

Administrative agreements on the exchange of information between ESMA and third countries

1. In order to carry out its supervisory responsibilities under Article 138a, ESMA may conclude administrative agreements on the exchange of information with the supervisory authorities of third countries only if the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Regulation (EU) No 1095/2010.

2. The exchange of information shall be intended for the performance of the tasks of ESMA or of the supervisory authorities referred to in paragraph 1.

3. With regard to transfers of personal data to a third country, ESMA shall apply Regulation (EU) 2018/1725.

Article 138e

Disclosure of information from third countries by ESMA

1. ESMA may disclose information received from supervisory authorities of third countries only where ESMA or the competent authority that provided the information to ESMA has obtained the express agreement of the supervisory authority of a third country that has transmitted the information and, where applicable, the information is disclosed only for the purposes for which that supervisory authority gave its agreement or where such disclosure is necessary for judicial proceedings.

2. The requirement for an express agreement as referred to in paragraph 1 shall not apply to other supervisory authorities of the Union where the information requested by them is needed for the fulfilment of their tasks and shall not apply to courts where the information requested by them is needed for investigations or proceedings in respect of infringements subject to criminal penalties.

Article 138f

Cooperation of ESMA with other authorities

Where a crypto-asset service provider engages in activities other than those covered by this Regulation, ESMA shall cooperate with the authorities responsible for the supervision of such other activities as provided for in the relevant Union or national law, including tax authorities and relevant supervisory authorities of third countries.

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Article 138g

Supervisory measures by ESMA

1. In order to perform its duties under Titles V and VI of this Regulation, ESMA shall be able, in addition to the powers provided in Article [39h] of Regulation (EU) No 1095/2010, to take the following supervisory measures:

(a) to suspend or prohibit marketing communications where there are reasonable grounds for suspecting that this Regulation has been infringed;

(b) to require relevant crypto-asset service providers to cease or suspend marketing communications for a maximum of 30 consecutive working days on any single occasion where there are reasonable grounds for suspecting that this Regulation has been infringed;

(c) to prohibit the provision of crypto-asset services where ESMA finds that this Regulation has been infringed;

(d) to disclose, or to require a crypto-asset servicer provider to disclose, all material information which might have an effect on the provision of the crypto-asset services concerned, in order to ensure the protection of the interests of clients, in particular retail clients, or the smooth operation of the market;

(e) to suspend, or require the relevant crypto-asset service provider operating the trading platform for crypto-assets to suspend, the crypto-assets from trading where ESMA considers that the situation of the offeror, the person seeking admission to trading of a crypto-asset or the issuer of an asset-referenced token or an e-money token is such that trading would be detrimental to the interests of the holders of crypto-assets, in particular retail holders;

(f) to suspend, or to require a crypto-asset service provider to suspend, the provision of crypto-asset services where ESMA considers that the crypto-asset service provider's situation is such that the provision of the crypto-asset service would be detrimental to the interests of clients, in particular retail clients;

(g) to require the transfer of existing contracts to another crypto-asset service provider in cases where a crypto-asset service provider's authorisation is withdrawn in accordance with Article 64, subject to the agreement of the clients and the crypto-asset service provider to which the contracts are to be transferred;

(h) where there is a reason to assume that a person is providing crypto-asset services without authorisation, to order the immediate cessation of the activity without prior warning or imposition of a deadline;

(i) where no other effective means are available to ensure the cessation of the infringement of this Regulation and in order to avoid the risk of serious harm to the interests of clients of crypto-asset service providers to take all necessary measures, including by requesting a third party or a public authority to implement such measures, to:

(i) remove content or restrict access to an online interface or to order the explicit display of a warning to clients and holders of crypto-assets when they access an online interface;

(ii) order a hosting service provider to remove, disable or restrict access to an online interface; or

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(iii) order domain registries or registrars to delete a fully qualified domain name and allow the competent authority concerned to register it;

2. In order to fulfil its duties under Title VI, ESMA shall have, at least the following supervisory and investigatory powers in addition to the powers referred to in paragraph 1:

(a) to refer matters for criminal prosecution;

(b) to require, insofar as permitted by national law in the Member State where the investigation takes place, existing data traffic records held by a telecommunications operator, where there is a reasonable suspicion of an infringement and where such records may be relevant to the investigation of an infringement of Articles 88 to 91;

(c) to impose a temporary prohibition on the exercise of professional activity;

(d) to take all necessary measures to ensure that the public is correctly informed, inter alia, by correcting false or misleading disclosed information, including by requiring an offeror, person seeking admission to trading, issuer, crypto-asset service provider or other person who has published or disseminated false or misleading information to publish a corrective statement.

Article 138h

Fines imposed by ESMA

1. ESMA shall adopt a decision imposing a fine in accordance with paragraphs 3 or 4 of this Article where, in accordance with the procedure in Article [39e] of Regulation (EU) No 1095/2010, it finds that a crypto-asset service provider or a member of its management body, or any other person has, intentionally or negligently, committed an infringement as listed in Annex VII.

An infringement shall be considered to have been committed intentionally if ESMA finds objective factors which demonstrate that such a crypto-asset service provider or a member of its management body or any other person acted deliberately to commit the infringement.

2. When adopting a decision as referred to in paragraph 1, ESMA shall take into account all relevant circumstances, including, where appropriate:

(a) the gravity, duration and frequency of the infringement;

(b) whether financial crime has been occasioned, facilitated or is otherwise attributable to the infringement;

(c) whether the infringement has revealed serious or systemic weaknesses in the crypto-asset service provider's procedures, policies and risk management measures;

(d) whether the infringement has been committed intentionally or negligently;

(e) the degree of responsibility of the natural or legal person responsible for the infringement;

(f) the financial strength of the natural or legal 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;

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(g) the impact of the infringement on the interests of clients of crypto-asset service providers;

(h) the importance of the profits gained, losses avoided by the natural or legal person responsible for the infringement or the losses for third parties caused by the infringement, insofar as they can be determined;

(i) the level of cooperation of the natural or legal person responsible for the infringement with ESMA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(j) previous infringements of this Regulation by the natural or legal person responsible for the infringement;

(k) measures taken by the crypto-asset service provider after the infringement to prevent the repetition of such an infringement.

3. ESMA shall have the power to impose, in relation to infringements committed by legal persons, maximum administrative fines of at least:

(a) EUR 5 000 000, or, in the Member States whose official currency is not the euro, the corresponding value in the official currency on [XX date of entry into force of the Regulation] for the infringements referred to in Annex VII, paragraphs 1 to 78, or 5 % of the total annual turnover of the legal person according to the last available financial statements approved by the management body, for the infringements referred to in Annex VII, paragraphs 1 to 78, whichever is the higher;

(b) EUR 2 500 000 for the infringements referred to in Annex VII, paragraph 79, or 2 % of the total annual turnover of the legal person according to the last available accounts approved by the management body, or in the Member States whose official currency is not the euro, the corresponding value in the official currency on [XX date of entry into force of the Regulation], whichever is the higher;

(c) EUR 15 000 000 for infringements referred to in Annex VII, paragraphs 80 to 86, or 15 % of the total annual turnover of the legal person according to the last available accounts approved by the management body, or in the Member States whose official currency is not the euro, the corresponding value in the official currency on [XX date of entry into force of the Regulation], whichever is the higher.

Where the legal person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial statements in accordance with Directive 2013/34/EU, the relevant total annual turnover referred to in points (a) and (b) shall be the total annual turnover or the corresponding type of income in accordance with applicable Union law in the field of accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

4. ESMA shall have the power to impose, in relation to infringements committed by natural persons, maximum administrative fines of at least:

(a) EUR 700 000, or, in the Member States whose official currency is not the euro, the corresponding value in the official currency on [XX date of entry into force of the Regulation], for the infringements referred to in Annex VII, paragraphs 1 to 78;

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(b) EUR 1 000 000 for infringements referred to in Annex VII, paragraph 79 or in the Member States whose official currency is not the euro, the corresponding value in the official currency on [XX date of entry into force of the Regulation]; and

(c) EUR 5 000 000 for infringements referred to in Annex VII, paragraphs 80 to 86 or in the Member States whose official currency is not the euro, the corresponding value in the official currency on [XX date of entry into force of the Regulation].

Article 138i

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

1. ESMA shall disclose to the public every fine that has been imposed pursuant to Article 138l unless such disclosure to the public would seriously jeopardise financial stability or cause disproportionate damage to the parties involved. Such disclosure shall not contain personal data.

2. Fines imposed pursuant to Article 138l shall be of an administrative nature.

3. Fines imposed pursuant to Article 138l shall be enforceable in accordance with the rules of civil procedure in force in the State in the territory of which the fine or periodic penalty payment is enforced.

4. The amounts of the fines shall be allocated to the general budget of the Union.

5. Where, notwithstanding Article 138l, ESMA decides not to impose fines or penalty payments, it shall inform the European Parliament, the Council, the Commission, and the competent authorities of the Member State concerned and shall set out the reasons for its decision.

Article 138j

Supervisory fees for ESMA

1. ESMA shall charge crypto-asset service providers fees in accordance with Article 39n of Regulation (EU) No 1095/2010 and with the Commission delegated act referred to in paragraph 3. the fees shall cover the reimbursement of costs that competent authorities might incur carrying out work under this Regulation, in particular as a result of supporting ESMA in the supervision of entities referred to in Article 138a(2).

2. The amount of the fee charged to an individual crypto-asset service provider shall be proportionate to the turnover of the crypto-asset service provider and shall cover all costs incurred by ESMA for the performance of its supervisory tasks under this Regulation.

3. The Commission shall adopt a delegated act in accordance with Article 139 by [12 months before the entry into application] to supplement this Regulation by 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 and the methodology to calculate the maximum amount per entity referred to in paragraph 2 of this Article that can be charged by ESMA.

(23) Article 139 is amended as follows:

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(a) paragraph 2 is replaced by the following:

‘2. The power to adopt delegated acts referred to in Articles 3(2), 43(11), 103(8), 104(8), 105(7), 134(10), 137(3) and 138j(3) shall be conferred on the Commission for a period of 12 months from [entry into application of this Regulation]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the 36-month period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.’;

(b) paragraph 3 is replaced by the following:

‘3. The delegation of powers referred to in Articles 3(2), 43(11), 103(8), 104(8), 105(7), 134(10), 137(3) and 138j(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.’;

(c) paragraph 6 is replaced by the following:

‘6. A delegated act adopted pursuant to Articles 3(2), 43(11), 103(8), 104(8), 105(7), 134(10), 137(3) and 138j(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 three months of notification of that act to the European Parliament and to 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 on the initiative of the European Parliament or of the Council.’;

(24) The following Article 143a is inserted:

‘Article 143a

Transitional measures related to ESMA

1. All responsibilities, competences and duties related to the supervisory and enforcement activity regarding crypto-asset service providers referred to in Article 138a, which were conferred on the competent authorities pursuant to Article 93 prior to [date of entry into force], or respectively, prior to the date when an entity is identified as providing crypto-asset services as its main activity, whether acting as competent authorities of the home Member State or not, shall be terminated on [24 months after entry into force of this Regulation] or, respectively, after that entity is identified as providing crypto-asset services as its main activity. The competences and duties conferred on ESMA pursuant to Article 138a shall be taken up by ESMA on that date.

However, an application for authorisation as a crypto-asset service provider pursuant to Article 62 that has been received by the competent authorities of the home Member State before [date of entry into application] shall not be transferred to ESMA, and the decision to grant or refuse that authorisation shall be taken by those competent authorities.

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2. Without prejudice to the second subparagraph of paragraph 1, any files and working documents related to the supervisory and enforcement activity, including to any ongoing examinations, investigations and enforcement actions, or certified copies thereof, shall be taken over by ESMA on [24 months after entry into force of this Regulation].

3. The competent authorities referred to in paragraph 1, first subparagraph 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 [24 months after entry into force of this Regulation]. 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.

4. As of [24 months after entry into force of this Regulation] ESMA shall act as the legal successor of the competent authorities referred to in paragraph 1, first subparagraph 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 crypto-asset service provider, in accordance with Chapter I of Title V, by a competent authority referred to in paragraph 1, first subparagraph of this Article shall remain valid after the transfer of competences to ESMA.';

(25) Annex V to this Regulation is added as Annex VII to Regulation (EU) 2023/1114.

Article 10

Amendments to Regulation (EC) No 1060/2009

Regulation (EC) No 1060/2009 is amended as follows:

(1) in Article 19 paragraph 1 and the first 2 subparagraphs of paragraph 2 are replaced by the following:

'1. ESMA shall charge credit rating agencies fees in accordance with Regulation (EC) No 1060/2009, Article 39n of Regulation (EU) No 1095/2010 and with the Commission regulation referred to in paragraph 2.

2. The Commission shall adopt a regulation on fees. That regulation shall determine in particular the type of fees and the matters for which fees are due, the amount of the fees and the way in which they are to be paid.

The amount of a fee charged to a credit rating agency shall be proportionate to the turnover of the credit rating agency concerned.';

(2) in Article 21 the following paragraph 1a is inserted:

'1a. ESMA shall be conferred with the powers necessary for the exercise of its functions over credit rating agencies under Regulation (EC) No 1060/2009 and under Regulation (EU) No 1095/2010.

ESMA shall use these powers over credit rating agencies and, where specified under this Regulation, related parties.';

(3) Article 23a, Article 23b, Article 23c, Article 23d, Article 23e are deleted;

(4) Article 24 is replaced by the following:

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‘1. In order to carry out its duties under Regulation (EC) No 1060/2009, ESMA shall act in accordance with Article 39h of Regulation (EU) No 1095/2010 and in addition be empowered to take the following decision:

(a) suspend the use, for regulatory purposes, of the credit ratings issued by the credit rating agency with effect throughout the Union, until the infringement has been brought to an end;

2. Before taking the decisions referred to in paragraph 1 and in Article 39h paragraph 1 of Regulation (EU) No 1095/2010, the Authority shall inform EBA and EIOPA thereof. Any decision adopted pursuant to paragraph 1 and in Article 39h paragraph 1 of Regulation (EU) No 1095/2010 shall be communicated to EBA and EIOPA.

3. Credit ratings may continue to be used for regulatory purposes following the adoption of the decisions referred to in point (a) of paragraph 1 or according to Article 39h(1), points (a) and (b) or Article 39h(2) of Regulation (EU) No 1095/2010 during a period not exceeding:

(a) 10 working days from the date ESMA’s decision is made public, if there are credit ratings of the same financial instrument or entity issued by other credit rating agencies registered under this Regulation; or

(b) three months from the date ESMA’s decision is made public, if there are no credit ratings of the same financial instrument or entity issued by other credit rating agencies registered under this Regulation.

ESMA may extend, including following a request by EBA or EIOPA, the period referred to in point (b) of the first subparagraph by three months in exceptional circumstances relating to the potential for market disruption or financial instability.’;

(5) Article 25 is deleted;

(6) in Article 36a paragraph 1 is replaced by the following:

‘1. Where, in accordance with Article 39e(5) of Regulation (EU) No 1095/2010, ESMA's Executive Board finds that a credit rating agency has, intentionally or negligently, committed one of the infringements listed in Annex III, it shall adopt a decision imposing a fine in accordance with paragraph 2.’;

(7) Articles 36b, 36c, 36d and 36e are deleted.

Article 11

Amendments to Regulation (EU) 2016/1011

Regulation (EU) 2016/1011 is amended as follows:

(1) Articles 48a to 48e are deleted;

(2) Article 48f is amended as follows:

(a) paragraph 1 is deleted;

(b) paragraph 2 is replaced by the following:

‘Notwithstanding Article 39f of Regulation (EU) No 1095/2010, the maximum amount of the fine for infringements of point (d) of Article 11(1) or of Article 11(4) shall be EUR 250 000 or, in the Member States whose official currency is not the euro, the corresponding value in the national currency according to euro foreign

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exchange reference rate published by the European Central Bank applying on the date when the fine was imposed 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 according to euro foreign exchange reference rate published by the European Central Bank applying on the date when the fine was imposed for natural persons.

For the purposes of Article 39f paragraph 2 point (a) of Regulation (EU) No 1095/2010, 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.';

(c) paragraphs 3 and 4 are deleted;

(d) paragraph 5 is replaced by the following:

'Where an act or omission of a person constitutes more than one infringement listed in point (a) of Article 42(1), only the higher fine calculated in accordance with Article 39f of Regulation (EU) No 1095/2010 and this Article and relating to one of those infringements shall apply.';

(3) Articles 48g to 48k are deleted;

(4) in Article 48l, paragraphs 1 and 2 are replaced by the following:

'1. ESMA shall charge fees to the administrators referred to in Article 40(1), in accordance with Article 39n of Regulation (EU) No 1095/2010 and with the delegated acts adopted pursuant to paragraph 3 of this Article.

2. The amount of an individual fee charged to an administrator shall be proportionate to the turnover of the administrator.';

Article 12

Amendments to Regulation (EU) 2017/2402

Regulation (EU) 2017/2402 is amended as follows:

(1) Article 14 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The powers conferred on ESMA in accordance with Articles [39a to 39m] of Regulation (EU) No 1095/2010, Articles 64, 65, 73 and 74 of Regulation (EU) No 648/2012, in conjunction with Annexes I and II thereto shall also be exercised with respect to this Regulation. References to Article 81(1) and (2) of Regulation (EU) No 648/2012 in Annex I to that Regulation shall be construed as references to Article 17(1) of this Regulation.';

(b) paragraph 2 is deleted.

(2) in Article 16 paragraph 1 the first and second subparagraphs are replaced by the following:

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‘1. ESMA shall charge fees to the securitisation repositories in accordance with Article 39n of Regulation (EU) No 1095/2010 and with the delegated acts adopted pursuant to paragraph 2 of this Article.

Those fees shall be proportionate to the turnover of the securitisation repository concerned. Insofar as Article 14(1) of this Regulation refers to Article 74 of Regulation (EU) No 648/2012, references to Article 72(3) of that Regulation shall be construed as references to paragraph 2 of this Article.’;

Article 13

Amendments to Regulation (EU) 2023/2631

Regulation (EU) 2023/2631 is amended as follows:

(1) in Article 42 paragraph 2 is replaced by the following:

‘2. A third-country external reviewer who intends to obtain recognition as referred to in paragraph 1 of this Article (the ‘third-country external reviewer seeking recognition’) shall comply with the requirements laid down in Articles 23 to 38 of this Regulation and Articles 39b to 39d of Regulation (EU) No 1095/2010.’;

(2) in Chapter II, Article 53a is inserted:

‘*Article 53a*

Powers of ESMA

ESMA shall be conferred with the powers necessary for the exercise of its functions over external reviewers for European Green Bonds under Regulation (EU) 2023/2631 and under Regulation (EU) No 1095/2010.

ESMA shall use these powers over external reviewers and, where specified under Regulation 2023/2631, related parties.’;

(3) Articles 54 to 57 are deleted;

(4) Article 59 is deleted;

(5) in Article 60 paragraphs 1 and 2 are replaced by the following:

‘1. ESMA shall adopt a decision imposing a fine in accordance with paragraph 2 of this Article where, in accordance with Article 63(8), it finds that an external reviewer or any of the persons referred to in Article 39b(1) of Regulation (EU) No 1095/2010 has, by intent or negligence, committed one or more of the following infringements:

(a) non-compliance with Article 24(1) or any provision of Title IV, Chapters 2 and 3;

(b) the submission of false statements when applying for registration as an external reviewer, or the use of any other irregular means to obtain such registration;

(c) failure to provide information in response to a decision requiring information pursuant to Article 39b of Regulation (EU) No 1095/2010 or the provision of incorrect or misleading information in response to a request for information or a decision;

(d) the obstruction of, or non-compliance with, an investigation pursuant to Article 39c of Regulation (EU) No 1095/2010;

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(e) non-compliance with Article 39d of Regulation (EU) No 1095/2010, by not providing an explanation on facts or documents related to the subject matter and purpose of an inspection, or by providing an incorrect or misleading explanation;

(f) taking up the activity of external reviewers or purporting to be an external reviewer, without having been registered as an external reviewer.

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. Without prejudice to paragraph 3, the minimum amount of the fine referred to in paragraph 1 shall be EUR 20 000. The maximum amount shall be EUR 200 000.

When determining the level of a fine pursuant to paragraph 1 of this Article, ESMA shall take into account the criteria set out in Article 39h of Regulation (EU) No 1095/2010.';

(6) Articles 61 to 65 are deleted;

(7) in Article 66, paragraphs 1 and the first subparagraph of paragraph 2 are replaced by the following:

'1. ESMA shall charge fees to external reviewers for the expenditure relating to their registration, recognition and supervision and for any costs that ESMA may incur in carrying out its tasks under this Regulation, in accordance with Article 39n of Regulation (EU) No 1095/2010.

2. Any fee shall be proportionate to the turnover of the external reviewer concerned.';

(8) in Article 67 paragraph 1, point (b) and (c) are replaced by the following:

'(b) external reviewers that are temporarily prohibited from pursuing their activities in accordance with Article 39h of Regulation (EU) No 1095/2010;

(c) external reviewers whose registration has been withdrawn in accordance with Article 39h of Regulation (EU) No 1095/2010;'.

Article 14

Amendment of Regulation (EU) 2024/3005

Regulation (EU) 2024/3005 is amended as follows:

(1) in Article 29 the following paragraph 2a is inserted:

'2a. ESMA shall be conferred with the powers necessary for the exercise of its functions under Regulation (EU) 2024/3005 and under Regulation (EU) No 1095/2010.

ESMA shall use these powers over ESG rating providers and, where specified under Regulation (EU) 2024/3005, related parties.';

(2) Articles 31 to 34 are deleted;

(3) Article 35 is amended as follows:

(a) paragraph 1 and the first subparagraph of paragraph 2 are replaced by the following:

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‘1. In order to carry out its duties under Regulation (EU) 2024/3005, ESMA shall be empowered to take the decisions in accordance with Article 39h(1) of Regulation (EU) No 1095/2010.

2. ESMA may also take one or more of the supervisory measures referred to in Article 39h(1) points (b) to (l) of Regulation (EU) No 1095/2010 in respect of any ESG rating provider that operates in the Union pursuant to Article 2(1):’;

(b) the following paragraph 2a is inserted:

‘2a. ESMA may also issue a public notice referred to in Article 39h(1) of Regulation (EU) No 1095/2010 in the event that an ESG rating activity of an ESG rating provider operating in the Union poses a serious threat to market integrity or to investor protection in the Union.

In order to verify whether a person is operating in the Union pursuant to Article 2(1), ESMA may use the powers conferred on it by Articles 39b, 39c and 39d of Regulation (EU) No 1095/2010 in respect of the person concerned or any third parties who enable the person concerned to carry out the ESG rating activity.’;

(c) paragraphs 3 to 6 are deleted.

(4) Article 36 is amended as follows:

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

‘1. Where ESMA finds that an ESG rating provider, or, where applicable, its legal representative, has, intentionally or negligently, committed an infringement under this Regulation or Regulation (EU) No 1095/2010, it shall adopt a decision imposing a fine in accordance with Article 39f of Regulation (EU) No 1095/2010.

2. Where the ESG rating provider referred to in paragraph 1 of this Article 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 calculation of the fine shall be based on the relevant total annual net turnover which shall be either the total annual net turnover, or the corresponding type of income in accordance with applicable Union law in the area of accounting, according to the most recent available consolidated accounts approved by the management body of the ultimate parent undertaking.’;

(b) paragraphs 3 and 4 are deleted;

(c) paragraph 5 is replaced by the following:

‘5. Where an act or omission of an ESG rating provider constitutes more than one infringement of this Regulation, only the higher fine calculated in accordance with this Article and Article 39f of Regulation (EU) No 1095/2010 and relating to one of those infringements shall apply.’;

(5) Articles 37 to 41 are deleted.

(6) Article 42 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. ESMA shall charge proportionate fees to ESG rating providers in accordance with Article 39n of Regulation (EU) No 1095/2010 and the delegated acts adopted pursuant to paragraph 2.’;

(b) the second subparagraph of paragraph 2 is replaced by the following:

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By 2 January 2026, the Commission shall adopt delegated acts in accordance with Article 47 to supplement this Regulation by specifying the type of fees, the matters for which fees are due, the amount of the fees and the respective justification and the manner in which they are to be paid. Those delegated acts shall establish fees which are proportionate and appropriate to the size of ESG rating providers and to the extent of their supervision, in particular when they are categorised as small ESG rating providers.'.

Article 15

Entry into force and application

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

Article 1 shall apply from [OP insert date = 12 months after the entry into force of this Regulation] with the exception of point (33).

Article 2 shall apply from [OP insert date = 12 months after the entry into force of this Regulation], with the exception of point (15) as regards Articles 22a(2) and 22a(3) of Regulation (EU) No 648/2012.

Article 3, points 2(a)(xiii), (15) and (16) shall apply from [*OP insert date = the day following the expiry of the first period of 5 years referred to in Article 27da of Regulation (EU) No 600/2014 with respect to the CTP for shares and ETFs*.

Article 3, points (29) and (32) to (37) shall apply from [*OP insert date = 12 months after the entry into force of this Regulation*].

Article 3, point (30) shall apply from [*OP insert date = 24 months after the entry into force of this Regulation*].

Article 4 point (2)(a), (j) and (k), point (8), point (9) as regards Article 11(1) and (4) to (10) of Regulation (EU) No 909/2014, and points (11), (12), (13), (21) and (26) shall apply from [*OP insert date = 24 months after the entry into force of this amending Regulation*].

Articles 5 to 14 shall apply from [*OP insert date = 12 months after the entry into force of this Regulation]*.

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

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

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LEGISLATIVE FINANCIAL AND DIGITAL STATEMENT

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1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

This legislative financial and digital statement covers the following proposals:

- proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) 1095/2010, 648/2012, 600/2014, 909/2014, 2019/1156, 2022/858 and 2023/1114 as regards the further development of market integration and supervision within the Union ('Master Regulation')

- proposal for a Directive of the European Parliament and of the Council amending Directives (EU) 2009/65/EC, 2011/61/EU and 2014/65/EU as regards the further development of market integration and supervision within the Union ('Master Directive')

1.2. Policy area(s) concerned

Internal market – financial services

1.3. Objective(s)

1.3.1. General objective(s)

The general objectives of the initiative are to improve the functioning of the single market in financial services by addressing persistent fragmentation both within and across relevant sectors (trading, post trading, asset management and crypto asset services). The proposed changes aim to foster stronger market integration and enable efficiency gains by removing obstacles to cross-border activity and strengthening regulatory and supervisory convergence as well as supervisory capacity in the relevant sectors.

This package of measures addresses two core pillars of the Commission's Savings and Investment Union (SIU) strategy: 'integration and scale', and 'efficient supervision in the single market'. It has a very broad scope and encompasses key sectors that form the backbone of capital markets, providing essential infrastructure for offering and investing in financial instruments and assets, and enabling crucial intermediation between investors and entities seeking financing.

1.3.2. Specific objective(s)

The specific objectives of this initiative are as follows:

• Enable further market integration and scale effects by increasing cross-border activity – the initiative aims to improve the ability of market actors to operate seamlessly across Member States, thereby increasing market integration. This in turn should drive both consolidation and specialisation within the individual sectors.

• Improve supervision by reducing fragmentation – the initiative seeks to address shortcomings and inefficiencies in the current supervisory framework, by tackling inconsistencies and complexities arising from fragmented national supervisory approaches. It aims to make supervision more effective, more conducive to cross-border activities, and more responsive to emerging risks, while reducing unnecessary burdens on firms. This should also increase investor confidence. Strengthening supervisory powers and capacities at the EU level, including by transferring more direct supervisory responsibilities to ESMA, aims to leverage the

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mutually reinforcing relationship between market integration and supervisory alignment.

• Facilitate innovation by removing regulatory obstacles – the initiative aims to remove regulatory obstacles to innovation with the aim of creating a framework which enables new technologies in the provision of financial services. For innovation to thrive, both the DLT Pilot Regime (DLTPR) and the standard rulebook should allow the industry to use distributed ledger technology (DLT) to bring efficient solutions to the market while ensuring that associated risks are mitigated.

The specific objectives will be pursued without compromising financial stability, market integrity or investor protection, thereby ensuring that the EU financial market remains safe and globally attractive.

1.3.3. Expected result(s) and impact

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

This initiative affects in particular the following groups of stakeholders: trading venues, investment firms (notably brokers), central securities depositories (CSDs), central counterparties (CCPs), asset managers, crypto asset service providers (CASPs), DLT-based structures, investors (including retail end-investors), national competent authorities (NCAs), the European Securities and Markets Authority (ESMA) and the European Central Bank (ECB).

In terms of benefits, trading venues and investment firms would benefit from rationalisation of intra-group operations, cross-border operations and savings linked to local governance costs. Operational efficiency gains for exchange operators should be partially passed on to downstream intermediaries and retail and institutional investors. CSDs would benefit from facilitation of cross-border provision of services and from increased legal clarity and certainty. Moreover, costs per settlement transaction could be reduced by a greater use of TARGET2-Securities (T2S). CSDs, investment firms, CASPS, credit institutions using DLT-based structures would also benefit from harmonised definitions and concepts. Asset managers would benefit from reduced compliance burden and legal costs as well as increased legal clarity when engaging in cross-border activities.

Financial market participants under strengthened EU supervision (i.e. cross-border significant trading venues, CSDs, CCPs, asset management firms and CASPs) would benefit from: 1) reduced compliance cost and administrative burden for entities currently supervised by multiple NCAs; 2) savings stemming from fewer duplications, differences in instructions and procedural delays; 3) reduction of supervisory fees for entities currently supervised by several NCAs and 4) savings due to synergies and increased intra-group outsourcing/delegation.

The initiative is expected to lead to deeper and more integrated financial markets and increased trust in financial markets, benefitting end-users and the wider economy. Institutional and retail investors are expected to face lower trading costs and a larger choice of financial products and services. More agile and comprehensive supervision of capital markets will increase investors' trust and overall confidence in the governance and supervision of capital markets. This could increase cross-border investments in the single market, yielding benefits for companies via a broader access to funding and expected lower financing costs.

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On the cost side, trading venues, brokers, CSDs, asset managers, CASPs and DLT-based structures would face implementation costs to align their operations with legal changes. For instance, CSDs would have to invest in establishing new links with other CSDs, if not yet in place, and to join T2S, if they are not members already. The ECB would likely have to invest into T2S to accommodate a higher number of linked CSDs as well as higher securities settlement volumes, in addition to any other changes to the functionality of the platform. ESMA would have to hire additional staff to perform new tasks (financed through fees) while NCAs would gain room for staff reductions due to centralisation of certain tasks.

1.3.4. Indicators of performance

Specify the indicators for monitoring progress and achievements.

Non-exhaustive list of potential indicators:
Number of Pan-European market operators
Average number of broker-venue connections
Number of instances of a regulated market setting up a branch in another Member State
Number of trading venues that are part of a group that are able to rely on staff/resources of other entities part of the same group which are based in the Union
Number of brokers offering cross-border trading
Average gap in fees charged between domestic and cross-border trading within the EU
Volume of cross-border transactions in the EU
Average transaction costs (per asset class; domestic/cross-border)
Number of open access arrangements / applications under open access provisions
Total cross-border settlement activity (volume/value by instrument)
Total cross-border issuance (value/volume)
Number and types of instances of cross-border provision of services by regulated markets
Number and types of instances of cross-border provision of services by CSDs
Number of instances of a CSD setting up a branch in another Member State
Number of CSDs that are part of a group that engage in intra-group outsourcing of core CSD activities
Number of CSDs experimenting with new technologies
Volume and value of settlement conducted by settlement internalisers
Number of CSDs that designate credit institutions to provide banking-type ancillary services
Volume and value of settlement activity taking place in T2S
Total number of CSD links
Settlement activity (in volume and value terms) executed using novel technologies (increase)

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Total amount of cash leg settlement executed with digital forms of money
Number of cross-border funds (marketed cross-border)
Average size of funds
Average management cost of funds (per sector / specialisation)
Creation/cessation of funds (indication of market entry barriers)
Number and average size of asset managers
Number of asset manager groups and number of Member States where they operate
Number of DLT-based authorisations
Number of Member States with legal frameworks to allow DLT-based transfer of ownership
Number of colleges with ESMA participation
Number of joint on-site inspections
Number of peer reviews conducted
Number of obstacles to convergence identified and removed
Number of collaboration platforms
Number of investigations of breach of EU law successfully closed
Number of warnings on manifest breach of the EU law
Number of on-site inspections and dedicated investigations

1.4. The proposal/initiative relates to:

☐ a new action

☐ a new action following a pilot project / preparatory action[44]

☒ the extension of an existing action

☐ a merger or redirection of one or more actions towards another/a new action

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 initiative is expected to follow a phased implementation. In the short term (within 2 years after adoption), preparatory actions would include the development of secondary legislation, establishment of technical standards, and (within 1 year after the adoption) preparatory measures for supervisory transitions. Two years after the adoption new supervisory structures and processes would become operational, allowing ESMA to assume its expanded responsibilities. Two years after entry into force, new supervisory structures and processes would become operational, allowing ESMA to assume its expanded responsibilities.

1.5.2. Added value of EU involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this section 'added value of EU involvement' is the value resulting

[44] As referred to in Article 58(2), point (a) or (b) of the Financial Regulation.

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from EU action, that is additional to the value that would have been otherwise created by Member States alone.

Reasons for action at EU level (ex-ante) The cross-border nature of activities in scope of this initiative and the systemic implications of the related supervisory decisions go beyond the capacity of any single Member States to address identified barriers effectively. Action at EU level is justified as it aims at reducing legal and operational uncertainties for businesses and investors, encouraging cross-border investments, enhancing market efficiency, consistency and coherence across all Member States. It is also justified to ensure consistent supervision, safeguard financial stability, and preserve the integrity of the internal market. Moreover, such EU-level initiatives promote a level playing field and increase the attractiveness and competitiveness of the single market for financial services and their economic efficiency, which can only be achieved through coordinated efforts at EU level. The initiative remains proportionate as it ensures the balance between EU and national competence, with respect to entities and activities with material cross-border relevance and those of primarily domestic importance. Expected generated EU added value (ex-post) The initiative would create clear EU-wide benefits by removing barriers to cross-border activity, reducing duplication and compliance costs, and enhancing supervisory consistency. It would enable more integrated and efficient financial markets, lowering operational and governance costs for trading venues, CSDs, asset managers and crypto-asset service providers, while providing end-investors with greater trust, lower trading costs and a wider choice of products. Stronger and more coherent EU-level supervision would reduce fragmentation, improve legal certainty and promote cross-border investment, ultimately supporting companies' access to finance and the competitiveness of EU capital markets.

1.5.3. Lessons learned from similar experiences in the past

The impact assessment accompanying the legislative proposal has assessed how the existing frameworks have performed and identified a number of shortcomings, in particular with respect to (i) barriers to cross-border operations and innovation, and (ii) non-aligned supervisory practices across Member States and weak tools and powers at EU level to enforce convergence and adopt a comprehensive single market/cross-border supervisory approach.

1.5.4. Compatibility with the multiannual financial framework and possible synergies with other appropriate instruments

The initiative will require additional resources and infrastructure at ESMA to support expanded direct supervision and coordination roles. Staffing needs are explained in the Appendix.

1.5.5. Assessment of the different available financing options, including scope for redeployment

Additional tasks conferred by the legislators could not be covered by redeployment.

The proposal requires a range of new activities and tasks, for which a high proportion of expenses, including overhead and IT systems, will be funded via fees levied on financial market participants supervised by ESMA. An exception to this is that in the preparatory phase, the EU would entirely finance ESMA for the set-up of its

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operations, so as to enable it to build the function during this key early phase, where fees cannot – yet – be levied whereas costs are incurred. Concerning IT development costs related to fee-funded activities, these would initially be paid from the EU budget but then recovered over a five-year period via fees. It is anticipated that preparation for supervision will take place from mid-2028 to mid-2029 and IT development costs are spread between 2028/2029 and 2030/31.

Not all new tasks are suitable for fee-based financing. Activities relating to supervisory convergence in the areas where ESMA doesn't have direct supervisory mandates IT tools for the areas where ESMA doesn't have direct supervisory mandates and DLT will instead be co-funded by the EU and national competent authorities (NCAs), reflecting their broader, system-wide objectives. Since these functions are designed to promote consistency and cooperation across the supervisory network, they cannot appropriately be financed through fees imposed directly on entities overseen by NCAs.

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1.6. Duration of the proposal/initiative and of its financial impact

☐ **limited duration**

– ☐ in effect from [DD/MM]YYYY to [DD/MM]YYYY

– ☐ financial impact from YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations.

☒ **unlimited duration**

– Implementation with a start-up period from mid-2027 to mid-2029,

– followed by full-scale operation as of mid-2029.

1.7. Method(s) of budget implementation planned

☒ **Direct management** by the Commission

– ☒ by its departments, including by its staff in the Union delegations;

– ☐ by the executive agencies

☐ **Shared management** with the Member States

☒ **Indirect management** by entrusting budget implementation tasks to:

– ☐ third countries or the bodies they have designated

– ☐ international organisations and their agencies (to be specified)

– ☐ the European Investment Bank and the European Investment Fund

– ☒ bodies referred to in Articles 70 and 71 of the Financial Regulation

– ☐ public law bodies

– ☐ bodies governed by private law with a public service mission to the extent that they are provided with 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 are provided with adequate financial guarantees

– ☐ bodies or persons entrusted with the implementation of specific actions in the common foreign and security policy pursuant to Title V of the Treaty on European Union, and identified in the relevant basic act

– ☐ bodies established in a Member State, governed by the private law of a Member State or Union law and eligible to be entrusted, in accordance with sector-specific rules, with the implementation of Union funds or budgetary guarantees, to the extent that such bodies are controlled by public law bodies or by bodies governed by private law with a public service mission, and are provided with adequate financial guarantees in the form of joint and several liability by the controlling bodies or equivalent financial guarantees and which may be, for each action, limited to the maximum amount of the Union support.

Comments

The initiative requires additional resources both under direct management within Commission departments dealing with financial services, and under indirect management within the ESMA agency.

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2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

As a decentralised agency, ESMA is subject to the legal and operational requirements of the Union laws in terms of monitoring and reporting rules. In line with already existing arrangements, ESMA prepares regular reports on its activity (including internal reporting to Senior Management, reporting to Boards and the production of the annual report), and is subject to audits by the European Court of Auditors and its own Internal Auditor (the Internal Audit Service of the Commission) 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 budget implementation method(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

The tasks will be implemented essentially by ESMA under indirect management, with funding covered by the EU budget co-financed in part via NCAs' contributions, and by fees levied on supervised entities.

In accordance with Article 30 of its Financial Regulations, ESMA is to implement its budgets in compliance with effective and efficient internal control, which should be based upon best international practices and on the Internal Control Framework laid down by the Commission for its own departments.

In accordance with Article 2 of ESMA's Financial Regulation, the Executive Director of ESMA is the authorising officer who in accordance with Article 45(1) of that Financial Regulation is '*responsible for implementing revenue and expenditure in accordance with the principle of sound financial management, including through ensuring reporting on performance and for ensuring compliance with the requirements of legality and regularity and equal treatment of recipients of Union funds.*' As specified in Article 45(2) of ESMA's Financial Regulation it is the duty of the authorising officer to put in place the organisational structure and the internal control systems suited to the performance of their duties.

In accordance with Article 70(5) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (the Financial Regulation), the Internal Auditor of the Commission is also the Internal Auditor of ESMA. In particular, in accordance with Article 78(3) of the Financial Regulations of ESMA, the Commission's Internal Auditor (i.e. the Internal Audit Service) is responsible for:

(a) assessing the suitability and effectiveness of internal management systems and the performance of departments in implementing programmes and actions by reference to the risks associated with them;

(b) assessing the efficiency and effectiveness of the internal control and audit systems applicable to each operation for implementation of the budget of the Union body.

These responsibilities of the Internal Audit Service will also extend to the tasks implemented by ESMA in accordance with the proposed legislation.

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As well as the work of the Internal Audit Service, ESMA is subject to external audit including by the European Court of Auditors, which in accordance with Article 104 of the Financial Regulations of ESMA, shall each year prepare specific annual reports on ESMA in line with the requirements of Article 287(1) of the Treaty on the Functioning of the European Union.

2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

In accordance with Article 45(2) of ESMA's Financial Regulation, ESMA's Executive Director, in their role as ESMA's authorising officer, is to pay due regard to the risks associated with the management environment and the specific risks associated with the nature of the actions financed when putting in place the internal control systems suited to the performance of the duties of the authorising officer. As indicated in the second sub-paragraph of Article 45(2) of ESMA's Financial Regulation '*The establishment of such structure and systems shall be supported by a comprehensive risk analysis, which takes into account their cost-effectiveness and performance considerations.*'

ESMA closely co-operated with its internal auditor (which is the Internal Audit Service of the Commission) to ensure that the appropriate standards are observed in all areas of the internal control framework. Every year, the European Parliament, following a recommendation from the Council, grants discharge to ESMA for the implementation of its budget. This initiative does not bring about new significant risks that would not be covered by an existing internal control framework.

2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio between the control costs and the value of the related funds managed), and assessment of the expected levels of risk of error (at payment & at closure)

Internal control systems as provided for in ESMA's Financial Regulation are already implemented and have not been found by ESMA's internal auditor not to be cost effective. On the basis of past findings of the European Court of Auditors, the risk of errors is expected to be low.

Historically costs incurred by the Commission for the overall cooperation have been estimated at 0.5% of the annual contributions paid to them. Such costs include, for example but not exclusively, the costs related to the assessment of the annual programming and budget, the participation of DG FISMA's representatives in Management Boards, Boards of Supervisors, internal committees and related preparatory work. The initiative is expected to create additional work for the Commission.

2.3. Measures to prevent fraud and irregularities

For the purpose of combating fraud, corruption and any other illegal activity, the provisions of Regulation (EU, Euratom) N°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 ESMA has a dedicated anti-fraud strategy and resulting action plan. ESMA's actions in the area of anti-fraud should be compliant with its Financial Regulation, OLAF's fraud prevention policies, the provisions provided by the Commission Anti-Fraud Strategy (COM(2019)196) as well as the Common Approach on EU decentralised agencies (July 2012) and the related roadmap. In addition, the Regulations

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establishing ESMA as well as the ESMA's Financial Regulations set out the provisions on implementation and control of the ESAs' budgets 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	Diff./Non-diff.[45]	from EFTA countries [46]	from candidate countries and potential candidates [47]	From other third countries	other assigned revenue
2	03.10.04.00 - ESMA	Diff.	NO	NO	NO	NO
4	20 01 02 01 - Headquarters and Representation offices	Non-diff.	NO	NO	NO	NO

- New budget lines requested

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 and potential candidates	from other third countries	other assigned revenue

[45] Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.
[46] EFTA: European Free Trade Association.
[47] Candidate countries and, where applicable, potential candidates from the Western Balkans.

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3.2. Estimated financial impact of the proposal on appropriations

3.2.1. Summary of estimated impact on operational appropriations

– ☐ The proposal/initiative does not require the use of operational appropriations

– ☒ The proposal/initiative requires the use of operational appropriations, as explained below

3.2.1.1. Appropriations from voted budget

EUR million (to three decimal places)

Heading of multiannual financial framework	Number	N/A

DG: FISMA			Year 2028	Year 2029	Year 2030	Year 2031	Year 2032	Year 2033	Year 2034	**TOTAL MFF 2028-2034**
Operational appropriations										
Budget line	Commitments	(1a)								**0**
	Payments	(2a)								**0**
Budget line	Commitments	(1b)								**0**
	Payments	(2b)								**0**
Appropriations of an administrative nature financed from the envelope of specific programmes[48]										
Budget line		(3)								**0**
TOTAL appropriations	Commitments	=1a+1b+3	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
for DG FISMA	Payments	=2a+2b+3	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**

[48] Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

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EUR million (to three decimal places)

Agency: European Securities and Markets Authority (ESMA)	Year **2027**(#)	Year **2028**	Year **2029**	Year **2030**	Year **2031**	Year **2032**	Year **2033**	Year **2034**	**TOTAL 2027+ MFF 2028-2034**
Budget line: 03 10 04 00 / EU Budget contribution to the agency	**0,149**	**15,972**	**8,373**	**8,708**	**8,930**	**2,962**	**3,070**	**4,387**	**52,551**

(#) Relating to the extension of the resourcing to 2027 (2 FTEs) for the current DLT Pilot regime established by Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology, and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU (resourcing for which was initially only forseen in the related legislative financial statement (LFS) for the period 2022 to 2026 (while under the current MFF and not under the new MFF 2028-2034, this cost is identified for transparency and consistency).

			Year **2028**	Year **2029**	Year **2030**	Year **2031**	Year **2032**	Year **2033**	Year **2034**	**TOTAL MFF 2028-2034**
TOTAL operational appropriations (including contribution to decentralised agency)	Commitments	(4)	15,972	8,373	8,708	8,930	2,962	3,070	4,387	**52,402**
	Payments	(5)	15,972	8,373	8,708	8,930	2,962	3,070	4,387	**52,402**
TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)	-	-	-	-	-	-	-	-
TOTAL appropriations under HEADING 2	Commitments	=4+6	**15,972**	**8,373**	**8,708**	**8,930**	**2,962**	**3,070**	**4,387**	**52,402**

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of the multiannual financial framework	Payments	=5+6	**15,972**	**8,373**	**8,708**	**8,930**	**2,962**	**3,070**	**4,387**	**52,402**

			Year **2028**	Year **2029**	Year **2030**	Year **2031**	Year **2032**	Year **2033**	Year **2034**	**TOTAL MFF 2028-2034**
• TOTAL operational appropriations (all operational headings)	Commitments	(4)	15,972	8,373	8,708	8,930	2,962	3,070	4,387	**52,402**
	Payments	(5)	15,972	8,373	8,708	8,930	2,962	3,070	4,387	**52,402**
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes (all operational headings)		(6)	-	-	-	-	-	-	-	-
TOTAL appropriations Under Heading 1 to 3	Commitments	=4+6	**15,972**	**8,373**	**8,708**	**8,930**	**2,962**	**3,070**	**4,387**	**52,402**
of the multiannual financial framework (Reference amount)	Payments	=5+6	**15,972**	**8,373**	**8,708**	**8,930**	**2,962**	**3,070**	**4,387**	**52,402**

Heading of multiannual financial framework	4	'Administrative expenditure'[49]

[49] The necessary appropriations should be determined using the annual average cost figures available on the appropriate BUDGpedia webpage.

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DG: FISMA		Year 2028	Year 2029	Year 2030	Year 2031	Year 2032	Year 2033	Year 2034	TOTAL MFF 2028-2034
• Human resources		0,752	0,752	0,752	0,752	0,752	0,752	0,752	**5,264**
• Other administrative expenditure		0,010	0,010	0,088	0,010	0,010	0,010	0,010	**0,148**
TOTAL DG FISMA	Appropriations	**0,762**	**0,762**	**0,840**	**0,762**	**0,762**	**0,762**	**0,762**	**5,412**

TOTAL appropriations under HEADING 4 of the multiannual financial framework	(Total commitments = Total payments)	0,762	0,762	0,840	0,762	0,762	0,762	0,762	**5,412**

EUR million (to three decimal places)

		Year 2028	Year 2029	Year 2030	Year 2031	Year 2032	Year 2033	Year 2034	TOTAL MFF 2028-2034
TOTAL appropriations under HEADINGS 1 to 4	Commitments	**16,734**	**9,135**	**9,548**	**9,692**	**3,724**	**3,832**	**5,149**	**57,814**
of the multiannual financial framework	Payments	**16,734**	**9,135**	**9,548**	**9,692**	**3,724**	**3,832**	**5,149**	**57,814**

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3.2.3. Summary of estimated impact on administrative appropriations

– ☐ 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

3.2.3.1. Appropriations from voted budget

VOTED APPROPRIATIONS	Year 2028	Year 2029	Year 2030	Year 2031	Year 2032	Year 2033	Year 2034	TOTAL 2028 - 2034
HEADING 4								
Human resources	0.752	0.752	0.752	0.752	0.752	0.752	0.752	**5.264**
Other administrative expenditure	0,010	0,010	0,088	0,010	0,010	0,010	0,010	**0,148**
Subtotal HEADING 4	**0,762**	**0,762**	**0,840**	**0,762**	**0,762**	**0,762**	**0,762**	**5,412**
Outside HEADING 4								
Human resources	0.000	0.000	0.000	0.000	0.000	0.000	0.000	**0.000**
Other expenditure of an administrative nature	0.000	0.000	0.000	0.000	0.000	0.000	0.000	**0.000**
Subtotal outside HEADING 4	**0.000**	**0.000**	**0.000**	**0.000**	**0.000**	**0.000**	**0.000**	**0.000**
TOTAL	**0,762**	**0,762**	**0,840**	**0,762**	**0,762**	**0,762**	**0,762**	**5,412**

Considering the overall strained situation in Heading 4, in terms of both staffing and the level of appropriations, the human resources required will be met to the extent possible by staff from the DG who are already assigned to the management of the action and/or have been redeployed within the DG or other Commission services.

3.2.4. Estimated requirements of human resources

– ☐ The proposal/initiative does not require the use of human resources

– ☒ The proposal/initiative requires the use of human resources, as explained below

3.2.4.1. Financed from voted budget

Estimate to be expressed in full-time equivalent units (FTEs)

VOTED APPROPRIATIONS	Year 2028	Year 2029	Year 2030	Year 2031	Year 2032	Year 2033	Year 2034
• Establishment plan posts (officials and temporary staff)							
20 01 02 01 (Headquarters and Commission's Representation Offices)	4	4	4	4	4	4	4
20 01 02 03 (EU Delegations)	0	0	0	0	0	0	0
(Indirect research)	0	0	0	0	0	0	0
(Direct research)	0	0	0	0	0	0	0
Other budget lines (specify)	0	0	0	0	0	0	0

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• External staff (inFTEs)								
20 02 01 (AC, END from the 'global envelope')		0	0	0	0	0	0	0
20 02 03 (AC, AL, END and JPD in the EU Delegations)		0	0	0	0	0	0	0
Admin. Support line	- at Headquarters	0	0	0	0	0	0	0
[XX.01.YY.YY]	- in EU Delegations	0	0	0	0	0	0	0
(AC, END - Indirect research)		0	0	0	0	0	0	0
(AC, END - Direct research)		0	0	0	0	0	0	0
Other budget lines (specify) - Heading 4		0	0	0	0	0	0	0
Other budget lines (specify) - Outside Heading 4		0	0	0	0	0	0	0
TOTAL		**4**	**4**	**4**	**4**	**4**	**4**	**4**

Considering the overall strained situation in Heading 4, in terms of both staffing and the level of appropriations, the human resources required will be met to the extent possible by staff from the DG who are already assigned to the management of the action and/or have been redeployed within the DG or other Commission services.

3.2.5. Overview of estimated impact on digital technology-related investments

TOTAL Digital and IT appropriations	Year **2028**	Year **2029**	Year **2030**	Year **2031**	Year **2032**	Year **2033**	Year **2034**	**TOTAL MFF 2028 - 2034**
HEADING 4								
IT expenditure (corporate)	0	0	0	0	0	0	0	**0**
Subtotal HEADING 4	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Outside HEADING 4								
Policy IT expenditure on operational programmes	0	0	0	0	0	0	0	**0**
Subtotal outside HEADING 4	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
TOTAL	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**

3.2.6. Compatibility with the current multiannual financial framework

The proposal/initiative:

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– ☐ can be fully financed through redeployment within the relevant heading of the multiannual financial framework (MFF)

– ☐ requires use of the unallocated margin under the relevant heading of the MFF and/or use of the special instruments as defined in the MFF Regulation

– ☒ requires a revision of the MFF

4 additional FTE are necessary for Directorate-General Financial Stability, Financial Services and Capital Markets Union (FISMA) to accompany the additional sectoral and horizontal responsibilities of ESMA.

3.2.7. Third-party contributions

The proposal/initiative:

– ☒ does not provide for co-financing by third parties

– ☐ provides for the co-financing by third parties estimated below:

Appropriations in EUR million (to three decimal places)

	Year **2028**	Year **2029**	Year **2030**	Year **2031**	Year **2032**	Year **2033**	Year **2034**	Total
Specify the co-financing body								
TOTAL appropriations co-financed								

3.2.8. Estimated human resources and the use of appropriations required in a decentralised agency

Total staff requirements (full-time equivalent units)

Agency: European Securities and Markets Authority	Year **2027**	Year **2028**	Year **2029**	Year **2030**	Year **2031**	Year **2032**	Year **2033**	Year **2034**
Temporary agents (AD Grades)	2	38	182	212	248	248	248	248
Temporary agents (AST grades)	0	7	34	40	45	45	45	45
Temporary agents (AD+AST) subtotal	***2***	***45***	***216***	***252***	***293***	***293***	***293***	***293***
Contract agents	0	18	103	121	142	142	142	142
Seconded national experts	0	7	33	39	45	45	45	45
Contract agents and seconded national experts	***0***	***25***	***136***	***160***	***187***	***187***	***187***	***187***

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subtotal								
TOTAL staff	**2**	**70**	**352**	**412**	**480**	**480**	**480**	**480**

Of which: fee funded staff requirements (full-time equivalent units)

Agency: European Securities and Markets Authority	Year **2027**	Year **2028**	Year **2029**	Year **2030**	Year **2031**	Year **2032**	Year **2033**	Year **2034**
Temporary agents (AD Grades)	-	-	166	196	232	232	232	232
Temporary agents (AST grades)	-	-	32	38	43	43	43	43
Temporary agents (AD+AST) subtotal	***0***	-	***198***	***234***	***275***	***275***	***275***	***275***
Contract agents	-	-	97	115	136	136	136	136
Seconded national experts	-	-	31	37	43	43	43	43
Contract agents and seconded national experts subtotal	***0***	-	***128***	***152***	***179***	***179***	***179***	***179***
TOTAL staff	**0**	-	**326**	**386**	**454**	**454**	**454**	**454**

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Appropriations covered by the EU budget contribution in EUR million (to three decimal places) (*)

Agency: European Securities and Markets Authority	Year **2027**	Year **2028**	Year **2029**	Year **2030**	Year **2031**	Year **2032**	Year **2033**	Year **2034**	**TOTAL 2027+ MFF 2028 - 2034**
Title 1: Staff expenditure	0,128	7,451	2,126	2,168	2,210	2,254	2,299	2,345	**20,981**
Title 2: Infrastructure and operating expenditure	0,021	1,561	0,423	0,432	0,441	0,449	0,458	0,467	**4,252**
Title 3: Operational expenditure	-	6,960	5,824	6,108	6,279	0,259	0,313	1,575	**27,318**
TOTAL of appropriations covered by the EU budget	**0,149**	**15,972**	**8,373**	**8,708**	**8,930**	**2,962**	**3,070**	**4,387**	**52,551**

Appropriations covered by fees, if applicable, in EUR million (to three decimal places)

Agency: European Securities and Markets Authority	Year **2027**	Year **2028**	Year **2029**	Year **2030**	Year **2031**	Year **2032**	Year **2033**	Year **2034**	**TOTAL 2027+ MFF 2028 - 2034**
Title 1: Staff expenditure	-	-	48,887	59,017	70,798	72,214	73,658	75,131	**399,705**
Title 2: Infrastructure and operating expenditure	-	-	10,360	12,515	15,018	15,318	15,624	15,937	**84,772**
Title 3: Operational expenditure	-	-	1,818	9,302	9,572	9,714	9,860	8,801	**49,067**
TOTAL of appropriations covered by fees	**-**	**-**	**61,065**	**80,834**	**95,388**	**97,246**	**99,142**	**99,869**	**533,544**

Appropriations covered by co-financing, if applicable, in EUR million (to three decimal places)

Contribution from NCAs

Agency: European Securities and Markets Authority	Year **2027**	Year **2028**	Year **2029**	Year **2030**	Year **2031**	Year **2032**	Year **2033**	Year **2034**	**TOTAL 2027+ MFF 2028 - 2034**
Title 1: Staff expenditure	0,192	0,577	2,126	2,168	2,210	2,254	2,299	2,345	**14,171**
Title 2: Infrastructure and operating expenditure	0,032	0,116	0,423	0,432	0,441	0,449	0,458	0,467	**2,818**
Title 3: Operational expenditure	-	0,007	0,027	0,428	0,436	2,697	2,751	2,806	**9,152**

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TOTAL of appropriations covered co-financing	**0,224**	**0,700**	**2,576**	**3,028**	**3,087**	**5,400**	**5,508**	**5,618**	**26,141**

Overview/summary of human resources and appropriations (in EUR million) required by the proposal/initiative in a decentralised agency

Agency: European Securities and Markets Authority	Year **2027**	Year **2028**	Year **2029**	Year **2030**	Year **2031**	Year **2032**	Year **2033**	Year **2034**	**TOTAL 2027+ MFF 2028 - 2034**
Temporary agents (AD+AST)	2	45	216	252	293	293	293	293	-
Contract agents	-	18	103	121	142	142	142	142	-
Seconded national experts	-	7	33	39	45	45	45	45	-
Total staff	**2**	**70**	**352**	**412**	**480**	**480**	**480**	**480**	-
Appropriations covered by the EU budget	0,149	15,972	8,373	8,708	8,930	2,962	3,070	4,387	**52,551**
Appropriations covered by fees (if applicable)	-	-	61,065	80,834	95,388	97,246	99,142	99,869	**533,544**
Appropriations co-financed (if applicable)	0,224	0,700	2,576	3,028	3,087	5,400	5,508	5,618	**26,141**
TOTAL appropriations	**0,373**	**16,672**	**72,014**	**92,570**	**107,405**	**105,608**	**107,720**	**109,874**	**612,236**

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	Impact of the proposal/initiative[50]						
		Year	Year	Year	Year	Year	Year	Year

[50] 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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	financial year	**2028**	**2029**	**2030**	**2031**	**2032**	**2033**	**2034**
Article …….								

For assigned revenue, specify the budget expenditure line(s) affected.

Other remarks (e.g. method/formula used for calculating the impact on revenue or any other information).

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4. DIGITAL DIMENSIONS

4.1. Requirements of digital relevance

The following table provides a high-level description of the requirements of digital relevance and related categories (data, process digitalisation & automation, digital solutions and/or digital public services)

Reference to the requirement	Requirement description	Actors affected or concerned by the requirement	High-level Processes	Categories
Amendments to Regulation (EU) 2019/1156 (CBDR)				
Article 12	Central portal (data platform) for the cross-border notifications of funds and interaction between home and host NCAs on cross-border matters. ESMA's one-stop-shop platform that will facilitate the exchange of information and documentation between home and host competent authorities concerning the marketing requirements of AIFs and UCITS.	ESMA, Member States competent authorities, businesses, the general public.	Information and document exchange Cross-border collaboration	Data; Digital; solutions Digital public services

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Amendments to Regulation (EU) 1095/2010 (ESMA)

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Article 35c	Data platform /IT infrastructure The Authority shall establish and maintain a data platform to facilitate the submission, exchange and access to information as provided for in other Union acts.	Member States authorities	Establishment of digital solutions Information exchange	Digital solutions;
Article 8*(ia), (iaa)*	‘(ia) to contribute to the establishment of a common Union financial data strategy and ensure efficient exchange of information within the EU;’ ‘(iaa) to contribute to the development of supervisory technology tools in collaboration with competent authorities;’	ESMA, Member States authorities	Establishment of a common Union financial data strategy	Data; Digital solutions;
Amendments to Regulation (EU) 2022/858 (DLT Pilot regime)				

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Article 4 and 4a	Requirements and application for exemptions regarding DLT trading venues including record-keeping obligations.	Investment firm / market operator operating the DLT trading venue; NCAs, ESMA, EC	Request for exemption;	Data
Article 5 and 5a	Requirements and application for exemptions regarding DLT settlement system including record keeping.	Investment firm / market operator operating the DLT trading venue; NCAs, ESMA; MSs, EC	Request for exemption;	Data
Article 7a	Additional requirements for DLT market infrastructures participating in the simplified regime, including reporting, publicly available documentation, transparency, security, audit, liability.	Operators of DLT market infrastructures; competent authorities, ESMA	Request permission for simplified regime;	Data; Digital public service
Article 8	Specific permission to operate DLT trading venue including reporting; provision of evidence of safeguards.	Operators of DLT trading venues; competent authorities, ESMA;	Request for authorisation;	Data; Digital public service

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Article 10, 10a, 10b, 10c, 10d, 10e	Specific permission to operate DLT trading and settlement system; Specific permission to provide individual CSD services; Settlement between DLT central account keepers; Authorisation and supervision of the settlement scheme; ESMA to develop guidelines and forms/template;	Operators of DLT trading and settlement systems; competent authorities, ESMA; DLT central account keepers;	Request for a specific permission to operate a DLT TSS; Reporting to ESMA;	Data; Digital public service;
Article 10g	Data standardisation in supporting interoperability between DLT market infrastructures	Operators of a DLT SS, a DLT TSS and DLT account keepers participating in a settlement scheme ESMA European Commission	Data standardisation	Data
Article 11, 11a	Operators of DLT market infrastructures to notify NCAs and to report on basic	Operators of DLT market infrastructures; competent	Operators of DLT market to notify and report to NCAs	Data; Digital public service;

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	parameters of their activities every 6 months. NCAs to submit the reports to ESMA; Requirements for reporting and record keeping.	authorities, ESMA;		
Article 13	Notification of competent authorities	MSs; NCAs; ESMA; EC	MSs to notify NCAs; ESMA to publish a list of NCAs.	Data; Digital public service;
Amendments to Regulation 909/2014 (CSDR)				
Article 6	Full automation of settlement instructions processing Harmonisation of the procedures and standards for communication	EU market participants and central securities depositories (CSDs).	Processing settlement instructions, communication of allocation and confirmation	Data, process digitalisation & automation
Article 9	Data reporting on internalised settlement as regards settlement efficiency	Settlement internalisers, including investment firms and credit institutions	Regular Reporting	Data
Articles 16	Designation of the competent authority for the supervision of CSDs to be communicated on	CSDs, Member States and ESMA	Competent authority designation	Data; Process digitalisation & automation

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	the central database			
Article 17	Procedures pertaining to the applications for authorisation to provide CSD services to be submitted on the central database	CSDs, Member States and ESMA	Authorisation management	Data; Process digitalisation & automation
Article 17a	Procedure for adopting decisions, reports or other measures	Member States and ESMA	Decision-making process	Process digitalisation & automation
Article 19a	Procedures pertaining to the applications for the outsourcing of CSD services to be submitted on the central database	CSDs, Member States and ESMA	Application for authorisation to outsource services	Data; Process digitalisation & automation
Article 21a	Access for all authorised CSDs to a database for the submission of data pertaining to the authorisations and approvals set out in the CSDR.	CSDs, Member States and ESMA	Establish a Digital Public Service	Digital Solution
Article 22	Opinion by the competent and relevant authorities pertaining to the review evaluation to be communicated on the	CSDs, Member States and ESMA	Establish a Digital Public Service	Data; Digital solution

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	central database			
Article 23	Requirement for notification to passport of services on financial instruments governed by the law of another Member State to be communicated on the central database	CSDs, Member States and ESMA	Notify	Data
Article 48	Procedure pertaining to the applications for CSD links to be communicated on the central database	CSDs, Member States and ESMA	Authorisation management	Data
Article 48a	Requirement for notification of a CSD hub, Requirement to establish a bilateral link to be both submitted via the central database	CSDs, Member States and ESMA	Notification and authorisation	Data
Article 48b	Procedure for the authorisation for the establishment of an interoperable link to be submitted on the central database	CSDs, Member States and ESMA	Authorisation and notification	Data

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Article 52	Procedures for the establishment/refusal of a link to be communicated on the central database	CSDs, Member States and ESMA	Application for authorisation	Data
Article 55	Procedures pertaining to the application for the authorisation to provide banking-type ancillary services to be communicated on the central database	CSDs, designated credit institutions, Member States and ESMA	Authorisation to provide banking-type ancillary services	Data
Amendments to Regulation (EU) 2023/1114 (MICA)				
Article 59, paragraph 6, para 8	ESMA verifies the authorisations, extension of authorisation, and may request for update and complement by crypto-service provider.	Crypto-service provider, ESMA	Management of authorisation for CASPs	Data
Article 60, paragraph 8, paragraph 11, paragraph 12	NCA receiving notification to assess information provided and notify ESMA. NCA revoking right to provide crypto-services by an entity. ESMA to make	NCAs, ESMA, notifying entity	Assessment of requirements and issue notifications;	Data;

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	notification available in register.			
Article 62, Article 63	Management of authorization - Submission of application of prospective crypto-service providers, acknowledge, assess and grant/refuse authorisation; consult NCAs; request additional information; update register)	Legal persons/undertakings, ESMA;	Management of CASP authorization	Data; Digital solution; Digital public service;
Article 63	ESMA and EBA to jointly issue guidelines on management body suitability;	Prospective crypto-providers; ESMA; EBA; NCAs	Issue guidelines; -	Data; Digital public service
Article 64	ESMA to assess if criteria for withdrawing of application are met; publish information in register; consulting NCAs; EBA and NCAs	Crypto-service providers; ESMA; EBA; NCAs	Management of CASP authorization	Data; Digital public service

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	can consult ESMA; crypto-services provider to establish procedures for orderly transfer of crypto assets/funds			
Article 65	Provision of cross-border crypto-services: crypto-service provider to notify intention to provide cross-border services; ESMA to inform NCA and EBA	Crypto-service providers; national competent authority, ESMA; EBA	Management of CASP authorization	Data;
Article 68	Crypto-services providers to risk-assess their systems; record keeping; ESMA to supervise; records available to clients on request	Crypto-service providers, ESMA; clients	Risk Assessment	Data;
Article 73	Third parties to provide information about outsourcing arrangements	Third parties; crypto-service providers; ESMA; competent authorities	Third parties to provide information about outsourcing	Data;
Article 76	Crypto-service providers operating a trading platform to	Crypto-service providers; ESMA;	monitoring of market abuse and transactions/orders on trading platforms	Data;

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	inform ESMA about potential market abuse cases, data on transactions and orders			
Article 81	Crypto-service providers to demonstrate knowledge to provide crypto advice, in line with published ESMA criteria	Crypto-service providers; clients; ESMA	Management of CASP authorization	Data;
Article 85, article 85a,	Classification of crypto-asset service providers as significant Voluntary classification of crypto-asset service providers as significant	Crypto-service providers; ESMA; EBA; NCAs	Management of CASP authorisation	Data;
Article 92	Notification to NCAs or ESMA of market abuse suspicion;	Persons professionally arranging or executing transactions ; ESMA; NCAs; EC	Prevention and detection of market abuse	Data
Article 93	MS to designate responsible NCA for this Regulation and for	MS; NCA; ESMA	Governance	Data

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	assisting ESMA			
Article 102	Precautionary measures by host NCA while informing home NCA and ESMA	Host NCA, home NCA, ESMA	Send notifications	Data
Article 138c	ESMA to request information from crypto-asset service providers and related persons.	ESMA; crypto-service provider; person involved in crypto activities; controlling person	ESMA to request information from relevant legal and natural persons; Provisions of information	Data
Article 138f	ESMA and NCA to provide each other with information	ESMA; NCAs	Exchange information	Data
Article 138g, 138h, 138i	ESMA to conclude agreements on information exchange; ESMA to obtain express agreement from third country NCAs for disclosures; ESMA to cooperate with other authorities	ESMA; NCAs; other authorities	Exchange information	Data
Article 138n	Disclosure of penalty	ESMA; public; European Parliament;	ESMA to disclose to the public fines and periodic penalty	Data; Digital public

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	payments of ESMA	EC; Council; NCAs	payments. If ESMA decides not to impose fines or penalty payments, it shall inform the European Parliament, the Council, the EC, and the NCAs	service
Article 138k	Handling of data in relation to supervisory measures (collecting information from supervised entities and disseminating information where necessary)	ESMA; crypto-asset provider; natural or legal person; NCAs; EC	Supervisory measures	Data; Digital public service
Amendments to Regulation 648/2012 (EMIR)				
Article 5	Clearing obligation procedure communicated on the central database	NCAs; ESMA	Notification	Data
Articles 6a, 6b	Procedures pertaining to suspension of clearing obligation to be carried out on the central database.	NCAs; ESMA; EC; CCP resolution authority	Suspension of clearing obligation	Data Process digitalisation & automation
Article 7	Procedure pertaining to access to a CCP to be	TV; CCP; ESMA	TV to send request to CCP; TV to inform ESMA of request	Data

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	carried out on the central database			
Article 8	Procedure pertaining to access to a trading venue to be carried out on the central database	CCP; TV; ESMA	CCP to send request to TV; CCP to inform ESMA	Data Process digitalisation & automation
Articles 14, 17, 17a, 17b, 22a, 88	CCP application for authorisation to CA, ESMA; ESMA to draft opinion for CA; ESMA to publish list of significant CCPs and list of CCP authorisations	ESMA; CAs; CCP college	Management of authorisations	Data; Process digitalisation & automation
Article 17c	ESMA to establish and maintain a central database	ESMA; NCAs; Relevant authorities; CCP College; CCP	Management of authorisations	Process digitalisation & automation; Digital solutions ; Digital public service
Article 17c	ESMA to establish and maintain a central database	ESMA; NCAs; Relevant authorities; CCP College; CCP	Management of authorisations	Process digitalisation & automation; Digital solutions ; Digital public service
Article 76	Appropriate authorities of third countries that do not have any trade repository established in their jurisdiction may contact ESMA with a	ESMA; Authorities of third countries; Union trade repositories	Access to information	Data

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	view to establishing cooperation arrangements to access information on derivatives contracts held in Union trade repositories. ESMA may establish cooperation arrangements with those appropriate authorities regarding access to information on derivatives contracts held in Union trade repositories that these authorities need to fulfil their respective responsibilities and mandates, provided that guarantees of professional secrecy exist, including the protection of business secrets shared by the authorities with third parties.			
Article 76a	Where necessary for the exercise of their duties, appropriate authorities	Authorities of third countries; European Commission; Union	Access to information	Data

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	of third countries in which one or more trade repositories are established shall have direct access to information in trade repositories established in the Union, provided that the Commission has adopted an implementing act in accordance with paragraph 2 to that effect.	trade repositories		
Amendments to Regulation (EU) 600/2014 (MiFIR)				
Article 22b	The data transmitted to the CTP pursuant to Article 22a(1) and the data disseminated by the CTP pursuant to Article 27h(1), point (d), shall comply with the regulatory technical standards adopted pursuant to Article 4(6), point (a), Article 7(2), point (a), Article 11(4), point (a), Article 11a(3), point (a), and Article 14(7), unless provided	Systematic internalisers and provider of the consolidated tape for shares and ETFs	Data transmission	Data, Process digitalisation & automation

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	otherwise in the regulatory technical standards adopted pursuant to paragraph 3, points (b) and (d), of this Article.			
Article 25	Ability for ESMA to request access to the data relating to all orders in financial instruments to the national surveillance authorities	National surveillance authorities and ESMA; Operators of trading venues	Access to data	Data, Process digitalisation & automation
Article 26	Reporting requirements for operators of trading venues.	National surveillance authorities and ESMA; Operators of trading venues	Reporting obligations	Data
Article 34b	ESMA may develop draft implementing technical standards to determine the format of the reports referred to in point (a) of paragraph 1. ESMA may develop draft implementing technical standards to specify the measures to require all reports	Market operators; ESMA	Reporting obligations	Data

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	referred to in point (a) of paragraph 1 to be sent to ESMA at a specified weekly time, for their centralised publication by the latter.			
Article 38fd	ESMA shall establish and maintain a central database to ensure that the following entities and authorities can submit their documents and access their documents and documents addressed to them, as registered within that database: (a) PEMO; (b) market operators that operate at least one significant trading venue; (c) investment firms that operate at least one significant trading venue with respect to the operation of MTFs or OTFs; (d) other trading venues	PEMO; Market Operators; Investment firms; Trading venues; National surveillance authorities; ESMA; National competent authorities	Establish a Digital Public Service	Data; Digital solution

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	that belong to the same group as market operators and investment firms referred to in points (b) and (c); (e) relevant national surveillance authorities of the entities referred to in points (a) do (d); (f) ESMA; (g) relevant national competent authority referred to in Article 2q to Article 2t of this Regulation; (h) any other recipients, as specified under this Regulation.			
Article 38fd	Information/document submission, its storage and subsequent access to the relevant supervisory data for market operators and investment firms operating trading venues subject to ESMA supervision, relevant	Market operators and investment firms operating trading venues subject to ESMA supervision, national competent authorities, national surveillance authorities and	Establish a Digital Public Service	Data, Process digitalisation & automation

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	national competent authorities, relevant national surveillance authorities and ESMA.	ESMA		

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4.2. Data

High-level description of the data in scope

Type of data	Reference to the requirement(s)	Standard and/or specification (if applicable)
Amendment to Regulation (EU) 2019/1156 (CBDR)		
Data and information that is requested by national competent authorities from funds in relation to authorisation & notification for cross-border marketing of funds. This information includes notifications of marketing intensions, compulsory fund disclosure documents and marketing documents, decisions, procedural measures and attestations issued by the competent authorities.	Amendment to Regulation (EU) 2019/1156, new Article 12	ESMA shall develop guidelines to establish standard forms, formats and templates
Amendments to Regulation (EU) 2022/858 (DLT Pilot regime)		
Compliance information for request of specific exemptions regarding DLT trading venues	Article 4(a)	ESMA shall develop guidelines to establish standard forms, formats and templates for submitting the requests referred to in paragraph 1.
Compliance information for request of specific exemptions regarding DLT settlement system	Article 5(a)	ESMA shall develop guidelines to establish standard forms, formats and templates for submitting the requests referred to in paragraph 1.
Compliance information for authorization to operate under the simplified regime	Article 7(a)	ESMA shall develop guidelines to establish standard forms, formats and templates for the application for authorization under the simplified regime referred to in paragraph 3.

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Notification on whether the operator intends to transition to the regular regime	Article 7(a)	
Information supporting the application for specific permission to operate DLT TV	Article 8	
Information supporting the application for a specific permission to provide the DLT notary service or the DLT central maintenance	Article 10a	ESMA shall develop guidelines to establish standard forms, formats and templates for the purpose of the application referred to in paragraph 1.
Information concerning DLT notaries and DLT central account managers	Article 10b	
Information about transfers that take place with the settlement scheme they participate	Article 10c	ESMA shall develop guidelines to establish standard forms, formats and templates
Information supporting the authorization and supervision of the settlement scheme	Article 10d	
Information on cross-border DLT CSD services	Article 10e	
Data standardisation in supporting interoperability between DLT market infrastructures	Article 10g	ESMA shall submit to the Commission technical advice on supporting interoperability between DLT market infrastructures

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Report on basic parameters of the activities of the DLT market infrastructures	Article 11, Article 11a	
Regulation (EU) 648/2012 (EMIR)		
Compliance information for authorization of CCP to clear a class of OTC derivatives	Article 5	ESMA shall develop technical standards
Request for the suspension of the clearing obligation	Articles 6a, 6b	ESMA shall develop guidelines to establish standard forms, formats and templates
Request for access to a CCP	Article 7	ESMA shall develop guidelines to establish standard forms, formats and templates
Request for access to a TV	Article 8	ESMA shall develop guidelines to establish standard forms, formats and templates
CCP request for authorization; Quantitative data to determine significance	Articles 14, 17, 17a, 17b, 22a, 88	ESMA shall develop technical standards (Articles 14 and 17a); ESMA shall develop guidelines to establish standard forms, formats and templates (Articles 17 and 17b); The Commission is empowered to adopt a delegated act (Article 22a); ESMA shall maintain a website (Article 88) ESMA shall develop guidelines to establish standard forms, formats and templates
Decisions, documents, notifications	Article 17c	ESMA to establish and maintain

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List of competent authorities designated by the Member States	Article 22	ESMA shall publish on its website
Information on derivatives contracts held in Union trade repositories	Article 76	ESMA may establish cooperation arrangements
Amendments to Regulation 909/2014 (CSDR)		
Allocation Confirmation and settlement instructions	Article 6	The international standards specified by ESMA in the relevant RTS
Settlement efficiency reporting	Article 9	The information specified by ESMA in the RTS pursuant to Article 9(4)
Information on the applicant CSD	Articles 16, 17	The information set out in the RTS drafted by ESMA pursuant to Articles 16 and 17
Opinion	Article 17a	N/A
Information on the outsourcing services	Article 19a	The information specified in the RTS drafted by ESMA pursuant to Article 19a
Information related to CSD applications for authorisations	Articles 16, 19, 19a, 21a, 48b, 54, 54a, 54b, 56	
Opinion	Article 22	N/A
Information on the passported services	Article 23	The information laid down in the RTS drafted by ESMA pursuant to Article 23

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Information on the instruments and services provided via the link	Articles 48, Article 48b, Article 52	The information specified in the relevant RTS drafted by ESMA
Information on the banking-type ancillary service	Article 55	The information set out in the RTS drafted by EBA pursuant to Article 55
Amendments to Regulation (EU) 2023/1114 (MICA)		
Disclosure of penalty payments of ESMA	Article 138j	Disclosure of penalty fines.
Exchange of information between ESMA and third countries Disclosure of information from third countries	Article 138d, e	ESMA to conclude agreements with third country authorities
Relevant data for CASP authorization in EU	Article 60, Article 62, Article 63, Article 64, Article 65	Legal persons or other undertakings that intend to provide crypto-asset services shall submit their application for an authorisation as a crypto-asset service provider to ESMA
Amendments to Regulation (EU) No 600/2014 (MiFIR)		
Quotes (price and volume) in respect of shares and ETFs	Article 22b	N/A
Details of orders in financial instruments	Article 25	The information specified by ESMA in the RTS pursuant to Article 25(3)

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Information on the authorisation of trading venues subject to ESMA supervision, formal supervisory requests addressed to supervised entities and responses to those requests.	Article 38fd	

Alignment with the European Data Strategy

Explanation of how the requirement(s) are aligned with the European Data Strategy

The requirements promote the transparency and accessibility to information (such as public registers, publication of reports on ESMA web sites, disclosures).

They support the creation of data flows between financial market business operators, Member States Competent Authorities and EU institutions.

The requirements also promote horizontal data sharing across public administrations, which is a key focus of the European data strategy.

Alignment with the once-only principle

Explanation of how the once-only principle has been considered and how the possibility to reuse existing data has been explored

The initiative promotes a "collect only once, share many times" approach, where data is gathered only once and then made available to relevant authorities in Member States and EU institutions. This therefore ensures that the initiator only submits information once and that there is no duplication.

The initiative promotes alignment and centralised procedures for the same cross-border services.

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Amendments to Regulation (EU) 600/2014 (MiFIR)

For Article 22b, the quotes generated by systematic internalisers would be submitted once on an ongoing basis, with this information being reused or accessed by users of the consolidates or for regulatory purposes.

For Article 25, details of orders in financial instruments are already kept at the disposal of national competent authorities (or future national surveillance authorities). The new requirement will provide ESMA with a possibility to request from national surveillance authorities the already-collected data without creating a new reporting obligation for market participants.

For Article 38fd, the data would be submitted once by the applicant (e.g. a trading venue) seeking authorisation from ESMA. That information could then be accessed by the applicant itself, ESMA, the relevant competent authorities or national surveillance authorities, where applicable.

Explanation of how newly created data is findable, accessible, interoperable and reusable, and meets high-quality standards

The initiative promotes collection of data only once which is then shared with relevant competent authorities in MSs and relevant EU institutions via central databases.

The requirements promote the transparency and accessibility to information using public registers, publication of reports and disclosures on ESMA web sites.

Amendments to Regulation (EU) 600/2014 (MiFIR)

For Article 22b and Article 25, there is no newly created data. Such data is already subject to harmonised data formats and in a machine-readable format, thus already ensuring consistency and completeness, which facilitates seamless interoperability and reuse.

For Article 38fd, the data will be easily accessible via the central database. It will be stored there, and therefore reusable. Since the format for providing the mandatory data will be harmonised, the data will also be interoperable.

Amendments to Regulation (EU) 684/2012 (EMIR)

All information, data, communications and requests transmitted under EMIR are done via the central database and stored therein. All stakeholders with legal rights to access such transmissions may do so by connecting to the central database. Full reuse and sharing of relevant transmissions is thus ensured.

Amendments to Regulation (EU) 909/2014 (CSDR)

All information, data, communications and requests transmitted under the CSDR are done via the central database and stored therein. All stakeholders with legal rights to access such transmissions may do so by connecting to the central database. Full reuse and sharing of relevant transmissions is thus

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ensured.

Data flows

The following table presents the high-level description of the data flows

Type of data	Reference(s) to the requirement(s)	Actors who provide the data	Actors who receive the data	Trigger for the data exchange	Frequency (if applicable)
Amendment to Regulation (EU) 2019/1156 (CBDR)					
Continuous transfer of data from national competent authorities to ESMA, which then makes the data available.	New Article 12	National Competent authorities	ESMA	Receipt of data by the national competent authority from supervised entities; decisions, procedural measures, or attestations by national competent authorities.	Ongoing, as soon as NCAs receive the data, it shall be provided to ESMA.
Amendments to Regulation (EU) 2022/858 (DLT Pilot regime)					
Compliance information for request of specific exemptions regarding DLT trading venues	Article (4a)	DLT TV operator	NCAs, EC, ESMA,	Request for exemption	
Compliance information for request of specific exemptions regarding DLT settlement system	Article (5a)	DLT SS operator	NCAs, EC, ESMA,	Request for exemption	

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Compliance information for authorization to operate under the simplified regime	Article 7(a)	DLT market infrastructure operator	NCA	Request for authorisation	
Application for specific permission to operate DLT TV	Article 8	Authorised legal person	NCA, ESMA	Request for authorisation	
Application for a specific permission to provide DLT notary service or the DLT central maintenance	Article 10a	Authorised legal person	NCA	Request for authorisation	
Information about transfers that take place with the settlement scheme they participate to	Article 10c	DLT central account keepers	ESMA, and further shared with NCAs	Reporting obligation	Monthly
Information supporting the authorization and supervision of the settlement scheme	Article 10d	DLT central account keepers	ESMA	Request for authorisation	
Information on cross-border DLT CSD services	Article 10e	DLT notary or a DLT central account keeper	Home NCA, and further shared with the host NCAs	Submit intention to provide services in more than one Member States	
Amendments to Regulation (EU) 648/2012 (EMIR)					
Authorisation for a CCP to clear a class of OTC derivatives	Article 5	NCA	ESMA	Authorisation	N/A
Request for the suspension of the	Article 6a of	NCA; ESMA; CCP resolution	ESMA; EC, EP,	Request for suspension of	N/A

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clearing obligation	Regulation	authority	Council; EC	obligation	
Request for access to a CCP	Article 7 of	TV	CCP; ESMA	Request to access CCP	N/A
Request for access to a TV	Article 8 of	CCP	TV; ESMA	Request to access trading venue	N/A
Public disclosure of penalties	Articles 12, 66	ESMA	Public	Disclosure of penalties to the public	Regular intervals
CCP request for authorization of extension of authorization; Quantitative data to determine significance; List of significant CCPs and CCP authorisations	Articles 14, 17, 17a, 17b, 22a, 88	CCP; ESMA	CA; ESMA; Public	CCP request for authorisation; Information on average open interest, average gross notional outstanding, average aggregated initial margin requirements, group structure, interoperability arrangements; ESMA to publish list of significant CCPs and CCP authorisations	N/A
Decisions, documents, notifications	Article 17c	ESMA; NCAs; Relevant authorities; CCP	ESMA; NCAs; Relevant authorities; CCP	Any need for transmitting documents,	N/A

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		College; CCP	College; CCP	decisions, notifications, information	
List of competent authorities designated by the Member States	Article 22	ESMA	Public	List of CCP CAs	N/A
Request by third country to establish cooperation arrangements to access information in Union trade repositories	Article 76	Third-country authority	ESMA; Third-country authority	Request by third-country authority; Third-country authorities to access information in Union trade repositories	N/A
Amendments to Regulation (EU) 909/2014 (CSDR)					
Allocation Confirmation and settlement instructions	Article 6	CSDs and market participants	CSDs and market participants	Market operations	N/A
Settlement efficiency reporting	Article 9	Settlement internalisers	Competent authorities	Regular reporting	Quarterly
Information on the applicant CSD	Articles 16 17	CSDs	Competent Authorities	Request for authorisation	N/A
Opinion	Articles 17a 22	Competent and relevant authorities	CSDs	Regular review and evaluation	At least every 3 years
Information on the passported services	Article 23	CSDs	Competent Authorities	Provision of the services	N/A

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Information on the instruments and services provided via the link	Articles 48 48a 48b 52	CSDs, Competent and relevant authorities	Competent authorities	Request for authorisation	N/A
Information on the banking-type ancillary service	Article 55	CSDs, banking supervisory authorities	Banking supervisory authorities, competent authorities	Request for authorisation	N/A
Amendments to Regulation (EU) 2023/1114 (MICA)					
Relevant Data for CASP authorization in EU	Article 62, 63 of Regulation (EU) 2023/1114 (MICA)	Legal persons or other undertakings that intend to provide crypto-asset services	ESMA	Request for authorisation or changes	
Amendments to Regulation (EU) 600/2014 (MiFIR)					
Quotes in respect of shares and ETFs	Article 22b	Systematic internalisers	Provider of a consolidated tape for shares and ETFs	Market operations	Ongoing
Details of orders in financial instruments	Article 25	Trading venues	National competent authorities, national surveillance	Regular reporting or reporting on request	Ongoing or on request

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			authorities, ESMA		
Information on the authorisation of trading venues subject to ESMA supervision, as well as formal supervisory requests addressed to supervised entities and responses to those requests.	Article 38fd	ESMA, national surveillance authorities, national competent authorities or market operators and investment firms operating trading venues subject to ESMA supervision	ESMA	Request for authorisation, request for information for supervisory purposes, responses to those requests	N/A

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4.3. Digital solutions

High-level description of digital solutions

Please note that the description below of the central database to be established by ESMA does not contain the information on providing the additional capabilities required for the Settlement Finality Regulation. Please refer to the digital statement of the Settlement Finality Regulation for more information on the latter.

Digital solution	Reference(s) to the requirement(s)	Main mandated functionalities	Responsible body	How is accessibility catered for?	How is reusability considered?	Use of AI technologies (if applicable)
ESMA Central Database and supervisory data platform coverage of CCPs, CSDs and TVs	Amendments to Regulation 648/2012 (EMIR) Article 17c Amendments to Regulation 909/2014 (CSDR) Article 19a Amendments to Regulation (EU) 600/2014 (MiFIR) Article 38eb Proposal for a Regulation on Settlement Finality, Article 22	Central data platform, provides functionalities for data collection, exchange of information between ESMA, competent authorities and operators (CSDs, CCPs, payments systems, market operators and investment firms operating a trading venue), registration authorities, among others, and automates supervisory workflows and procedures	ESMA	Fully accessible for those entities (ESMA needs to ensure access)	ESMA's supervisory platform will be extended to include additional requirements	

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ESMA data platform for cross-border notifications of funds and interaction between home and host NCAs on cross-border matters	Amendment to Regulation (EU) 2019/1156, new Article 12	Functions to collect, process, generate, and exchange or share data/documents and facilitate communication between national competent authorities. Translation services Public interface to make relevant data available to the general public (ESMA's one-stop-shop portal)	ESMA		The platform will reuse existing resources and data where it already exists (e.g. the central database as established in Article 17c of EMIR)	Not applicable
ESMA Central register for CASPs markets surveillance	Amendments to Regulation (EU) 2023/1114 (MICA)	Central public register and supervisory platform	ESMA		The platform will reuse existing resources and data (e.g. the central database as established in Article 17c of EMIR)	
Centralised data and analytics	Amendments to Regulation (EU) 1095/2010 (ESMA) Article 35, Article 8	Provide common tools to supervise and analyse market data, in collaboration with competent authorities; Enable timely sharing	ESMA			

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		of supervisory insights with competent authorities; and Facilitate secure, standardised data access and exchange across the EU supervisory framework.				

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For each digital solution, explanation of how the digital solution complies with applicable digital policies and legislative enactments

ESMA Data and supervisory platforms

Digital and/or sectorial policy (when these are applicable)	**Explanation on how it aligns**
AI Act	
EU Cybersecurity framework	Member States and ESMA are required to ensure the security, integrity, authenticity and confidentiality of the data collected and stored for the purpose of the Regulation.
eIDAS	
Single Digital Gateway and IMI	
Others	

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4.4. Interoperability assessment

High-level description of the digital public service(s) affected by the requirements

Digital public service or category of digital public services	**Description**	**Reference(s) to the requirement(s)**	**Interoperable Europe Solution(s)** **(NOT APPLICABLE)**	**Other interoperability solution(s)**
ESMA data platform for cross-border notification of funds and interaction between home and host NCAs on cross-border matters	The process with national competent authorities for notifications of cross-border marketing of funds.	Amendment to Regulation (EU) 2019/1156, new Article 12	//	Existing solutions in place at ESMA will be reused (e.g. the central database as established in Article 17c of EMIR)
Supervisory data platform coverage of CCPs, CSDs,TV	Granting authorisation Exchange of information between ESMA, MSs competent authorities and operators, Supervisory workflows and procedures	Amendments to Regulation 648/2012 (EMIR) Amendments to Regulation 909/2014 (CSDR)		Existing solutions in place at ESMA will be extended and reused (e.g. the central database as established in Article 17c of EMIR)
Central register for CASPs markets surveillance	Establishment of the central system for CASPs authorisation and monitoring, exchange of information, maintain public register	Amendments to Regulation (EU) 2023/1114 (MICA)		Existing solutions in place at ESMA will be reused and extended with the new functionalities (e.g. the central database as established in Article 17c of EMIR)
Central database-	A central database for	Regulation (EU)		Existing solutions in place at ESMA

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	information/documents storage and access for market operators and investment firms operating trading venues subject to ESMA supervision, national competent authorities, national surveillance authorities and ESMA, to a database for the submission of information pertaining to the authorisations under MiFIR, as well as other supervision-related information (including supervisory requests and responses to those requests).	600/2014 (MiFIR) Article 38eb		will be reused where it already exits (e.g. the central database as established in Article 17c of EMIR)
Category of digital public services according to COFOG #1	01.1.2		//	

Impact of the requirement(s) as per digital public service on cross-border interoperability

MiFIR Central database

Assessment	**Measure(s)**	**Potential remaining barriers (if applicable)**
Alignment with existing digital and sectorial policies	- The central database is implemented across several financial sectors (trading,	- *N/A*

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Please list the applicable digital and sectorial policies identified	post-trading, etc) in a consistent and coherent manner to ensure that the same digital solution can serve for the purpose of the documents/information storage and access across all relevant financial sectors.	
Organisational measures for a smooth cross-border digital public services delivery **Please list the governance measures foreseen**	- As the central database will be run by a European authority (ESMA), it will ensure that the data is submitted and accessed in a fair and non-disproportionate manner by all relevant authorities and market participants.	- *N/A*
Measures taken to ensure a shared understanding of the data **Please list such measures**	- As the central database will be run by a European authority (ESMA), it will ensure that the data format is universally applied to all information/documents submitted by the relevant authorities and marker participants. Furthermore, the information to be submitted (notably for authorisations) is set out in legislation.	- *N/A*
Use of commonly agreed open technical specifications and standards **Please list such measures**	- As the central database will be run by a European authority (ESMA), it will ensure that the data format is universally applied to all information/documents submitted by the relevant authorities and marker participants. Furthermore, the information to be submitted (notably for authorisations) is set out in legislation.	- *N/A*

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4.5. Measures to support digital implementation

High-level description of measures supporting digital implementation

Description of the measure	**Reference(s) to the requirement(s)**	**Commission role** (if applicable)	**Actors to be involved** (if applicable)	**Expected timeline** (if applicable)
Amendments to Regulation (EU) 2022/858 (DLT Pilot regime)				
ESMA shall submit to the Commission technical advice on supporting interoperability between DLT market infrastructures	Article 15	Review; Initiate further initiatives	ESMA	
ESMA shall develop guidelines to establish standard forms, formats and templates for submitting the requests under Article 4a,5a,7a,10a, 10c	Article 4a,5a,7a,10a, 10c		ESMA	As per deadlines specified in the related Articles 4a,5a,7a,10a, 10c-CJ
Amendments to Regulation (EU) 648/2012 (EMIR)				
ESMA shall develop technical standards and/or guidelines as per Articles 5, 14, 17, 17a, 17b	Articles 5, 14, 17, 17a, 17b		ESMA	As per deadlines specified in Articles 5, 14, 17, 17a, 17b
Amendments to Regulation (EU) 909/2014 (CSDR)				
ESMA shall develop technical standards as per Articles 6, 9, 16, 17, 19a, 23, 48, 48b, 52	Articles 6, 9, 16, 17, 19a, 23, 48, 48b, 52		ESMA	As per deadlines specified in Articles 6, 9, 16, 17, 19a, 23, 48, 48b, 52

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The EBA shall develop technical standards as per Article 55	Article 55		EBA	As per the deadline specified in Article 55

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APPENDIX

General Assumptions as regards FTE and costs

Title I – Staff Expenditure

The following specific assumptions have been applied in the calculation of the staff expenditure based upon the identified staffing needs explained below:

- Negotiations on the package are finished by mid-2027 and there are 1-2 years until the legislation enters into application (for some regulations it is 1 year and for other acts 2 years), out of which 6 months-1 year is intended for the preparatory phase for new mandates. During this phase, staff to prepare for new mandates should be recruited. It is expected that 10 FTEs, plus 2 FTEs overhead per sector will be needed for this work. The assumption retained is that ESMA will have time to recruit additional FTEs so that they are operational from 2028-mid-2028.
- The Executive Board will be installed, one year after entry into force, mid-2028 to start laying the ground for direct supervision and preparing cooperation arrangements. As of mid-2029 direct supervision starts – full staffing for trading and post-trading should be achieved by this date. Full staffing for the supervision of crypto asset service providers should, however, be achieved gradually until 2031. The standard annual cost retained (2025 current) for a Temporary Agent is EUR 188 000, for a Contract Agent, it is EUR 101 000 and for a Seconded National Expert it is EUR 103 000, all of which include EUR 30 000 of 'habillage' costs.
- The correction coefficient applicable to staff salaries in Paris (ESMA) is 114,2 (2025 basis);
- Employer's pension contributions for Temporary Agents and Contract Agents have not been included in the estimates. For fee-funded direct supervisory tasks, 100% of the employer's pension contributions would be included in the fees charged to the supervised entities. For non-direct supervisory tasks, the cost of which would be borne by the EU and the NCAs, the NCA share of such contributions, would as is the case now, be paid by NCAs to ESMA (the EU share being borne directly by the Union budget and not passing through the ESMA budget).
- Resource overhead staff are contract agents, temporary agents including assistants, and seconded national experts.
- A 2% inflation rate was applied as from 2027 on the 2025 standard rates.

Title II – Infrastructure and operating expenditure

Costs are based upon multiplying the number of staff by the proportion of the year employed by the standard cost for 'habillage', i.e. EUR 30 000 (covering buildings, IT basic support, etc.). A 2% inflation rate is applied.

Title III – Operational expenditure

Costs are estimated subject to the following assumptions:

- The one-off IT costs set out in section D are assumed to be implemented evenly over two years (2028-2029 for the Supervisory Platform, the CASP market surveillance system and

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the funds database; 2030-2031 for the centralised data and analytics), taking account of the time needed for preparation, planning and contracting.

- IT costs (development and maintenance) are based on best estimates of marginal supplementary expenses to be actually incurred over years 2028 to 2034 and allocated to either direct supervision or supervisory activities and their respective funding scheme.
- As an exception to the applicable funding scheme,
- the costs of IT development that is linked to direct supervision will be paid for by the EU at the development stage and recovered over the subsequent five years via a reduction of the EU contribution, corresponding to the depreciated costs of the IT infrastructure for an amount of EUR 12.2 million. The subsequent annual maintenance costs (and any evolutionary development) will be fully fee-funded and would be borne from 2030.
- the initial cost of the development of the new IT systems that are not linked to direct supervision, which are required for the implementation of this proposal, will be 100% paid by the EU (up to EUR 18.1 million after inflation). Thereafter, the costs of maintenance and evolutionary development of these systems would be borne equally by the EU and NCAs.
- A 2% inflation rate was applied as from 2027 on the 2025 current prices.
- Mission expenses, communications services and general meeting expenses are included as 1.25% of staff expenditure (Title 1), based on actual costs incurred at ESMA. This results in the following additional expenses:

€ million	**2028**	**2029**	**2030**	**2031**	**2032**	**2033**	**2034**
EU share	0,008	0,027	0,027	0,028	0,028	0,029	0,029
NCA share	0,008	0,027	0,027	0,028	0,028	0,029	0,029
Fee funded	0,094	0,611	0,737	0,885	0,902	0,920	0,939
Total	**0,110**	**0,664**	**0,792**	**0,940**	**0,959**	**0,978**	**0,997**

All Titles – co-financing

The co-financing retained, from 2028 on, is a 50% contribution from the EU and 50% from NCAs for all the supplementary activities introduced by this initiative, that are co-financed at ESMA. These rates differ slightly from the rates of 40% and 60%, respectively, usually retained for co-financing based on Recital 68 of Regulation (EU) No 1095/2010 establishing ESMA. This modification would not entail any changes as regards the way contributions are calculated for the activities introduced before this initiative that are co-financed at ESMA (they would continue to be financed 40% contribution from the EU and 60% from NCAs) and as regards the way contributions from Member States are made in accordance with the weighting of votes[51]. The rationale is that, in light of the considerable reinforcement of

[51] According to Recital 68, ESMA should be appropriately financed and, at least initially, it should be financed 40 % from Union funds and 60 % through contributions from Member States, made in accordance with the weighting of votes set out in Article 3(3) of the Protocol (No 36) on transitional provisions.

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ESMA's mandate and the increasing Union-wide nature of its supervisory responsibilities, the financing of its activities should more accurately reflect the Union interest served by its work. Strengthening ESMA's role in ensuring consistent and effective supervision across the internal market delivers benefits that accrue to the Union economy as a whole, and it is therefore appropriate that a greater share of the associated costs be borne by the EU budget, alleviating the pressure on national competent authorities while preserving a balanced and proportionate cost-sharing arrangement. This adjustment supports a fairer distribution of financial contributions, enhances budgetary predictability for Member States, and promotes an efficient and resilient supervisory framework capable of ensuring the proper functioning and further integration of Union capital markets.

Specific Assumptions

This legislative initiative will have an impact on costs incurred because of the changes brought (A) to enhance supervisory convergence, (B) to provide direct supervisory powers to ESMA, (C) overheads resources, (D) IT tools necessary for direct supervision and supervisory convergence, (E) to set up a new independent Executive Board. Finally, redeployment possibilities and efficiency gains have been explored (F).

Overview of ESMA staff needs at cruising speed (from 2031):

	Direct supervision & related convergence activities	**Other supervisory convergence & DLT**	**Total**
	fee funded	*co-financed*	
Executive board	5		5
CCPs	47		47
CSDs	39		39
Trading Venues	104		104
CASPs	158		158
Asset Management Coordination and Cross-border oversight	15	15	30
DLT Pilot		7	7
Supervisory convergence		10	10
(*)	10	-10	-
Overhead	76	4	80
Total	**454**	**26**	**480**

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(*) 10 FTE in the current ESMA department dealing with supervisory convergence would be transferred to the fee funded activities, thus offsetting an additional 10 FTEs created by this package for supervisory convergence.

Additionally, on the side of the Commission, there is a resource need to accompany the additional sectoral and horizontal responsibilities of ESMA. To ensure effective policy oversight, coordination, and enforcement of the new supervisory framework, 4 AD officials will be required within the Commission. Each official would reinforce a key policy area affected by the initiative: digital finance, market infrastructure, asset management, and supervision and convergence. These staff will be responsible for ongoing monitoring of ESMA's expanded mandates, assessing the impact of new supervisory arrangements, ensuring policy coherence across sectors, and maintaining structured engagement with ESMA, NCAs, and stakeholders. Given the breadth and technical depth of the reforms, this level of staffing is considered the minimum necessary to ensure continuity, timely follow-up, and effective alignment of supervisory and legislative developments across the capital markets framework.

A. Enhanced supervisory convergence

In the asset management area, ESMA would ensure a coordinated approach to the oversight of large cross-border asset management groups through a mandate to carry out, together with NCAs, periodical group-wide reviews of the supervisory approach for asset management companies, which should foster a converged NCA supervision of asset management groups' activities. This would potentially include operations, management, risk monitoring, or the corporate structure of the largest asset managers. Beyond those periodic reviews of large asset managers groups, coordination under ESMA would include monitoring risks on an ongoing basis, using dashboards derived from supervisory data and risk indicators to identify emerging vulnerabilities, and initiating investigations by joint teams, if necessary. For this oversight, up to 15 of the largest cross-border asset management groups should be chosen. For each group 1 FTEs should be planned. In all, 15 FTEs would be necessary. These would be co-financed by the EU and NCAs.

ESMA would be actively involved in the seamless passporting of UCITS funds and AIFs by centralising notifications, operating collaboration platforms, thereby addressing NCAs disagreement or handling stakeholders' complaints. ESMA would exercise binding mediation powers. ESMA would coordinate the single market supervision of UCITS and AIFs through the establishment of collaboration platforms. ESMA would: (i) set the agenda for such collaboration platforms; (ii) host regular collaboration platforms, manage workflows, and share relevant information on a dedicated IT tool (data platform, accessible to NCAs) for UCITS funds and AIFs operating in the single market; (iii) initiate ad hoc collaboration platforms based on complaints from NCAs, market participants or consumers; and (iv) facilitate between NCAs in the collaboration platform. ESMA's Executive Board and Board of Supervisors would have to play important roles in this regard. For this cross-border oversight, 15 FTEs should be planned. After a transitional period in 2028 with 5 FTEs fully financed by the EU to set up the function, ESMA would cover the cost of these tasks via fees applicable for the expenditure relating to the passporting procedures.

The proposal also foresees changes to horizontal supervisory convergence tools that would enhance and incentivise their use, as well as the establishment of new ones. It is expected that ESMA will use binding mediation, peer reviews and breach of Union law tools more often. In addition, new tools that have proven their effectiveness in sector legislation, such as collaboration platforms, would be included in the supervisory toolset. Collaboration platforms

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with a strong role for ESMA, would facilitate coordination and information exchange between home and host supervisory authorities for significant cross-border activities. An additional 10 FTEs should be foreseen for these tasks. Furthermore, 10 existing FTEs will be moved internally to convergence activities related to direct supervision. These FTEs will henceforth be fee-funded.

ESMA's strong coordination role in the DLT Pilot Regulation continues, and will require more resources, since the threshold of the Pilot is increased. This will lead to more businesses checking into the Pilot and more work for ESMA. Additionally, ESMA will be the direct supervisor for a new distributed model for settlement of financial instruments ("settlement scheme"). Therefore, the 2 FTEs currently allocated at ESMA should be reinforced by additional staff, so as to reach 7 FTE in total. There is hence a need to continue with the 2 FTEs foreseen for this area in the context of the initial DLT pilot regulation and for 5 additional FTEs (the 2 FTEs which ESMA was allocated for the period 2022 to 2026 to implement Regulation 2022/858 establishing the DLT Pilot regime[52] will be extended to 2027 and thereafter, from 2028 ESMA will be allocated additional 5 FTEs). In addition, to co-finance the 2 FTEs for the DLT Pilot in 2027 according to the current standard 60:40 NCA:EU funding model, ESMA will be allocated EUR 149 376 of Union contribution on top of the financial programming for 2027 financing).

B. Direct supervisory powers

As a preliminary remark, it is worth recalling that entities subject to direct supervision by ESMA pay fees to ESMA (one-off costs for registration and recurrent costs for ongoing supervision). This is currently the case for credit rating agencies, trade repositories, securitisation repositories, data reporting service providers, etc.

Under this legislative proposal, ESMA will be in charge of the direct supervision of large cross-border CCPs (up to around 8), CSDs (up to around 14) and trading venues (around 10 groups which would mean 150-200 trading venues). In relation to CASPs, ESMA should supervise all CASPs (up to 615) and become the sole supervisor of this sector in the EU.

We have conducted an analysis to determine the necessary staffing requirements. We have sent questionnaires to NCAs, asking about FTEs dedicated to the supervision of these sectors. The numbers per sector presented below, are based on input received from the NCAs, also relying on expertise from ESMA and the Commission's own assessments.

We have calculated that 104 FTE posts at ESMA will be required to ensure effective supervision of the largest cross-border trading venue groups. A consultation of NCAs as regards the FTE needs to supervise trading venues indicated an average of approximately 2 FTEs per supervised entity across the 19 NCAs which participated in the survey. It is assumed that this headcount reflects the average resource needed at the level of each market operator. The scope of the proposal targets approximately 30-40 operators, which manage the largest trading venues in the Union (there are ongoing changes in the market that make it difficult to have the precise estimate). Considering the upper bound of the proposed range of operators in scope and taking into account the fact that ESMA will receive new competences regarding the oversight of the compliance by trading venues with the organisational requirements pertaining to market surveillance, this estimate is corrected upwards to 2.5 FTEs per market operator. 4 FTEs are considered necessary to work on supervisory convergence in this area.

[52] Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology, and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU.

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The trading venues that would fall under ESMA supervision have been selected based on their substantial market shares and, in some cases, EU/cross-border dimension, necessitating a robust supervisory set-up. As ESMA has not held any supervisory power over trading venues so far, it is essential to establish a new structure to facilitate the effective exercise of these responsibilities. The requested staffing level of 104 FTE posts is deemed necessary to ensure that ESMA can adequately discharge its new supervisory duties and maintain the high standards of oversight expected of it.

With regard to CCPs, ESMA would assume responsibility for the direct supervision of up to 8 of the most significant EU CCPs. ESMA would act as the ultimate decision-maker for supervisory matters, ensuring consistency and convergence across jurisdictions. According to the data that we have received, our estimate is that direct supervision of a CCP would require, on average, 6 FTEs. Applying this estimate to 8 CCPs results in a total requirement of 48 FTEs. Considering that ESMA already performs certain CCP-related tasks, notably in the area of model validation, a degree of efficiency can be achieved, and the estimate can be reduced by around 10%. 4 FTEs are considered necessary to work on supervisory convergence in this area. Consequently, the net additional staffing need for the supervision of CCPs is assessed at approximately 47 FTEs.

Turning to CSDs, ESMA would directly supervise the CSDs belonging to the largest European groups which together comprise up to 14 CSDs. For the purpose of this assessment, the CSDs should be broadly classified according to their systemic importance and scale of activity. The two international CSDs are expected to require more extensive supervisory engagement than medium-sized or small CSDs. Accordingly, the resource estimate takes into account the need for proportionality between different types of institutions. It is therefore assumed that the supervision of international CSDs would each require approximately 6 FTEs, medium-sized CSDs 3 FTEs, and smaller CSDs 2 FTEs. On this basis, the total supervisory resources required for the 14 CSDs belonging to the main EU groups are assessed at around 41 FTEs.

Given the expected synergies arising from the group structure of these entities, it is reasonable to expect that these FTE needs could be reduced by around one quarter. This would place the lower bound of the estimate at approximately 31 FTEs. In addition, 3-4 FTEs would be required for the cooperation and oversight tasks related to the TARGET2-Securities platform. 4 FTEs are considered necessary to work on supervisory convergence in this area. Taking these factors together, the overall FTE requirement for the direct supervision of CSDs is estimated to reach 39 FTEs.

Crypto assets is a new area and NCAs are only building their capacity and knowledge. Therefore, it is not possible to rely on current practice. For the purpose of this assessment, the CASPs should be broadly classified according to their systemic importance and scale of activity. Therefore, we can group them as significant and non-significant CASPs. For significant CASPs there would be 2.5 FTE/CASPs, for non-significant – 5 CASPs/FTE. 1 FTE is considered necessary to work on supervisory convergence in this area. In total it would be 158 FTEs for around 600 CASPs.

C. Overhead

The overheads in terms of resources support at the ESMA agency level cover Human Resources, Finance, Legal, Facility Management, Coordination and IT support. Based on ESMA's Activity Based Management system, 30% of the resources are dedicated to horizontal services. Taking into account that ESMA, 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 represent 20% of the total staff.

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D. IT tools necessary for direct supervision and supervisory convergence

Supervisory data platform coverage of CCPs, CSDs, TV and for the designation and registration of systems under the Settlement Finality Regulation (SFR)

Estimated cost: EUR 8M for development and EUR 3.7M for annual maintenance. Based on actual use across all supervision mandates, the platform would cover up to 80% of direct supervisory needs and up to 20% of other activities via functionalities supporting document collaboration and notifications between Union and Member State authorities. Based on the funding approach adopted for the development of the IT systems, the EU would fund 100% of the development cost. Thereafter, the share of the depreciated cost applicable to direct supervision mandates would be recovered via fees. Based upon, activity based costing, the cost of the maintenance (and evolutionary development) of the system(s) would be split between fees charged to directly supervised entities on the one side and between the EU and NCAs on the other side for non-direct supervision tasks (with that part of the cost being split equally between the EU and the NCAs).

ESMA has multiple mandates in Union legislation to develop and maintain databases and tools for the submission, exchange and access to supervisory information. To ensure these systems are developed and maintained efficiently, to avoid duplication of IT investments, and to ensure the accuracy and interoperability of data, the supervisory data platform should integrate ESMA’s existing supervisory databases and related tools within a single architecture.

Accordingly, ESMA's supervisory platform, initially designed to support supervisory tasks under EMIR 3, should therefore be expanded to include data collection and management for supervisory oversight of CSDs, CCPs, and TVs and to provide the additional capabilities required for the Settlement Finality Regulation, building on this integrated technical architecture. The Commission estimates that integrating the management of ESMA’s supervision mandates within a single supervisory data platform allows for a more efficient solution and results in a lower overall cost compared with developing separate systems for the new supervisory mandates individually.

Maintenance should cover the full cost of operating the platform, including high-quality support to all stakeholders — staff from the ESAs and other Union institutions and bodies, competent authorities and supervised entities — as well as system and security operations, corrective, preventive and adaptive maintenance such as mandatory lifecycle and security upgrades and incremental functional enhancements. It should also include the necessary infrastructure to ensure continuous availability and performance of the platform, in particular the sufficient compute and storage capacity required for the collection, processing and retention of both unstructured (e.g. documents) and structured (e.g. prudential) information used for supervisory risk assessments.

All relevant competent authorities and bodies should have access to such a platform for the information pertinent to their tasks and responsibilities. Similarly, entities subject to the requirements of corresponding regulations should have access to the information and documentation they submitted, and any information and documentation addressed to them. The data platform should be used for the swift and efficient sharing of as much information and documentation as possible.

Central register for CASPs markets surveillance

Estimated cost: EUR 4.2M for development and EUR 2.5M for annual maintenance. The costs of development will be paid for by the EU and recovered over the subsequent five years

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via a reduction of the EU contribution, corresponding to the depreciated costs of the IT infrastructure. The annual maintenance costs will be fully fee-funded.

ESMA is expected to develop and operate a centralised data and market surveillance system for CASPs, building on the ongoing work on MIDAS (Markets Integrity Data Analysis System). The system would serve as a pan-EU data hub for the collection, aggregation, and analysis of transaction and order data reported by CASPs under MiCA and related implementing acts. Its core purpose would be to enhance market integrity, detect market abuse, and support both direct and indirect supervision of crypto markets.

The system would integrate regulatory and market data flows collected directly from CASPs, ensuring consistent and harmonised data access across the EU, and enabling timely identification of potential risks. ESMA would operate as a central analytics and monitoring centre, responsible for:

– Collecting and standardising data from CASPs and trading platforms across Member States;

– Running advanced data analytics and surveillance algorithms to detect suspicious or abusive trading behaviour, price manipulation, or insider dealing;

– Flagging potential issues or anomalies for investigation and enforcement;

– Providing aggregated insights to support ESMA's own direct supervision of CASPs and to facilitate cooperation with national competent authorities.

The Commission estimates that the current system developed by ESMA for MiCA monitoring by NCAs will be adapted to a centralised model, with costs proportionate to the number of CASPs to be integrated into the system.

Maintenance should cover the full operational cost of running the system, including high-quality support for all stakeholders — staff from the ESAs and other Union entities, competent authorities, and supervised entities — as well as system and security operations and corrective, preventive and adaptive maintenance, such as mandatory lifecycle and security upgrades and incremental capability improvements. It should also finance the necessary infrastructure, including sufficient compute and storage capacity for the collection, processing and retention of unstructured (e.g. documents) and structured information (e.g. prudential data) used for supervisory risk assessments. The system should therefore ensure continuous availability, data integrity and security, and support the efficient execution of ESMA's supervisory functions.

Data platform for cross-border notifications of funds and interaction between home and host NCAs on cross-border matters

Estimated cost: EUR 1,000,000 for development and EUR 200,000 for annual maintenance. The costs of development will be paid for by the EU and recovered over the subsequent five years via a reduction of the EU contribution, corresponding to the depreciated costs of the IT infrastructure. The annual maintenance costs (and any evolutionary development costs) will be fully fee-funded.

This cost reflects an upgrade of the existing register in the ESAP system, which currently stores information on cross-border fund activities, in order to include additional information required to support enhanced supervisory cooperation under the AIFMD and UCITS frameworks, while maintaining data collection via NCAs. The objective is to develop a one-stop-shop system that reduces the need for multiple bilateral exchanges currently required between home and host competent authorities and stakeholders in the context of the notification of the cross-border marketing of funds. This system will serve as a central

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interface for ESMA and the 27 NCAs, providing a secure channel for home–host documentation access and communication of procedural steps. It will provide funds and managers with a single point accessing information for cross-border activities more generally. To deliver these capabilities, the system must store and provide submission functionalities for reliable, always up-to-date and quality-checked documentation, including automated translation services for submitted documents.

The data platform must be up to date at all times so that information is accurate and reliable and allows for immediate access for both NCAs and stakeholders.

Key functionalities include:

– interconnectedness between ESMA and all 27 NCAs, ensuring secure and timely data exchange,

– automatic translation into official languages of the Union, supporting direct usability across Member States,

– a public portal for transparency,

– user friendly interfaces, for both non-public and public information to share, access and retrieve information in a secure and efficient manner.

Centralised data and analytics

Estimated cost: EUR 15M for development and EUR 4M annual maintenance. The EU would support 100% of the development costs of that platform over 2030 and 2031. For this the EU would increase its contribution in order to further fund this development, by adding an amount of EUR 8.2 million to the amount that would be expected on the basis of a 50% contribution to ESMA for that development, thus reducing the NCAs contribution by the same amount. The annual maintenance (and any further evolutionary development) would be co-financed equally by EU and NCAs.

This initiative will contribute to the development of supervisory technology tools and to the efficient exchange of information within the EU as part of a common Union financial data strategy.

Funding will support the progressive enhancement of ESMA's central systems to provide the functionalities listed below covering all the relevant mandates under Union legislation:

– provide common tools for market analysis and supervision, in collaboration with competent authorities;

– enable timely sharing of supervisory insights with competent authorities; and

– facilitate secure, standardised data access and exchange across the EU supervisory framework.

These shared solutions are expected to create efficiencies for competent authorities and support consistent supervisory practices in the Union.

Summary Table ICT needs *(*)*

	One-off development costs	**One-off development costs**	**Annual maintenance (2030-2034)**	**Annual maintenance (2032-2034)**

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	(2028-2029)	(2030-2031)		
	€	€	€	€
Supervisory data platform coverage of CCPs, CSDs, TV, SFR	8,000,000		3,700,000	
Central register for CASPs market surveillance	4,200,000		2,500,000	
Data platform for cross-border notifications of funds	1,000,000		200,000	
Centralised data and analytics		15,000,000		4,000,000
Total	**28,200,000**		**10,400,000**	

(*) amounts are in current 2025 prices, before inflation

E. New Executive Board

A new Executive Board would be composed of ESMA's Chair and 5 full time independent members, with diverse composition, bringing different types of supervisory expertise (e.g. CCPs, CSD, trading venues, asset managers/funds, prudential, central banks, etc.). They should be experienced and should be recruited as AD temporary agents of a grade of AD 14. The Executive Director would equally be recruited as an AD 14 temporary agent. The Executive Board would be the main decision-making body for direct supervision and supervisory convergence measures that target individual entities. The Executive Board would also take over the tasks of the current Management Board. The Executive Board will be operational as of mid-2028. Tasks linked to direct supervision would be financed through fees, and tasks linked to supervisory convergence (up to 10% of total tasks) would be co-financed by the Union budget and NCA's contributions.

F. Redeployment and efficiency gains

The scope for redeployment is limited, considering the nature and scope of this initiative. Nevertheless, efficiency gains have been examined thoroughly in order to limit costs, wherever possible. For instance, as explained above, economies of scale are anticipated in the extent of additional overhead needed.

A key efficiency is that ESMA's current capacity to levy fees would be largely relied upon to deal with the increased number of entities to be charged. In particular, no specific IT developments are included as regards fees management, as it is expected that ESMA will rely on their current IT systems, to handle the extended scope of application.

In order to further reduce the costs incurred by ESMA, a large number of new FTEs could be employed as Contract Agents (CAs), Assistants (AST) or Seconded National Experts (SNEs). However, the number of SNEs should not be overestimated. ESMA might face difficulties in recruiting such experts because of the costs this would represent for Member States and national competent authorities. In addition to these difficulties related to 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.

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The following table provides for an indicative split of staff into those categories.

	Direct supervision & related convergence activities	Other supervisory convergence & DLT	Overhead	Total
Temporary Agents - AD Grade	194	14	40	**248**
Assistants	35	2	8	**45**
Contractual Agents	112	5	25	**142**
Seconded National Experts	36	1	7	**45**
Total	**378**	**22**	**80**	**480**

At the same time, some cost reductions can be expected at NCAs once ESMA takes over certain supervisory tasks and NCAs reduce or reallocate supervisory capacity.

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EUROPEAN
COMMISSION

Brussels, 4.12.2025
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ANNEXES 1 to 6

ANNEXES

to the

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulations (EU) No 1095/2010, No 648/2012, No 600/2014, No 909/2014, 2015/2365, 2019/1156, 2021/23, 2022/858, 2023/1114, No 1060/2009, 2016/1011, 2017/2402, 2023/2631 and 2024/3005 as regards the further development of capital market integration and supervision within the Union

{SEC(2025) 943 final} - {SWD(2025) 943 final} - {SWD(2025) 944 final}

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ANNEX I

'ANNEX

Correlation table referred in Article 3, point (43)

Directive 2014/65/EU	**Regulation (EU) No 600/2014**
Article 5(2)	---
Article 18(1)	Article 2u(1)
Article 18(2)	Article 2u(2)
Article 18(3)	Article 2u(3)
Article 18(4)	Article 2u(3)
Article 18(5)	Article 2u(3)
Article 18(6)	Article 2u(5)
Article 18(7)	Article 2u(3)
Article 18(8)	Article 2u(6)
Article 18(9)	Article 2u(7)
Article 18(10)	Article 2u(8), Article 2zf
Article 18(11)	Article 2zg(4)(b)
Article 19(1)	Article 2x(1)
Article 19(2)	Article 2x(2)
Article 19(3)	Article 2x(3)
Article 19(4)	Article 2x(4)
Article 19(5)	Article 2x(5)
Article 20(1)	Article 2z(1)
Article 20(2)	Article 2z(2)
Article 20(3)	Article 2z(3)
Article 20(4)	Article 2z(4)
Article 20(5)	Article 2z(5)
Article 20(6)	Article 2z(6)
Article 20(7)	Article 2z(7)
Article 20(8)	Article 2z(8)
Article 31(1)	Article 2u(3)
Article 31(2)	Article 2u(3)

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Article 31(3)	Article 2u(3)
Article 31(4)	Article 2zg(2), point (c)
Article 32(1)	Article 2v(1)
Article 32(2)	Article 2v(2)
Article 32(3)	Article 2zg(4), point (a)
Article 32(4)	Article 2zg(2), point (b)
Article 33(1)	Article 2y(1)
Article 33(2)	Article 2y(2)
Article 33(3)	Article 2y(3)
Article 33(4)	Article 2y(4)
Article 33(5)	Article 2y(5)
Article 33(6)	Article 2y(6)
Article 33(7)	Article 2y(7)
Article 33(8)	Article 2zg(2), point (d)
Article 33(9)	---
Article 34(6)	Article 2w, Article 2o(1)
Article 34(7)	Article 2w, Article 2o(2)
Article 36	---
Article 37(1)	---
Article 37(2)	Article 34c
Article 38	---
Article 44(1)	Article 2a(2), points (a) and (b), Article 2b(1)
Article 44(2)	Article 2a(3) and (4)
Article 44(3)	Article 2a(4) and (5)
Article 44(4)	Article 2a(7)
Article 44(5)	Article 2c(1)
Article 44(6)	---
Article 45(1)	Article 2d(1)
Article 45(2)	Article 2d(2)
Article 45(3)	Article 2d(3)
Article 45(4)	Article 2d(4)

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Article 45(5)	Article 2d(5)
Article 45(6)	Article 2d(6)
Article 45(7)	Article 2d(7)
Article 45(8)	Article 2d(8)
Article 45(9)	Article 2d(9)
Article 46(1)	Article 2e(1)
Article 46(2)	Article 2e(2)
Article 46(3)	Article 2e(3)
Article 47(1)	Article 2f(1)
Article 47(2)	Article 2f(2)
Article 48(1)	Article 2g(1)
Article 48(2)	Article 2g(2)
Article 48(3)	Article 2g(3)
Article 48(4)	Article 2g(4)
Article 48(5)	Article 2g(5)
Article 48(6)	Article 2g(6)
Article 48(7)	Article 2g(7)
Article 48(8)	Article 2g(8)
Article 48(9)	Article 2g(9)
Article 48(10)	Article 2g(10)
Article 48(11)	Article 2g(10)
Article 48(12)	Article 2zg(3)(a) to (i)
Article 49(1)	Article 2h(1)
Article 49(2)	Article 2h(2)
Article 49(3)	Article 2zg(3)(j)
Article 49(4)	Article 2zg(3)(k)
Article 51(1)	Article 2i(1)
Article 51(2)	Article 2i(2)
Article 51(3)	Article 2i(3)
Article 51(4)	Article 2i(4)
Article 51(5)	Article 2i(5)
Article 51(6)	Article 2zg(3), points (l) to (n)

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Article 51a(1)	Article 2j(1)
Article 51a(2)	Article 2j(2)
Article 51a(3)	Article 2j(3)
Article 51a(4)	Article 2j(4)
Article 51a(5)	Article 2j(5)
Article 51a(6)	Article 2j(6)
Article 51a(7)	Article 2zg(2)(a)
Article 52(1)	Article 2k(1)
Article 52(2)	Article 2k(2), Article 2zg(3)(o)
Article 52(3)	Article 2zg(4)(a)
Article 52(4)	Article 2zg(2)(b)
Article 53(1)	Article 2l(1)
Article 53(2)	Article 2l(2)
Article 53(3)	Article 2l(3)
Article 53(4)	Article 2l(4)
Article 53(5)	Article 2l(5)
Article 53(6)	Article 2o(1)(a)
Article 53(7)	Article 2l(6)
Article 54(1)	Article 2n(1)
Article 54(2)	Article 2n(2)
Article 54(3)	Article 2n(3)
Article 54(4)	Article 2zg(2)(c)
Article 55	---
Article 56	Article 2zf
Article 57(8)	Article 34a(1)
Article 57(9)	Article 34a(2)
Article 57(10)	Article 34a(3)
Article 58(1)	Article 34b(1)
Article 58(4)	Article 34b(2)
Article 58(5)	Article 34b(3)
Article 58(6)	Article 34b(4)
Article 58(7)	Article 34b(5)

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ANNEX II

Annex IV of Regulation (EU) No 648/2012 is amended as follows:

(a) the title is replaced by the following:

‘List of the coefficients linked to aggravating and mitigating factors for the application of Article 25j(3) and Article 22c(3)’;

(b) the introductory wording is replaced by the following:

‘The following coefficients shall be applicable, cumulatively, to the basic amounts referred to in Article 25j(2) and in Article 22c(3):’.

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ANNEX III

'ANNEX V

List of infringements referred to in Article 22c(3)

I. Infringements relating to access requirements:

(a) a significant CCP infringes Article 7(1) by not ensuring a trading venue's right to non-discriminatory treatment;

(b) a significant CCP infringes Articles 7(2) and 7(3) by not acceding or refusing access to a trading venue within three months of the request, or not providing the trading venue with the full reasons for such refusal.

II. Infringements relating to reporting requirements:

(a) a significant CCP infringes Article 7e(1) by not reporting ESMA on a monthly basis, via the central database established pursuant to Article 17c at least the information mentioned in points (a) to (h) of the same paragraph;

(b) a significant CCP infringes Article 9(1) by not ensuring that the details of any derivative contract they have concluded and of any modification or termination of the contract are reported in accordance with this Article to a trade repository registered in accordance with Article 55 or recognised in accordance with Article 77; and by not putting in place appropriate procedures and arrangements to ensure the quality of the data they report;

(c) a significant CCP infringes Article 9(1e) by not ensuring that the details of derivatives contracts to be reported are reported correctly and without duplication, including where the reporting obligation has been delegated.

III. Infringements relating to capital requirements:

(a) a significant CCP infringes Article 16(1) by not having a permanent and available initial capital of at least EUR 7.5 million;

(d) a significant CCP infringes Article 16(2) by not having capital, including retained earnings and reserves, which is proportionate to the risk stemming from its activities and at all times sufficient to ensure an orderly winding-down or restructuring of that activities over an appropriate time span and an adequate protection of the CCP against credit, counterparty, market, operational, legal and business risks which are not already covered by specific financial resources as referred to in Articles 41 to 44.

IV. Infringements relating to requirements to obtain an authorisation or a validation;

(a) a significant CCP infringes Article 15 by not submitting an application for an extension of its authorisation to additional clearing services or activities, before extending its business to additional services or activities.

V. Infringements relating to organisational requirements or conflicts of interest:

(a) a significant CCP infringes Article 26(1) by not having robust governance arrangements which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks to which it is or might be exposed and adequate internal control mechanisms, including sound administrative and accounting procedures or by becoming a clearing member, a client, or establishing indirect clearing arrangements with a clearing member with the aim to undertake clearing activities at another CCP, unless such clearing activities are undertaken under an interoperability arrangement under Title V or where conducting its investment policies under Article 47;

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(b) a significant CCP infringes Article 26(2) by not adopting policies and procedures which are sufficiently effective to ensure compliance including that of its managers and employees, with this Regulation;

(c) a significant CCP infringes Article 26(3) by not maintaining or operating an organisational structure that ensures continuity and orderly functioning in the performance of its services and activities or by not employing appropriate and proportionate systems, resources or procedures including ICT systems managed in accordance with Regulation (EU) 2022/2554;

(d) a significant CCP infringes Article 26(4) by not maintaining a clear separation between the reporting lines for risk management and those for other operations of the CCP;

(e) a significant CCP infringes Article 26(5) by not adopting, implementing or maintaining a remuneration policy which promotes sound and effective risk management and which does not create incentives to relax risk standards;

(f) a significant CCP infringes Article 26(7) by not making its governance arrangements, the rules governing the CCP, or its admission criteria for clearing membership available publicly free of charge;

(g) a significant CCP infringes Article 26(8) by not being subject to frequent and independent audits or by not communicating the results of those audits to the board or by not making those results available to ESMA;

(h) a significant CCP infringes Article 27(1) or Article 27(2), second subparagraph, by not ensuring that its senior management and the members of the board are of sufficiently good repute and experience to ensure the sound and prudent management of the CCP;

(i) a significant CCP infringes Article 27(2) by not ensuring that at least one third, but no less than two, of the members of that board are independent or by not inviting the representatives of the clients of clearing members to board meetings for matters relevant to Articles 38 and 39 or by linking the compensation of the independent and other non-executive members of the board to the business performance of the CCP;

(j) a significant CCP infringes Article 27(3) by not clearly determining the roles and responsibilities of the board or by not making the minutes of the board meeting available to ESMA or the auditors;

(k) a significant CCP infringes Article 28(1) by not establishing a risk committee or by not composing that risk committee of representatives of its clearing members, independent members of the board and representatives of its clients, by composing the risk committee in a way that one of those groups of representatives has a majority in the risk committee, or by not duly informing ESMA of the activities and decisions of the risk committee where ESMA has requested to be duly informed;

(l) a significant CCP infringes Article 28(2) by not clearly determining the mandate, the governance arrangements to ensure its independence, the operational procedures, the admission criteria or the election mechanism of risk committee members or by not making those governance arrangements publicly available or by not determining that the risk committee is chaired by an independent member of the board and reports directly to the board and holds regular meetings;

(m) a significant CCP infringes Article 28(3) by not allowing the risk committee to advise the board on any arrangements that may impact the risk management of the CCP or by not making reasonable efforts to consult the risk committee on developments impacting the risk management of the CCP in emergency situations;

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(n) a significant CCP infringes Article 28(5) by not promptly informing ESMA of any decision in which the board decides not to follow the advice of the risk committee;

(o) a significant CCP infringes Article 29(1) by not maintaining all the records on the services and activity provided by that CCP for a period of at least 10 years, which are required to enable ESMA to monitor the CCP's compliance with this Regulation;

(p) a significant CCP infringes Article 29(2) by not maintaining, for a period of at least 10 years following the termination of a contract, all information on all contracts it has processed in a way that enables the identification of the original terms of a transaction before clearing by that CCP;

(q) a significant CCP infringes Article 29(3) by not making the records and information referred to in paragraphs 1 and 2 of Article 29, or all information on the positions of cleared contracts, irrespective of the venue where the transactions were executed, available upon request to ESMA and the relevant members of the ESCB;

(r) a significant CCP infringes Article 30(1) by not, or by falsely or by incompletely, informing ESMA of the identities of its shareholders or members, whether direct or indirect, natural or legal, persons that have qualifying holdings or of the amounts of those holdings;

(s) a significant CCP infringes Article 30(4) by allowing the persons referred to in Article 30(1) exercise an influence which is likely to be prejudicial to the sound and prudent management of the CCP;

(t) a significant CCP infringes Article 31(1) by not, or by falsely or by incompletely, notifying ESMA of any change to its management or not providing ESMA with all information necessary to assess compliance with Article 27(1) or Article 27(2), second subparagraph;

(u) a significant CCP infringes Article 33(1) by not maintaining or operating effective written organisational and administrative arrangements to identify or manage any potential conflict of interest between itself, including its managers, employees or any person with direct or indirect control or close links, and its clearing members or their clients known to the CCP or by not maintaining or implementing adequate procedures aiming at resolving possible conflicts of interest;

(v) a significant CCP infringes Article 33(2) by not clearly disclosing the general nature or sources of conflicts of interest, before accepting new transactions from the clearing member concerned, to the clearing member or to a concerned client of that clearing member who is known to the CCP where the organisational or administrative arrangements of that CCP to manage a conflict of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interest of a clearing member or client are prevented;

(w) a significant CCP infringes Article 33(3) by not taking into account in its written arrangements any circumstances, of which it is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other undertakings with which it has a parent undertaking or a subsidiary relationship;

(x) a significant CCP infringes Article 33(5) by not taking all reasonable steps to prevent any misuse of the information held in its systems or preventing the use of that information for other business activities, or by a natural person who has a close link to a CCP or a legal person that has a parent undertaking or a subsidiary relationship with the CCP using confidential information recorded in that CCP for any commercial purposes without the prior consent of the client to whom such confidential information belongs;

(y) a significant CCP infringes Article 36(1) by not acting fairly and professionally in accordance with the best interests of its clearing members and their clients;

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(z) a significant CCP infringes Article 36(2) by not having accessible, transparent and fair rules for the prompt handling of complaints;

(aa) a significant CCP infringes Article 37(1) or (2) by using, on an ongoing basis, discriminatory, opaque or subjective admission criteria, or by otherwise failing to ensure fair and open access to that CCP on an ongoing basis or by failing to ensure on an ongoing basis that its clearing members have sufficient financial resources and operational capacity to meet the obligations arising from the participation in that CCP, or by not having admission criteria that ensure that CCPs or clearing houses cannot be clearing members, directly or indirectly, of the CCP, or by failing to conduct a comprehensive review of compliance by its clearing members on an annual basis;

(ab) a significant CCP infringes Article 37(1a) by accepting non-financial counterparties as clearing members where such counterparties have not demonstrated how they intend to fulfil the margin requirements and default fund contributions, or by failing to review the arrangements established to monitor that the condition for such non-financial counterparties to act as clearing members is met;

(ac) a significant CCP infringes Article 37(4) by failing to have objective and transparent procedures for the suspension and the orderly exit of clearing members that no longer meet the criteria referred to in Article 37(1);

(ad) a significant CCP infringes Article 37(5) by denying access to a clearing member meeting the criteria referred to in Article 37(1) where such denial of access is not duly justified in writing and based on a comprehensive risk analysis;

(ae) a significant CCP infringes Article 38(1) by not allowing the clients of its clearing members separate access to the specific services provided;

(af) a significant CCP infringes Article 39(7) by not offering the different levels of segregation referred to in that paragraph on reasonable commercial terms.

VI. Infringements relating to operational requirements:

(a) a significant CCP infringes Article 34(1) by not establishing, implementing or maintaining an adequate business continuity policy and response and recovery plan set up in accordance with Regulation (EU) 2022/2554, aiming to ensure the preservation of its functions, the timely recovery of operations and the fulfilment of the CCP's obligations, which at least allows for the recovery of all transactions at the time of disruption to allow the CCP to continue to operate with certainty and to complete settlement on the scheduled date;

(b) a significant CCP infringes Article 34(2) by not establishing, implementing or maintaining an adequate procedure aimed at ensuring the timely and orderly settlement or transfer of the assets and positions of clients and clearing members in the event of withdrawal of authorisation pursuant to a decision under Article 20;

(c) a significant CCP infringes Article 35(1), second subparagraph, by outsourcing major activities linked to the risk management of that CCP without ESMA's approval;

(d) a significant CCP infringes Article 39(1) by not keeping separate records and accounts that enable it, at any time and without delay, to distinguish in accounts with the CCP the assets and positions held for the account of one clearing member from the assets and positions held for the account of any other clearing member and from its own assets;

(e) a significant CCP infringes Article 39(2) by not offering to keep and not keeping where so requested separate records and accounts enabling each clearing member to distinguish in

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accounts with the CCP the assets and positions of that clearing member from those held for the account of its clients;

(f) a significant CCP infringes Article 39(3) by not offering to keep and not keeping where so requested separate records and accounts enabling each clearing member to distinguish in accounts with the CCP the assets and positions held for the account of a client from those held for the account of other clients, or by not offering its clearing members the possibility to open more accounts in their own name for the account of their clients where so requested;

(g) a significant CCP infringes Article 40 by not measuring and assessing its liquidity and credit exposures to each clearing member and, where relevant, to another CCP with which it has concluded an interoperability arrangement on a near to real-time basis or by not having access to the relevant pricing sources to effectively measure its exposures on a reasonable cost basis;

(h) a significant CCP infringes Article 41(1) by not imposing, calling or collecting margins to limit its credit exposures from its clearing members or, where relevant, from CCPs with which it has concluded an interoperability arrangement, or by imposing, calling or collecting margins which are not sufficient to cover potential exposures that the CCP estimates to occur until the liquidation of the relevant positions or to cover losses that result at least 99 % of the exposures movements over an appropriate time horizon or sufficient to ensure that the CCP fully collateralises its exposures with all its clearing members and, where relevant, with all CCPs with which it has concluded an interoperability arrangement, at least on a daily basis, or, by failing to continuously monitor and revise the level of margins to reflect the current market conditions taking into account any potentially procyclical effects;

(i) a significant CCP infringes Article 41(2) by failing to adopt models and parameters in setting its margin requirements that capture the risk characteristics of the products cleared taking into account the interval between margin collections, market liquidity and the possibility of changes over the duration of the transaction;

(j) a significant CCP infringes Article 41(3) by not calling and collecting margins on an intraday basis, at least when predefined thresholds are exceeded or by holding intraday variation margin payments after it has collected all such payments due, instead of passing them on, where possible;

(k) a significant CCP infringes Article 42(3) by not maintaining a default fund which at least enables it to withstand, under extreme but plausible market conditions, the default of the clearing member to which it has the largest exposures or of the second and third largest clearing members if the sum of their exposures are larger, or by developing scenarios that do not include the most volatile periods that have been experienced by the markets for which the CCP provides its services and a range of potential future scenarios, which take into account sudden sales of financial resources and rapid reductions in market liquidity;

(l) a significant CCP infringes Article 43(2) where its default fund referred to in Article 42 and its other financial resources referred to in Article 43(1) do not enable it to withstand the default of the two clearing members to which it has the largest exposures under extreme but plausible market conditions;

(m) a significant CCP infringes Article 44(1) by not having access at all times to adequate liquidity to perform its services and activities or by not measuring on a daily basis its potential liquidity needs;

(n) a significant CCP infringes Article 45(1), (2) and (3) by not using the margins posted by a defaulting clearing member prior to other financial resources in covering losses;

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(o) a significant CCP infringes Article 45(4) by not using dedicated own resources before using the default fund contributions of non-defaulting clearing members;

(p) a significant CCP infringes Article 45a(1) by taking any of the actions listed under points (a), (b) and (c) of that paragraph where ESMA has required the CCP to refrain from taking any such actions for a period specified by ESMA;

(q) a significant CCP infringes Article 46(1) by accepting anything other than highly liquid collateral with minimal credit and market risk to cover its initial and ongoing exposure to its clearing members where other collateral is not allowed under the delegated act adopted by the Commission under Article 46(3);

(r) a significant CCP infringes Article 46(1) by accepting public guarantees, public bank guarantees or commercial bank guarantees, where such guarantees are not unconditionally available upon request within the liquidation period referred to in Article 41, or by not setting, in its operating rules, the minimum acceptable level of collateralisation for the guarantees it accepts, or by accepting public guarantees, public bank guarantees or commercial bank guarantees to cover exposures other than its initial and ongoing exposure to its clearing members that are non-financial counterparties or to clients of clearing members, provided that those clients of clearing members are non-financial counterparties or by, where public guarantees, public bank guarantees or commercial bank guarantees are provided to the CCP, not complying with the requirements set out under the third subparagraph, points (a) to (e), of that paragraph;

(s) a significant CCP infringes Article 47(1) by investing its financial resources other than in cash or highly liquid financial instruments with minimum market and credit risk and capable of being liquidated rapidly with minimal adverse price effect;

(t) a significant CCP infringes Article 47(3) by not depositing financial instruments posted as margins or as default fund contributions with operators of securities settlement systems that ensure the full protection of those financial instruments where those are available or by not using other highly secure arrangements with authorised financial institutions;

(u) a significant CCP infringes Article 47(4) by performing cash deposits other than through highly secure arrangements with authorised financial institutions or through the use of standing deposit facilities of central banks or other comparable means provided by central banks;

(v) a significant CCP infringes Article 47(5) by depositing assets with a third party without ensuring that the assets belonging to the clearing members are identifiable separately from the assets belonging to the CCP and from assets belonging to that third party by means of differently titled accounts on the books of the third party or any other equivalent measures that achieve the same level of protection or by not having prompt access to the financial instruments when required;

(w) a significant CCP infringes Article 47(6) by investing its capital or the sums arising from the requirements laid down in Articles 41 to 44 in its own securities or those of its parent undertaking or its subsidiary;

(x) a significant CCP infringes Article 48(1) by not having detailed procedures in place to be followed where a clearing member does not comply with the participation requirements laid down in Article 37 within the time limit and in accordance with the procedures established by the CCP, or by not setting out in detail the procedures to be followed in the event the default of a clearing member is not declared by the CCP, or by not reviewing those procedures annually;

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(y) a significant CCP infringes Article 48(2) by failing to take prompt action to contain losses and liquidity pressures resulting from clearing member defaults and to ensure that the closing out of any clearing member's positions does not disrupt its operations or expose the non-defaulting clearing members to losses they cannot anticipate or control;

(z) a significant CCP infringes Article 48(3) by failing to promptly inform ESMA before the default procedure is declared or triggered;

(aa) a significant CCP infringes Article 48(4) by not verifying that its default procedures are enforceable and not taking all reasonable steps to ensure that it has the legal powers to liquidate the proprietary positions of the defaulting clearing member and to transfer or liquidate the clients' positions of the defaulting clearing member;

(ab) a significant CCP infringes Article 49(1) by not regularly reviewing its models and parameters adopted to calculate its margin requirements, default fund contributions, collateral requirements or other risk control mechanisms; by not subjecting those models to rigorous and frequent stress tests to assess their resilience in extreme but plausible market conditions; by not performing back tests to assess the reliability of the methodology adopted; by failing to obtain independent validation; by failing to inform ESMA of the results of the tests performed; or by failing to obtain ESMA's validation before adopting any significant change to the models and parameters where ESMA did not allow for a provisional adoption of that change prior to its validation;

(ac) a significant CCP infringes Article 49(2) by not regularly testing the key aspects of its default procedures or by failing to take all reasonable steps to ensure that all clearing members understand them and have appropriate arrangements in place to respond to a default event;

(ad) a significant CCP infringes Article 50(1) by not using, where practical and available, central bank money to settle its transactions or by not taking steps to strictly limit cash settlement risks where central bank money is not used;

(ae) a Tier 2 CCP infringes Article 50(3) by not eliminating principal risks through the use of delivery-versus-payment mechanisms to the extent possible, where that CCP has an obligation to make or receive deliveries of financial instruments;

(af) a significant CCP infringes Article 50a or Article 50b by not calculating KCCP as specified in those Articles or by not following the rules for the calculation of KCCP set out in Articles 50a(2), 50b and 50d;

(ag) a significant CCP infringes Article 50a(3) by calculating KCCP less than quarterly or less frequently than required by ESMA in accordance with Article 50a(3);

(ah) a significant CCP infringes Article 51(2) by not having non-discriminatory access both to the data that it needs for the performance of its functions from a trading venue to the extent that the CCP complies with the operational and technical requirements established by that trading venue and to the relevant settlement system;

(ai) a significant CCP infringes Article 52(1) by entering into an interoperability arrangement without fulfilling any of the requirements set out in points (a) to (d) of that paragraph;

(aj) a significant CCP infringes Article 53(1) by not distinguishing in accounts the assets and positions held for the account of another CCP with whom it has entered into an interoperability arrangement;

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(ak) a significant CCP CP infringes Article 54(1) by entering into an interoperability arrangement, or making a material change to an approved interoperability arrangement under Title V, without the prior approval of ESMA.

VII. Infringements relating to transparency and the availability of information:

(a) a significant CCP infringes Article 38(1) by not publicly disclosing the prices and fees of each service provided separately including discounts and rebates and the conditions to benefit from those reductions;

(b) a significant CCP infringes Article 38(1) by not disclosing the information on costs and revenues of its services to ESMA;

(c) a significant CCP infringes Article 38(2) by not disclosing to its clearing members and their clients the risks associated with the services provided;

(d) a significant CCP infringes Article 38(3) by not disclosing to its clearing members or ESMA the price information used to calculate its end-of-day exposures to its clearing members or by not publicly disclosing the volume of cleared transactions for each instrument cleared by the CCP on an aggregated basis;

(e) a significant CCP infringes Article 38(4) by not publicly disclosing the operational and technical requirements relating to the communication protocols covering content and message formats it uses to interact with third parties including the operational and technical requirements referred to in Article 7;

(f) a significant CCP infringes Article 38(5) by not publicly disclosing any breaches by clearing members of the criteria referred to in Article 37(1) or the requirements laid down in Article 38(1) except where ESMA considered that such a disclosure would constitute a threat to financial stability or to market confidence or would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved;

(g) a significant CCP infringes Article 38(6) by not providing its clearing members with a simulation tool allowing them to determine the amount of additional initial margin, at portfolio level, that the CCP may require upon the clearing of a new transaction, including simulation of the margin requirements that they might be subject to under different scenarios, or by not making that tool accessible on a secured access basis;

(h) a significant CCP infringes Article 38(7) by not providing its clearing members with information on the initial margin models it uses, as detailed in points (a), (b) and (c) of that paragraph, in a clear and transparent manner;

(g) a significant CCP infringes Article 38(8) by not providing, or providing with a significant delay, in response to a request by a clearing member, the information requested to allow that clearing member to comply with the first subparagraph of that paragraph, where such information has not already been provided;

(h) a significant CCP infringes Article 39(7) by not publicly disclosing the levels of protection and the costs associated with the different levels of segregation that it provides;

(i) a significant CCP infringes Article 49(3) by not publicly disclosing key aspects on its risk management model or assumptions adopted to perform the stress test referred to in Article 49(1);

(j) a significant CCP infringes Article 50(2) by not clearly stating its obligations with respect to deliveries of financial instruments, including whether it has an obligation to make or receive delivery of a financial instrument or whether it indemnifies participants for losses incurred in the delivery process;

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(k) a significant CCP infringes Article 50c(1) by not reporting the information referred in points (a) to (e) of Article 50c(1) to those of its clearing members which are institutions or to their competent authorities;

(l) a significant CCP infringes Article 50c(2) by notifying those of its clearing members which are institutions less than quarterly or less frequently than required by ESMA in accordance with Article 50c(2).

VIII. Infringements relating to obstacles to the supervisory activities:

(a) significant CCP infringes Article 22c and Regulation (EU) No 1095/2010 by failing to provide information in response to a decision requiring information pursuant to the same paragraph or by providing incorrect or misleading information in response to a simple request for information or a decision by ESMA in accordance with the same paragraph and the provisions of Regulation (EU) No 1095/2010;

(b) a significant CCP or its representatives provide incorrect or misleading answers to questions asked pursuant the provisions of Regulation (EU) No 1095/2010;

(c) a significant CCP infringes the provisions of Regulation (EU) No1095/2010 by not complying with ESMA's request for records of telephone or data traffic;

(d) a significant CCP does not comply in due time with a supervisory measure required by a decision adopted by ESMA pursuant to the provisions of Regulation (EU) No 1095/2010;

(e) a significant CCP does not submit to an on-site inspection required by an inspection decision adopted by ESMA pursuant to the provisions of Regulation (EU) No 1095/2010.'.

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ANNEX IV

'ANNEX

LIST OF INFRINGEMENTS REFERRED TO IN ARTICLES 10(a) TO 10(e)

Infringements relating to settlement schemes:

(a) a DLT account keeper infringes Article 10b(2) by not complying with the requirements set out in Article 7(1), first subparagraph, Article 7(2), (4) and (5) and Article 7(6), first and second subparagraphs;

(b) a DLT account keeper that provides CSD core services jointly with a DLT notary, a DLT SS, a TSS or a CSD operating solely under Regulation (EU) No 909/2014, infringes Article 10b(8) by not specifying its role and responsibilities in providing those services in a legally binding written agreement or by not notifying that written agreement to its respective competent authorities, together with clear information on which entity provides CSD core services for which DLT financial instruments, or categories of DLT financial instruments;

(c) a DLT account keeper infringes Article 10c(1) by not settling transactions only within a settlement scheme authorised under Article 10d;

(d) a DLT account keeper infringes Article 10c(1) by not settling transactions only with other DLT account keepers that are part of the same settlement scheme;

(e) a DLT account keeper infringes Article 10c(2) by not ensuring that all transactions are settled only with central bank deposits held with the central bank of issue of the relevant currency, that all transactions in DLT financial instruments that involve a cash leg are settled on a DVP basis, that, at least on the day of the settlement date, the settlement scheme provides adequate settlement finality of transfers of cash and DLT financial instruments, and that the settlement scheme effectively manages its legal, business and operational risks;

(f) a DLT account keeper infringes Article 10c(3) by not ensuring that the settlement scheme they are part of, and each DLT account keeper participating in the settlement scheme, complies with the requirements under point (a) to (c) of that Article;

(g) a DLT account keeper infringes Article 10c(4) by not identifying sources of operational risk to the functioning of the settlement scheme and minimising their impact;

(h) a DLT account keeper infringes Article 10c(5) by not establishing, implementing and maintaining an adequate business continuity policy and disaster recovery plan to ensure the preservation of settlement activities within the settlement scheme and the timely recovery of its operations;

(i) a DLT account keeper infringes Article 10c(5) by not identifying, monitoring and managing the risks that service and utility providers might pose to its operations;

(j) a DLT account keeper providing banking services to its clients, related to the settlement activity within the settlement scheme, infringes Article 10c(6) by not complying with the specific prudential requirements for the credit risks set out in points (a) to (f) of such Article related to those services;

(k) a DLT account keeper providing banking services to their clients, related to the settlement activity within the settlement scheme, infringes Article 10c(7) by not complying with the specific prudential requirements for the liquidity risks set out in points (a) to (e) of such Article related to those services;

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(l) a DLT account keeper participating in a settlement scheme infringes Article 10c(8) by not entering into a legally binding written agreement clearly specifying the roles and responsibilities of the DLT account keepers within the settlement scheme;

(m) a DLT account keeper infringes Article 10c(8) by being a member of more than two settlement schemes or by participating to a settlement scheme not comprised of at least two DLT account keepers;

(n) a DLT account keeper infringes Article 10c(9) by not activating the transition strategy referred to in Article 10(e) or by not notifying ESMA of the activation of its transition strategy and of the timescale for the transition, where the aggregate market value has reached the amount specified under Article 3(3);

(o) a DLT account keeper infringes Article 10c(9) by not activating the transition strategy where the DLT financial instruments are transferable securities issued by SMEs and when the market value of those transferable securities reaches EUR 45 billion;

(p) a DLT account keeper infringes Article 10c (10) by not reporting to ESMA on a monthly basis the information listed in points (a) to (e) of such Article or by not reporting sufficiently detailed information to verify compliance of the settlement scheme and participating DLT account keepers with such Article;

(r) a DLT account keeper infringes Article 10d (2) by not submitting to ESMA the information se out in points (a) to(g) of such Article;

(s) a DLT account keeper infringes Article 10d(2) by not notifying ESMA without undue delay of any material changes to the information previously notified about the settlement scheme;

(t) a DLT account keeper that joins the settlement scheme after the start of its operations infringes Article 10d (2) by not submitting to ESMA information about the new composition of the settlement scheme at least one month before they begin settling DLT financial instruments;

(u) a DLT account keeper infringes Article 10e(2) by not establishing and making publicly available a clear and detailed transition strategy for reducing the activity of a particular settlement scheme where required under points (a) to (c) or by not ensuring the transition strategy fulfils the requirements listed in Article 10(e) (2) and (3).'.

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ANNEX V

'ANNEX VII

LIST OF INFRINGEMENTS REFERRED TO IN TITLES V AND VI FOR CRYPTO-ASSET SERVICE PROVIDERS

1. A person infringes Article 59(1) by providing crypto-asset services without been authorised in accordance with Article 63, or without being allowed to provide crypto-asset services pursuant to Article 60.

2. An entity allowed to provide crypto-asset services pursuant to Article 60(2) to (6) infringes Article 60(6a) by not submitting yearly to ESMA information on their total annual turnover, in particular, which percentage of their total annual turnover according to the last available financial statements approved by their management body, is generated from the provision of crypto-asset services.

3. The crypto-asset service provider infringes Article 65(1) by not submitting the information listed in paragraph 1, points (a) to (d) of that Article.

4. The crypto-asset service provider infringes Article 66(1) by not acting honestly and professionally in accordance with the best interests of its clients and prospective clients.

5. The crypto-asset service provider infringes Article 66(2) by not communicating with its clients in a fair, clear and not misleading manner.

6. The crypto-asset service provider infringes Article 66(3) by not warning clients of the risks associated with transactions in crypto-assets.

7. The crypto-asset service provider infringes Article 66(4) by not making its policies on pricing, costs and fees publicly available.

8. The crypto-asset service provider infringes Article 66(5) by not making publicly available, in a prominent place on its website, information related to the principal adverse impacts on the climate and other environment-related adverse impacts of the consensus mechanism used to issue each crypto-asset in relation to which they provide services.

9. The crypto-asset service provider infringes Article 67(1) by not having in place prudential safeguards equal to amounts of at least the highest of that set in point (a) or (b) of that paragraph.

10. The crypto-asset service provider infringes Article 67(4) where its own funds do not consist of Common Equity Tier 1 items and instruments referred to in Articles 26 to 30 of Regulation (EU) No 575/2013 after the deductions in full, pursuant to Article 36 of that Regulation, without the application of threshold exemptions pursuant to Articles 46 and 48 of that Regulation, or it does not have an insurance policy covering the territories of the Union where crypto-asset services are provided or a comparable guarantee and does not comply with the conditions of paragraphs 5 or 6 of that Article.

11. The crypto-asset service provider infringes Article 68(1) by having members of its management body who are not of sufficiently good repute or do not possess the appropriate knowledge, skills and experience, both individually and collectively, to

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perform their duties or do not demonstrate that they are capable of committing sufficient time to effectively perform their duties.

12. The crypto-asset service provider infringes Article 68(2) by having shareholders or members, whether direct or indirect, with qualifying holdings who are not of sufficiently good repute.

13. The crypto-asset service provider infringes Article 68(4) by not adopting policies and procedures that are sufficiently effective to ensure compliance with this Regulation.

14. The crypto-asset service provider infringes Article 68(5) by not employing personnel with the knowledge, skills and expertise necessary for the discharge of their responsibilities allocated to them.

15. The members of the management body of a crypto-asset service provider infringe Article 68(6) by not assessing and periodically reviewing the effectiveness of the policy arrangements and procedures put in place to comply with Chapters 2 and 3 of Title V and take appropriate measures to address any deficiencies in that respect.

16. The crypto-asset service provider infringes Article 68(7) by not taking all reasonable steps to ensure continuity and regularity in the performance of their crypto-asset services and employing appropriate and proportionate resources and procedures, including resilient and secure ICT systems as required by Regulation (EU) 2022/2554, or by not establishing a business continuity policy which includes ICT business continuity plans as well as ICT response and recovery plans set up pursuant to Articles 11 and 12 of Regulation (EU) 2022/2554 that aim to ensure, in the case of an interruption to their ICT systems and procedures, the preservation of essential data and functions and the maintenance of crypto-asset services or, where that is not possible, the timely recovery of such data and functions and the timely resumption of crypto-asset services.

17. The crypto-asset service provider infringes Article 68(8) by not having in place mechanisms, systems and procedures as required by Regulation (EU) 2022/2554, as well as effective procedures and arrangements for risk assessment, to comply with the provisions of national law transposing [Directive (EU) 2015/849] and for not monitoring and, on a regular basis, evaluating the adequacy and effectiveness of those mechanisms, systems and procedures.

18. The crypto-asset service provider infringes Article 68(9) by not arranging for records to be kept of all crypto-asset services, activities, orders, and transactions undertaken by them.

19. The crypto-asset service provider infringes Article 69 by not notifying without delay of any changes to their management body, prior to the exercise of activities by any new members.

20. The crypto-asset service provider infringes Article 70(1) by not safeguarding the ownership rights of clients, especially in the event of the crypto-asset service provider's insolvency, and by not preventing the use of clients' crypto-assets for their own account.

21. The crypto-asset service provider infringes Article 70(2) by not having adequate arrangements in place to safeguard the ownership rights of clients and prevent the use of clients' funds for their own account, where their business model requires holding clients' funds other than e-money tokens.

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22. The crypto-asset service provider infringes Article 70(3) by not placing clients' funds with a credit institution or a central bank by the end of the business day following the day on which clients' funds other than e-money tokens were received, and that the funds are not held in an account separately identifiable from any accounts used to hold funds belonging to the crypto-asset service provider.

23. The crypto-asset service provider infringes Article 70(4) by providing payment services but not informing their clients of the nature and terms and conditions of those services, including references to the applicable national law and to the rights of clients, or whether those services are provided by them directly or by a third party.

24. The crypto-asset service provider infringes Article 71(1) by not establishing and maintaining effective and transparent procedures for the prompt, fair and consistent handling of complaints received from clients.

25. The crypto-asset service provider infringes Article 71(2) by not enabling the clients to file complaints free of charge.

26. The crypto-asset service provider infringes Article 71(3) by not informing clients of the possibility of filing a complaint and by not making available to clients a template for filing complaints and any measures taken in response to those complaints.

27. The crypto-asset service provider infringes Article 71(4) by not investigating all complaints in a timely and fair manner or by not communicating the outcome of such investigation to the clients within a reasonable period.

28. The crypto-asset service provider infringes Article 72(1) by not implementing and maintaining effective policies and procedures to identify, prevent, manage and disclose conflicts of interest between the crypto-asset service provide itself and its shareholders or members, itself and any person directly or indirectly linked to the crypto-asset service provider or its shareholders or members by control, itself and the members of its management body, itself and its employees, itself and its clients, or two or more clients whose mutual interests conflict.

29. The crypto-asset service provider infringes Article 72(2) by not disclosing, in a prominent place on its website, to clients and prospective clients the general nature and sources of conflicts of interest and the steps taken to mitigate those risks.

30. The crypto-asset service provider infringes Article 72(3) by not making the disclosure referred to in Article 72(2) in an electronic manner, and by not being sufficiently precise to enable each client to take an informed purchasing decision about such token.

31. The crypto-asset service provider infringes Article 72(4) by not assessing and, at least annually, reviewing its policy on conflicts of interest and is not taking all appropriate measures to address any deficiencies in that respect.

32. The crypto-asset service provider infringes Article 73(1) by not taking all reasonable steps to avoid additional operational risks that arise from outsourcing services or activities to third parties.

33. The crypto-asset service provider infringes Article 73(2) by not having a policy on outsourcing, including on contingency plans and exit strategies.

34. The crypto-asset service provider infringes Article 73(3) by not defining in a written agreement its rights and obligations and those of the third parties to which it is

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outsourcing services or activities and by not providing the right to terminate this agreement.

35. The crypto-asset service provider infringes Article 74 by not having in place a plan that is appropriate to support an orderly wind-down of its activities under applicable national law, including the continuity or recovery of any critical activities.

36. The crypto-asset service provider providing custody and administration of crypto-assets on behalf of clients infringes Article 75(1) by not having in place an agreement with its clients to specify its duties and responsibilities when providing custody and administration of crypto-assets and including in this agreement at least the elements provided in points (a) to (g) of Article 75(1).

37. The crypto-asset service provider providing custody and administration of crypto-assets on behalf of clients infringes Article 75(2) by not keeping a register of positions, opened in the name of each client and where relevant, record as soon as possible in that register any movements following instructions from its clients, evidenced by a transaction regularly registered in the client's register of positions.

38. The crypto-asset service provider providing custody and administration of crypto-assets on behalf of clients infringes Article 75(3) by not establishing a custody policy with internal rules and procedures to ensure the safekeeping or the control of the crypto-assets under its custody, or the means of access to the crypto-assets and making it available to clients at their request in an electronic format.

39. The crypto-asset service provider providing custody and administration of crypto-assets on behalf of clients infringes Article 75(5) by not providing at least every three months and at the request of the client a statement of position of the crypto-assets recorded in the name of that client, identifying the crypto-assets concerned, their balance, their value and the transfer of crypto-assets made during the period concerned.

40. The crypto-asset service provider providing custody and administration of crypto-assets on behalf of clients infringes Article 75(6) by not ensuring that necessary procedures are in place to return crypto-assets held on behalf of its clients, or the means of access, as soon as possible to those clients.

41. The crypto-asset service provider providing custody and administration of crypto-assets on behalf of clients infringes Article 75(7) first subparagraph by not segregating holdings of crypto-assets on behalf of its clients from its own holdings and is not ensuring that the means of access to crypto-assets of its clients is clearly identified as such and that, on the distributed ledger, its clients' crypto-assets are held separately from its own crypto-assets.

42. The crypto-asset service provider providing custody and administration of crypto-assets on behalf of clients infringes Article 75(7) second subparagraph by not keeping the crypto-assets held in custody legally segregated from the crypto-asset service provider's estate in the interest of the clients of the crypto-asset service provider and that the crypto-assets held in custody are operationally segregated from the crypto-asset service provider's estate.

43. The crypto-asset service provider providing custody and administration of crypto-assets on behalf of clients infringes Article 75(9) by not making use of other crypto-asset service providers that are authorised in accordance with Article 59 when making use of other crypto-asset service providers for the provision of custody and administration of crypto-assets or informing its clients thereof.

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44. The crypto-asset service provider operating a trading platform for crypto-assets infringes Article 76(1) by not laying down, maintaining and implementing clear and transparent operating rules for the trading platform for crypto-assets it operates, and for not setting in the operating rules at least the elements referred to in paragraphs (a) to (h) of that Article.

45. The crypto-asset service provider operating a trading platform for crypto-assets infringes Article 76(2) by not ensuring that before admitting a crypto-asset to trading, the crypto-asset complies with the operating rules of the trading platform and has assessed the suitability of the crypto-asset concerned.

46. The crypto-asset service provider operating a trading platform for crypto-assets infringes Article 76(4) by not drawing up the operating rules of the trading platform in an official language of the home Member State or in a language customary in the sphere of international finance.

47. The crypto-asset service provider operating a trading platform for crypto-assets infringes Article 76(5) by dealing on own account on the trading platform for crypto-assets it operates.

48. The crypto-asset service provider operating a trading platform for crypto-assets infringes Article 76(6) by engaging in matched principal trading without the consent of its client.

49. The crypto-asset service provider operating a trading platform for crypto-assets infringes Article 76(7) by not having in place effective systems, procedures and arrangements to ensure that its trading system complies with points (a) to (h) of Article 76(7).

50. The crypto-asset service provider operating a trading platform for crypto-assets infringes Article 76(8) by not informing ESMA when it identifies cases of market abuse or attempted market abuse occurring on or through its trading system.

51. The crypto-asset service provider operating a trading platform for crypto-assets infringes Article 76(9) by not making public on a continuous basis during trading hours any bid and ask prices and the depth of trading interests advertised for crypto-assets through its trading platform.

52. The crypto-asset service provider operating a trading platform for crypto-assets infringes Article 76(10) by not making public as close to real-time as it is technically possible the price, volume and time of the transactions executed in respect of crypto-assets traded on its trading platforms.

53. The crypto-asset service provider operating a trading platform for crypto-assets infringes Article 76(11) by not making available free of charge 15 minutes after publication the information published in accordance with Article 76(9) and (10).

54. The crypto-asset service provider operating a trading platform for crypto-assets infringes Article 76(12) by not initiating the final settlement of a crypto-asset transaction on the distributed ledger within 24 hours of the transaction being executed on the trading platform or, in the case of transactions settled outside the distributed ledger, by the closing of the day at the latest.

55. The crypto-asset service provider operating a trading platform for crypto-assets infringes Article 76(13) by not ensuring that its fee structures are transparent, fair and non-discriminatory and that it does not create incentives to place, modify or

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cancel orders or to execute transactions in a way that contributes to disorderly trading conditions or market abuse as referred to in Title VI.

56. The crypto-asset service provider operating a trading platform for crypto-assets infringes Article 76(14) by not maintaining resources and having back-up facilities in place.

57. The crypto-asset service provider exchanging crypto-assets for funds or other crypto-assets infringes Article 77(1) by not establishing a non-discriminatory commercial policy that indicates, in particular, the type of clients it agrees to transact with and the conditions that shall be met by such clients.

58. The crypto-asset service provider exchanging crypto-assets for funds or other crypto-assets infringes Article 77(2) by not publishing a firm price of the crypto-assets or a method for determining the price of the crypto-assets that it proposes to exchange for funds or other crypto-assets, and any applicable limit determined by it on the amount to be exchanged.

59. The crypto-asset service provider exchanging crypto-assets for funds or other crypto-assets infringes Article 77(3) by not executing client orders at the prices displayed at the time when the order for exchange is final and by not informing its clients of the conditions for their order to be deemed final.

60. The crypto-asset service provider exchanging crypto-assets for funds or other crypto-assets infringes Article 77(4) by not publishing information about the transactions it concludes.

61. The crypto-asset service provider executing orders for crypto-assets on behalf of clients infringes Article 78(1) by not taking all necessary steps to obtain, while executing orders, the best possible result for its clients.

62. The crypto-asset service provider executing orders for crypto-assets on behalf of clients infringes Article 78(2) by not establishing and implementing effective execution arrangements to allow it to comply with Article 78(1) and provide for the prompt, fair and expeditious execution of client orders and prevent the misuse by its employees of any information relating to client orders.

63. The crypto-asset service provider executing orders for crypto-assets on behalf of clients infringes Article 78(3) by not providing appropriate and clear information to their clients on their order execution policy referred to in Article 78(2) and explaining clearly, in sufficient detail and in a way that can be easily understood by clients, how its client orders are to be executed and obtaining prior consent form each client regarding the order execution policy.

64. The crypto-asset service provider executing orders for crypto-assets on behalf of clients infringes Article 78(4) by not being able to demonstrate to its clients, at their request, that is has executed their orders in accordance with its order execution policy and being able to demonstrate to ESMA, at the latter's request, its compliance with Article 78.

65. The crypto-asset service provider executing orders for crypto-assets on behalf of clients infringes Article 78(5) by not informing its clients about the possibility that client orders might be executed outside a trading platform, where the execution policy provides for this possibility, and obtaining the prior express consent of its clients before proceeding to execute their orders outside a trading platform.

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66. The crypto-asset service provider executing orders for crypto-assets on behalf of clients infringes Article 78(6) by not monitoring the effectiveness of its order execution arrangements and order execution policy on a regular basis and notifying its clients with whom it has an ongoing client relationship of any material changes to its order execution arrangements or order execution policy.

67. The crypto-asset service provider placing crypto-assets infringes Article 79(1) by not communicating to the offeror, to the person seeking admission to trading, or to any third party acting on their behalf, before entering into an agreement with them the type of placement under consideration, an indication of the amount of transaction fees associated with the proposed placing, the likely timing, process and price and information about the targeted purchasers.

68. The crypto-asset service provider placing crypto-assets infringes Article 79(1) by not obtaining the agreement of the issuers of those crypto-assets or any third party acting on their behalf as regards the information listed in the first subparagraph of Article 79(1).

69. The crypto-asset service provider infringes Article 79(2) by not including in its rules on conflicts of interest specific and adequate procedures in place to identify, prevent, manage and disclose any conflicts of interest arising from placing crypto-assets with its own clients, from the proposed price for placing of crypto-assets has been overestimated or underestimated, or incentives, including non-monetary incentives are paid or granted by the offeror.

70. The crypto-asset service provider receiving and transmitting orders for crypto-assets on behalf of clients infringes Article 80(1) by not establishing and implementing procedures and arrangements that provide for the prompt and proper transmission of client orders for execution on a trading platform for crypto-assets or to another crypto-asset service provider.

71. The crypto-asset service provider receiving and transmitting orders for crypto-assets on behalf of clients infringes Article 80(2) by receiving remuneration, discount or non-monetary benefits in return for routing orders received from clients to a particular trading platform for crypto-assets or to another crypto-asset service provider.

72. The crypto-asset service provider providing advice on crypto-assets or providing portfolio management of crypto-assets infringes Article 81(1) by not assessing whether the crypto-asset services or crypto-assets are suitable for its clients or prospective clients.

73. The crypto-asset service provider providing advice on crypto-assets infringes Article 81(2) by not informing prospective clients in good time before providing advice on crypto-assets whether the advice is provided on an independent basis or based on a broad or on a more restricted analysis of different crypto-assets, including whether the advice is limited to crypto-assets issued or offered by entities having close links with the crypto-asset service provider or any other legal or economic relationships, such as contractual relationships, that risk impairing the independence of the advice provided.

74. The crypto-asset service provider providing portfolio management of crypto-assets infringes Article 81(3) by accepting and retaining fees, commissions or any monetary or non-monetary benefits paid or provided by an issuer, offeror, person seeking

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admission to trading, or any third party, or a person acting on behalf of a third party, in relation to the provision of portfolio management of crypto-assets to its clients.

75. The crypto-asset service provider providing advice on crypto-assets infringes Article 81(4) by not providing prospective clients with information on all costs and related charges, including the cost of advice.

76. The crypto-asset service provider providing advice on crypto-assets infringes Article 81(9) by not warning clients or prospective clients of the various elements referred to in Article 81(9) points (a) to (e).

77. The crypto-asset service provider providing advice on crypto-assets infringes Article 81(10) by not establishing, maintaining and implementing policies and procedures to enable them to collect and assess all information necessary to conduct the assessment referred to in Article 81(1) for each client.

78. The crypto-asset service provider providing transfer services for crypto-assets on behalf of clients infringes Article 82(1) by not concluding an agreement with its clients to specify its duties and its responsibilities and including at least the elements referred to in Article 82(1) points (a) to (e).

79. The crypto-asset service provider infringes Article 88(1) except where the conditions of Article 88(2) are met, by not informing the public as soon as possible of inside information as referred to in Article 87, that directly concerns an issuer whose crypto-assets they offer in a manner that enables fast access and complete, correct and timely assessment of the information by the public.

80. A natural or legal person infringes Article 89(2) by engaging or attempting to engage in insider trading or using inside information about crypto-assets to acquire, or dispose of, those crypto-assets directly or indirectly, whether for that person's own account or for the account of a third party.

81. A natural or legal person infringes Article 89(2) by recommending that another person engage in insider trading or is inducing another person to engage in insider trading.'

82. A natural or legal person in possession of inside information about crypto-assets infringes Article 89(3) by recommending or inducing another person to acquire or dispose of crypto-assets, or to cancel or amend an order concerning crypto-assets.

83. A natural or legal person infringes Article 90(1) by unlawfully disclosing inside information to any other person, except where such disclosure is made in the normal exercise of an employment, a profession or duties.

84. A natural or legal person infringes Article 91(1) by engaging or attempting to engage in market manipulation as described in Article 91(2) and 91(3).

85. The crypto-asset service provider infringes Article 92(1) by not having in place effective systems and procedures to prevent and detect market abuse.

86. The crypto-asset service provider infringes Article 92(1) by not reporting to ESMA any reasonable suspicion regarding an order or transaction, including any cancellation or modification thereof, and other aspects of the functioning of the distributed ledger technology as the consensus mechanism, where there might exist circumstances indicating that market abuse has been committed, is being committed or is likely to be committed.'.

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ANNEX VI

The Annex of Regulation (EU) No 909/2014 is amended as follows:

(a) the title is replaced by the following

'LIST OF SERVICES AND INFRINGEMENTS';

(b) the following Sections D and E are added:

'SECTION D

List of infringements referred to in Article 11b

I. Infringements relating to settlement discipline

(a) a significant CSD infringes Article 6(3) by not establishing procedures that facilitate the settlement of transactions on the intended settlement date;

(b) a significant CSD infringes Article 6(4) by not putting in place measures to encourage and incentivise the timely settlement of transactions by its participants;

(c) a significant CSD infringes Article 7(1) by not establishing a system that monitors settlement fails of transactions;

(d) a significant CSD infringes Article 7(1) by not providing regular reports on the number and details of settlement fails and any other relevant information, including the measures envisaged by the CSD and its participants to improve settlement efficiency;

(e) a significant CSD infringes Article 7(2) by not establishing procedures that facilitate the settlement of transactions in financial instruments referred to in Article 5(1) that are not settled on the intended settlement date;

(f) a significant CSD infringes Article 7(2) by not establishing a penalty mechanism that serves as an effective deterrent to participants that cause settlement fails;

II. Infringements relating to requirements to obtain an authorisation or a validation

(a) a significant CSD infringes Article 16 by commencing its activities without obtaining a prior authorisation in accordance with such Article;

(b) a significant CSD infringes Article 16 by not complying at all times with the conditions for authorisation;

(c) a significant CSD infringes Article 17 by not complying with the procedure set out therein for the relevant applications for authorisation;

(d) a significant CSD infringes Article 19 by extending its business to additional services or activities, by outsourcing a core service, or by establishing an interoperable link without obtaining a prior authorisation in accordance with such Article;

(e) a significant CSD infringes Article 19a by outsourcing a core service to another CSD within its group without obtaining a prior authorisation in accordance with such Article;

(f) a significant CSD obtains the authorisations required under Articles 16 and 54 by making false statements or by any other unlawful means as provided for in point (b) of Article 20(1) and point (b) of Article 57(1).

III Infringements relating to reporting requirements

(a) a significant CSD infringes Article 22 by not providing all the necessary information for the purposes of the review and evaluation, including periodic information, via the central database, as specified in such Article;

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(b) a significant CSD infringes Article 22a by not preparing and submitting to ESMA appropriate plans for its recovery and orderly wind down in accordance with such Article;

IV. Infringements relating to organisational requirements, conflicts of interests, or conduct of business rules

(a) a significant CSD infringes Article 26(1) by not setting up robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate remuneration policies and internal control mechanisms, including sound administrative and accounting procedures;

(b) a significant CSD infringes Article 26(2) by providing banking-type ancillary services to other CSDs pursuant to Article 54a, without having in place clear rules and procedures addressing potential conflicts of interest and mitigating the risk of discriminatory treatment towards those other CSDs and their participants;

(c) a significant CSD infringes Article 26(3) by not maintaining and operating effective written organisational and administrative arrangements to identify and manage any potential conflicts of interest between its participants or their clients and the CSD itself and by not maintain and implementing adequate resolution procedures where possible conflicts of interest occur;

(d) a significant CSD infringes Article 26(4) by not making its governance arrangements and the rules governing its activity available to the public;

(e) a significant CSD infringes Article 26(5) by not having appropriate procedures for its employees to report internally potential infringements of this Regulation through a specific channel;

(f) a significant CSD infringes Article 26(6) by not being subject to regular and independent audits or by not communicating the results of these audits to the management body or not making them available to ESMA and, where appropriate taking into account potential conflicts of interest between the members of the user committee and such CSD, to the user committee;

(g) a significant CSD infringes Article 27(1) by not ensuring that its senior management are sufficiently good repute and experience so as to ensure the sound and prudent management of such CSD;

(h) a significant CSD infringes Article 27(2) by not ensuring that at least one third, but no less than two, of the members of its management body are independent;

(i) a significant CSD infringes Article 27(3) by linking the remuneration of the independent and other non-executive members of the management body to the business performance of such CSD;

(j) a significant CSD infringes Article 27(4) by not ensuring that its management body is composed of suitable members of sufficiently good repute with an appropriate mix of skills, experience and knowledge of the entity and of the market, or by not ensuring that the non-executive members of the management body decide on a target for the representation of the under-represented gender in the management body and prepare a policy on how to increase the number of the under-represented gender in order to meet that target, or by not ensuring that the target, policy and its implementation is made public;

(k) a significant CSD infringes Article 27(5) by not clearly determining the role and responsibilities of the management body in accordance with the relevant national law or by

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not making the minutes of the meetings of the management body available to ESMA and the auditor upon request;

(l) a significant CSD infringes Article 27(11) by not providing ESMA with information regarding the ownership of such CSD, and the identity and scale of interests of any person having a qualifying holding in the CSD, or by not making public such information or the transfer of ownership rights that results in a change in control of such CSD;

(m) a significant CSD infringes Article 27a(1) by not notifying ESMA of any changes to its management and by not providing ESMA with all the information necessary to assess its compliance with Article 27(1) to (5);

(n) a significant CSD infringes Article 28(1) by not establishing user committees for each securities settlement system it operates, by not ensuring that such user committee is composed of representatives of issuers and of participants in such securities settlement systems, or by not ensuring that the advice of such user committee is independent from any direct influence by the management of such CSD;

(o) a significant CSD infringes Article 28(2) by not defining in a non-discriminatory way the mandate for each established user committee, the governance arrangements necessary to ensure its independence and its operational procedures, as well as the admission criteria and the election mechanism for user committee members, or by not making the governance arrangements publicly available, or by not ensuring that the user committee reports directly to the management body and holds regular meetings;

(p) a significant CSD infringes Article 28(3) and (4) by not enabling the user committees to advise the management body on key arrangements that impact on their members, including the criteria for accepting issuers or participants in their respective securities settlement systems and on service level, or by not enabling the user committees to submit a non-binding opinion to the management body containing detailed reasons regarding the pricing structures of such CSD;

(q) a significant CSD infringes Article 28(6) by not promptly informing ESMA and the user committee of any decision in which the management body decides not to follow the advice of the user committee;

(r) a significant CSD infringes Article 29(1) by not maintaining, for a period of at least 10 years, all its records on the services and activities, including on the ancillary services referred to in Sections B and C of the Annex, so as to enable ESMA to monitor the compliance with the requirements under this Regulation;

(s) a significant CSD infringes Article 29(1a) by not requiring issuers to obtain and transmit to such CSD a valid legal entity identifier (LEI);

(t) a significant CSD infringes Article 29(2) by not making the records referred to in Article 29(1) available upon request to ESMA and the relevant authorities and any other public authority which under Union law or national law of such CSD's home Member State has a power to require access to such records for the purpose of fulfilling their mandate;

(u) a significant CSD infringes Article 30(2) by not defining in a written outsourcing agreement its rights and obligations and those of the service provider and by not ensuring that the outsourcing agreement allows such CSD to terminate the agreement;

(v) a significant CSD infringes Article 30(3) by not making available upon request to ESMA and the relevant authorities all information necessary to enable them to assess the compliance of the outsourced activities with the requirements of this Regulation;

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(w) a significant CSD infringes Article 30(4) by not notifying the outsourcing of services referred to in Section B of the Annex to ESMA prior to implementing such outsourcing and by not providing all relevant information that allows ESMA to assess compliance with the requirements provided in such Article;

(x) a significant CSD infringes Article 32 by not having clearly defined goals and objectives that are achievable, such as in the areas of minimum service levels, risk-management expectations and business priorities and by not having transparent rules for the handling of complaints;

(y) a significant CSD infringes Article 33(1) by not having publicly disclosed criteria for participation which allow fair and open access for all legal persons that intend to become participants and by not ensuring that such criteria are transparent, objective, and non-discriminatory so as to ensure fair and open access to the CSD with due regard to risks to financial stability and the orderliness of markets, and by not ensuring that criteria that restrict access are permitted only to the extent that their objective is to justifiably control a specified risk for such CSD;

(z) a significant CSD infringes Article 33(2) by not treating requests for access promptly by providing a response to such requests within one month at the latest and shall make the procedures for treating access requests publicly available;

(aa) a significant CSD infringes Article 33(3) by denying access to a participant meeting the criteria referred to in Article 33(1) without duly justifying in writing and without basins such refusal on a comprehensive risk assessment;

(bb) a significant CSD infringes Article 33(4) by not having objective and transparent procedures for the suspension and orderly exit of participants that no longer meet the criteria for participation referred to in Article 33(1);

(cc) a significant CSD infringes Article 34(1) by not publicly disclosing the prices and fees associated with the core services listed in Section A of the Annex that it provides, for each securities settlement system it operates, as well as for each of the other core services it performs, or by not disclosing the prices and fees of each service and function provided separately, including discounts and rebates and the conditions to benefit from those reductions, or by not allowing its clients separate access to the specific services provided;

(dd) a significant CSD infringes Article 34(2) by not publishing its price list so as to facilitate the comparison of offers and by not allowing clients to anticipate the price they shall have to pay for the use of services;

(ee) a significant CSD infringes Article 34(3) by not being bound by its published pricing policy for its core services;

(ff) a significant CSD infringes Article 34(4) by not providing its clients with information that allows reconciling invoices with the published price lists;

(gg) a significant CSD infringes Article 34(5) by not disclosing to all clients information that allows them to assess the risks associated with the services provided;

(hh) a significant CSD infringes Article 34(6) by not accounting separately for costs and revenues of the core services provided and by not disclosing that information to ESMA;

(ii) a significant CSD infringes Article 34(7) by not accounting for the cost and revenue of the ancillary services provided as a whole and by not disclosing that information to ESMA;

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(jj) a significant CSD infringes Article 34(8) by not maintaining analytical accounting for its activities and by not, in such accounts, separating the costs and revenues associated with each of its core services from those associated with ancillary services.

V. Infringements relating to requirements on CSD services

(a) a significant CSD infringes Article 36 by not having appropriate rules and procedures, including robust accounting practices and controls, to help ensure the integrity of securities issues, and minimise and manage the risks associated with the safekeeping and settlement of transactions in securities, for each securities settlement system it operates;

(b) a significant CSD infringes Article 37 by not taking appropriate reconciliation measures, that may be undertaken using DLT, to verify that the number of securities making up a securities issue or part of a securities issue submitted to such CSD is equal to the sum of securities recorded on the securities accounts of the participants of the securities settlement system operated by such CSD and, where relevant, on owner accounts maintained by such CSD, or by not conducting such reconciliation measures at least daily;

(c) a significant CSD infringes Article 37(2) by not, where appropriate and if other entities are involved in the reconciliation process for a certain securities issue, such as the issuer, registrars, issuance agents, transfer agents, common depositories, other CSDs or other entities, organising adequate cooperation and information exchange measures with any such entities so that the integrity of the issue is maintained;

(d) a significant CSD infringes Article 37(3) by allowing securities overdrafts, debit balances or securities creation in a securities settlement system operated by such CSD;

(e) a significant CSD infringes Article 38(1) by not keeping records and accounts that shall enable it, at any time and without delay, to segregate in the accounts with the CSD, the securities of a participant from those of any other participant and, if applicable, from the CSD's own assets;

(f) a significant CSD infringes Article 38(2) by not keeping records and accounts that enable any participant to segregate the securities of the participant from those of the participant's clients;

(g) a significant CSD infringes Article 38(3) by not keeping records and accounts that enable omnibus client segregation;

(h) a significant CSD infringes Article 38(4) by not keeping records and accounts that enable individual client segregation;

(i) a significant CSD infringes Article 38(6) by not publicly disclosing the levels of protection and the costs associated with the different levels of segregation that it provides, or by not offering those services on reasonable commercial terms, or by not ensuring that details of the different levels of segregation include a description of the main legal implications of the respective levels of segregation offered, including information on the insolvency law applicable in the relevant jurisdictions;

(j) a significant CSD infringes Article 38(7) by using for any purpose securities that do not belong to it, or by using securities of a participant without having obtained that participant's prior express consent, or by not requiring its participants to obtain any necessary prior consent from their clients;

(k) a significant CSD infringes Article 39(1) by not ensuring that the securities settlement system it operates offers adequate protection to participants;

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(l) a significant CSD infringes Article 39(2) by not ensuring that each securities settlement system that it operates defines the moments of entry and of irrevocability of transfer orders in that securities settlement system in accordance with [Regulation (EU) …/… on settlement finality];

(m) a significant CSD infringes Article 39(3) by not disclosing the rules governing the finality of transfers of securities and cash in a securities settlement system;

(n) a significant CSD infringes Article 39(5) by not taking all reasonable steps to ensure that, in accordance with the rules referred to in Article 39(3), finality of transfers of securities and cash referred to Article 39(3) is achieved either in real time or intra-day and in any case no later than by the end of the business day of the actual settlement date;

(o) a significant CSD infringes Article 39(6) by not ensuring that the cash proceeds of securities settlements are to be available for recipients to use no later than by the end of the business day of the intended settlement date, where such CSD offers the services referred to in Article 40(3);

(p) a significant CSD infringes Article 39(7) by not ensuring that all securities transactions against payment in cash or in e-money tokens between direct participants in a securities settlement system operated by a CSD and settled in that securities settlement system are settled on a DVP basis;

(q) a significant CSD infringes Article 40(1) by not settling the cash payments of its securities settlement system in central bank money where practical and available;

(r) a significant CSD infringes Article 40(2) by not connecting directly to a common settlement infrastructure integrated with central bank real-time gross settlement systems operated in the Union and by not offering to its participants the possibility to settle their transactions denominated in currencies available on such platform in accounts opened at such platform, where such CSD offers to settle the cash payments of its securities settlement system in a currency available on such platform;

(s) a significant CSD infringes Article 40(3) by offering to settle the cash payments for all or part of its securities settlement systems in a way different than those listed in such Article 40(3), where such CSD does not settle in central bank money;

(t) a significant CSD infringes Article 41(1) by not having effective and clearly defined rules and procedures to manage the default of one or more of its participants ensuring that such CSD can take timely action to contain losses and liquidity pressures and continue to meet its obligations;

(u) a significant CSD infringes Article 41(2) by not making its default rules and relevant procedures available to the public;

(v) a significant CSD infringes Article 41(3) by not undertaking with its participants and other relevant stakeholders periodic testing and review of its default procedures to ensure that they are practical and effective.

VI. Infringements relating to prudential requirements

(a) a significant CSD infringes Article 42 by not adopting a sound risk-management framework for comprehensively managing legal, business, operational and other direct or indirect risks, including measures to mitigate fraud and negligence;

(b) a significant CSD infringes Article 43(1) by not having rules, procedures, and contracts that are clear and understandable for all the securities settlement systems that it operates and all other services that it provides;

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(c) a significant CSD infringes Article 43(2) by not designing its rules, procedures and contracts so that they are enforceable in all relevant jurisdictions, including in the case of the default of a participant;

(d) a significant CSD infringes Article 43(3) by conducting business in different jurisdictions without taking all reasonable steps to identify and mitigate the risks arising from potential conflicts of law across jurisdictions;

(e) a significant CSD infringes Article 44 by not having robust management and control systems as well as IT tools in order to identify, monitor and manage general business risks, including losses from poor execution of business strategy, cash flows and operating expenses;

(f) a significant CSD infringes Article 45(1) by not identifying sources of operational risk, both internal and external, and not minimising their impact also through the deployment of appropriate ICT tools, processes and policies set up and managed in accordance with Regulation (EU) 2022/2554 of the European Parliament and of the Council, as well as through any other relevant appropriate tools, controls and procedures for other types of operational risk, including for all the securities settlement systems it operates;

(g) a significant CSD infringes Article 45(3) by not establishing, implementing and maintaining, for services that it provides as well as for each securities settlement system that it operates, an adequate business continuity policy and disaster recovery plan, including ICT business continuity policy and ICT response and recovery plans established in accordance with Regulation (EU) 2022/2554, to ensure the preservation of its services, the timely recovery of operations and the fulfilment of the CSD's obligations in the case of events that pose a significant risk to disrupting operations;

(h) a significant CSD infringes Article 45(4) by not ensuring that the plan referred to in Article 45(3) provides for the recovery of all transactions and participants' positions at the time of disruption to allow the participants of a CSD to continue to operate with certainty and to complete settlement on the scheduled date, including by ensuring that critical IT systems can resume operations from the time of disruption as provided for in Article 12(5) and (7) of Regulation (EU) 2022/2554;

(i) a significant CSD infringes Article 45(5) by not planning and not carrying out a programme of tests of the arrangements referred to in Article 45 paragraphs 1 to 4;

(j) a significant CSD infringes Article 45(6) by not identifying, monitoring and manage the risks that key participants in the securities settlement systems it operates, as well as service and utility providers, and other CSDs or other market infrastructures might pose to its operations, or by not, upon request, providing ESMA and relevant authorities with information on any such risk identified, or by not informing ESMA and relevant authorities without delay of any operational incidents, other than in relation to ICT risk, resulting from such risks;

(k) a significant CSD infringes Article 45a by not complying with the requirements listed in points (a) to (e) of Article 45a where operating itself a core service using DLT;

(l) a significant CSD infringes Article 46(1) by not holding its financial assets at central banks, authorised credit institutions or authorised CSDs;

(m) a significant CSD infringes Article 46(2) by not having prompt access to its assets, where required;

(n) a significant CSD infringes Article 46(3) by not investing its financial resources only in cash or in highly liquid financial instruments with minimal market and credit risk, or by not

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ensuring that those investments are capable of being liquidated rapidly with minimal adverse price effect;

(o) a significant CSD infringes Article 46(5) by not ensuring that its overall risk exposure to any individual authorised credit institution or authorised CSD with which it holds its financial assets remains within acceptable concentration limits;

(p) a significant CSD infringes Article 47(1) by not holding capital, together with retained earnings and reserves of a CSD, which is proportional to the risks stemming from the activities of such CSD and by not holding capital that is at all times sufficient to ensure that such CSD is adequately protected against operational, legal, custody, investment and business risks so that such CSD can continue to provide services as a going concern and to ensure an orderly winding-down or restructuring of such CSD's activities over an appropriate time span of at least six months under a range of stress scenarios;

(q) a significant CSD infringes Article 47a(1) by applying deferred net settlement without defining the rules and procedures applicable to that mechanism and to the settlement of participants' net claims and obligations;

(r) a significant CSD infringes Article 47a(2) by applying deferred net settlement without measuring, monitoring, managing and reporting to the competent authorities the credit and liquidity risks arising from that mechanism.

VII. Infringements relating to requirements for CSD links

(a) a significant CSD infringes Article 48(1) by not identifying, assessing, monitoring and managing all potential sources of risk for themselves and for their participants arising from the CSD link or by not taking appropriate measures to mitigate them before establishing a CSD link;

(b) a significant CSD infringes Article 48(2) by establishing interoperable links with other CSDs without obtaining a prior authorisation in accordance with the procedure laid down in Article 48b;

(c) a significant CSD infringes Article 48(2a) by establishing interoperable links that outsource some of their services related to those interoperable links to a public entity in accordance with Article 30(5), or CSD links that are not interoperable, without notifying ESMA prior to the implementation of such links;

(d) a significant CSD infringes Article 48(2c) by establishing a link with a third-country CSD without complying with the conditions and requirements provided for in Article 48, or by establishing an interoperable link with a third-country CSD without submitting an application for authorisation in accordance with Article 17;

(e) a significant CSD infringes Article 48(3) by not ensuring that a link it has established provides adequate protection to the linked CSDs and their participants, in particular as regards possible credits taken by CSDs and the concentration and liquidity risks as a result of the link arrangement, or by establishing a link that is not supported by an appropriate contractual arrangement that sets out the respective rights and obligations of the linked CSDs and, where necessary, of the CSDs' participants, or by establishing a contractual arrangement with cross-jurisdictional implications that does not provide for an unambiguous choice of law that govern each aspect of the link's operations;

(f) a significant CSD infringes Article 48(4) by, in the event of a provisional transfer of securities between linked CSDs, retransferring securities prior to the first transfer becoming final;

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(g) a significant CSD infringes Article 48(5) by using an indirect link or an intermediary to operate a CSD link with another CSD without measuring, monitoring, and managing the additional risks arising from the use of that indirect link or intermediary and take appropriate measures to mitigate them;

(h) a significant CSD infringes Article 48(6) by not having robust reconciliation procedures to ensure that its respective records are accurate;

(i) a significant CSD infringes Article 48(7) by not permitting DVP settlement of transactions between participants in linked CSDs, where practical and feasible or by not providing detailed reasons for any CSD link not allowing for DVP settlement to ESMA and the relevant authorities;

(j) a significant CSD infringes Article 48(8) by not ensuring that interoperable securities settlement systems and CSDs, which use a common settlement infrastructure establish identical moments of entry of transfer orders into the system and irrevocability of transfer orders or by not ensuring that such securities settlement systems and CSDs use equivalent rules concerning the moment of finality of transfers of securities and cash;

(k) a significant CSD infringes Article 48a(2), where such requirement is applicable to it, by not establishing and maintaining a bilateral link with each of the other CSD hubs;

(l) a significant CSD infringes Article 48a(3), where such requirement is applicable to it, by not establishing and maintaining a bilateral link with a CSD hub;

(m) a significant CSD infringes Article 48a(5) by not ensuring that all financial instruments issued in each of the CSDs involved in a bilateral link established pursuant to Article 48a(2) or (3), as applicable, are available for settlement through that bilateral link;

(n) a significant CSD infringes Article 48b by establishing an interoperable link without requesting a prior authorisation to ESMA in accordance with the procedure set out in that Article;

VIII. Infringements relating to access requirements

(a) a significant CSD infringes Article 49(2) by not treating a request from an issuer to record its securities in a CSD, initially or subsequently to an initial recording, promptly and in a non-discriminatory manner orby not providing a response to the requesting issuer within three months;

(b) a significant CSD infringes Article 49(3) by refusing to provide services to an issuer for other reasons than on the basis of a comprehensive risk assessment or if that CSD does not provide the services referred to in point (1) of Section A of the Annex in relation to securities on which such services are requested by the issuer;

(c) a significant CSD infringes Article 51a by rejecting a request under such Article 51a for other reason than on the basis of risk considerations, or by rejecting such a request on the grounds of loss of market share;

(d) a significant CSD infringes Article 52(1) by not treating a request to access from another CSD promptly or by not providing a response to the requesting CSD within three months, or by not ensuring that, if the receiving CSD agrees to the request, the CSD link is implemented within a reasonable timeframe which shall be no longer than 12 months;

(e) a significant CSD infringes Article 52(2) by denying access to a requesting CSDs for other reasons than where such access would threaten the smooth and orderly functioning of the financial markets or cause systemic risk or by denying such access without a comprehensive risk assessment, or by not providing the requesting CSD with full reasons for such refusal;

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(f) a significant CSD infringes Article 52(2a) by refusing to grant access through a link referred to in Article 48a (2) or (3), without providing a duly justified refusal via the central database to ESMA and to the requesting CSD, by not basing such refusal on a comprehensive risk assessment, or by not providing ESMA with its proposed measures to mitigate the risks underlying the refusal within 30 working days from the notification of the refusal to ESMA and to the requesting CSD;

(g) a significant CSD infringes Article 53(1) by not providing access to its securities settlement systems on a non-discriminatory and transparent basis to a CCP or a trading venue;

(h) a significant CSD infringes Article 53(2) by not treating requests for access promptly and by not providing a response to the requesting party within three months;

(i) a significant CSD infringes Article 53(3) by denying access for other reasons than where such access would affect the smooth and orderly functioning of the financial markets or cause systemic risk, or by denying a request on the grounds of loss of market share, or by not providing the requesting party with full written reasons for such refusal based on a comprehensive risk assessment.

IX. Infringements related to the provision of banking-type ancillary services

(a) a significant CSD infringes Article 54(1) by settling the cash payments for all or part of its securities settlement systems through its own accounts as referred to Article 40(3), or by otherwise to providing any other banking-type ancillary services set out in Section C of the Annex without having obtained a prior authorisation in accordance with the provisions of Article 54 and 55;

(b) a significant CSD authorised in accordance with Article 54 infringes Article 54(2) by not ensuring that any information it provides to market participants about the risks and costs associated with settlement through its own accounts is clear, fair and not misleading, by not making available sufficient information to clients or potential clients to allow them to identify and evaluate the risks and costs associated with settlement through the own accounts of the CSD or by not providing such information on request;

(c) a significant CSD authorised in accordance with Article 54 infringes Article 54(4) by not complying at all times with the conditions necessary for authorisation under this Regulation and by not, without delay, notifying the competent authorities of any substantive changes affecting the conditions for authorisation;

(d) a significant CSD infringes Article 54a(1) by settling the cash payments for all or part of its securities settlement systems through accounts opened with another CSD as referred to Article 40(3) without having obtained a prior authorisation in accordance with the provisions of Article 54a and 55;

(e) a significant CSD authorised in accordance with Article 54a infringes Article 54a(2) by not ensuring that information provided by the CSD itself or by the designated CSD to market participants about the risks and costs associated with settlement through accounts opened with another CSD is clear, fair and not misleading, by not making available sufficient information to clients or potential clients to allow them to identify and evaluate the risks and costs associated with settlement through accounts opened with another CSD or by not providing such information on request;

(f) a significant CSD authorised in accordance with Article 54a infringes Article 54a(3) by using the authorisation to designate another CSD in accordance with Article 54a(1), for other activities than the provision of the banking-type ancillary services referred to in Section C of

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the Annex for the settlement of the cash payments for all or part of its securities settlement systems;

(g) a significant CSD infringes Article 54a(5) by designating another CSD in accordance with Article 54a(1) to settle the cash payments for all or part of its securities settlement systems in a currency of the country where the designating CSD is established where such payments in cash or in e-money tokens exceed the threshold determined in accordance with Article 54b(12);

(h) a significant CSD infringes Article 54b(1) by settling the cash payments for all or part of its securities settlement systems through accounts opened with a credit institution as referred to Article 40(3) without having obtained a prior authorisation in accordance with the provisions of Article 54b and 55;

(i) a significant CSD authorised in accordance with Article 54b infringes Article 54b(2) by not ensuring that information provided by the CSD or by the designated credit institution to market participants about the risks and costs associated with settlement through accounts opened with a credit institution is clear, fair and not misleading, by not making available sufficient information to clients or potential clients to allow them to identify and evaluate the risks and costs associated with settlement through accounts opened with a credit institution or by not providing such information on request;

(j) a significant CSD authorised in accordance with Article 54b infringes Article 54b(3) by using the authorisation to designate a credit institution in accordance with Article 54b(1) for other activities than the provision of the banking-type ancillary services referred to in Section C of the Annex for the settlement of the cash payments for all or part of its securities settlement systems;

(k) a significant CSD infringes Article 54b(6) by designating a credit institution in accordance with Article 54b(1) to settle the cash payments for all or part of its securities settlement systems in a currency of the country where the designating CSD is established where such cash payments exceed the threshold determined in accordance with Article 54b(12) for settlement in cash or in e-money tokens;

(l) a significant CSD infringes Article 54c(1) by settling the cash payments for all or part of its securities settlement systems in e-money tokens differently than through its own accounts in accordance with Article 54, through accounts opened with another CSD in accordance with Article 54a, or than through accounts opened with a credit institution in accordance with Article 54b;

(m) a significant CSD infringes Article 54c(2) by not ensuring that all of the conditions set out in such Article 54c(2) are met where such CSD is settling the cash payments for all for all or part of its securities settlement systems in e-money tokens;

(n) a significant CSD infringes Article 55 by providing banking-type ancillary services in accordance with Article 54, by designating another CSD in accordance with Article 54a or by designating a credit institution in accordance with Article 54b without submitting an application for authorisation in accordance with the procedure set out in Article 55;

(o) a significant CSD infringes Article 56 by extending the banking-type ancillary services it provides itself or for which it designates a CSD or credit institution in accordance with Articles 54, 54a or 54b, as applicable, without submitting a request for extension to its competent authority;

(p) a significant CSD infringes Article 59(1) by not providing only the services set out in Section C of the Annex that are covered by the authorisation;

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(q) a significant CSD authorised in accordance with Article 54 or designated in accordance with Article 54a infringes Article 59(2) by not complying with any present or future legislation applicable to credit institutions;

(r) a significant CSD authorised in accordance with Article 54 or designated in accordance with Article 54a infringes Article 59(3) by not complying with the specific prudential requirements for the credit risks related to those services in respect of each securities settlement system set out in such Article 59(3);

(s) a significant CSD authorised in accordance with Article 54 or designated in accordance with Article 54a infringes Article 59(4) by not complying with the specific prudential requirements for the liquidity risks relating to those services in respect of each securities settlement system set out in such Article 59(4);

(t) a significant CSD designated in in accordance with Article 54a infringes Article 59(4a) by not having in place clear rules and procedures addressing any potential credit, liquidity and concentration risks resulting from the provision of those services.

SECTION E

List of the coefficients linked to aggravating and mitigating factors for the application of Article 11b (3)

The following coefficients shall be applicable, cumulatively, to the basic amounts referred to in Article 11b (3).

I. Adjustment coefficients linked to aggravating factors:

(a) if the infringement has been committed repeatedly, for every time it has been repeated, an additional coefficient of 1.1 shall apply;

(b) if the infringement has been committed for more than six months, a coefficient of 1.5 shall apply;

(c) if the infringement has revealed systemic weaknesses in the organisation of the CSD, in particular in its procedures, management systems or internal controls, a coefficient of 2.2 shall apply;

(d) if the infringement has a negative impact on the quality of the activities and services of the CSD, a coefficient of 1.5 shall apply;

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

(f) if no remedial action has been taken since the breach has been identified, a coefficient of 1.7 shall apply;

(g) if the CSD's senior management has not cooperated with ESMA in carrying out its investigations, a coefficient of 1.5 shall apply.

II. Adjustment coefficients linked to mitigating factors:

(a) if the infringement has been committed for less than 10 working days, a coefficient of 0.9 shall apply;

(b) if the CSD's senior management can demonstrate to have taken all the necessary measures to prevent the infringement, a coefficient of 0.7 shall apply;

(c) if the CSD has brought quickly, effectively and completely the infringement to ESMA's attention, a coefficient of 0.4 shall apply;

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(d) if the CSD has voluntarily taken measures to ensure that a similar infringement cannot be committed in the future, a coefficient of 0.6 shall apply.’.

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