095153/EU XXVIII. GP
Eingelangt am 02/10/26

Council of the European Union

Brussels, 2 October 2026
(OR. en)

13779/26

Interinstitutional File:
2025/0383 (COD)

EF 257
ECOFIN 1238
CODEC 1803
ECB

NOTE

From:	Presidency
To:	Permanent Representatives Committee/Council
Subject:	Market Integration and Supervision Package 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 - *General Approach*

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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[1],

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,

[1] OJ C , , p. .

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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 ***the*** 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 ***is*** deepened, it is also crucial for the Union supervisory framework to evolve in accordance with it.

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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.

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(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 ▌ crypto-asset ***services***, 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([2]), 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.

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[2] 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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(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 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 ***new*** direct supervisory responsibilities, ***the Authority*** should establish***, under its overall responsibility,*** structured***, transparent and proportionate*** cooperation arrangements with ***relevant*** competent authorities ***and*** other ▌ national authorities, ***Union institutions or Union bodies. Those arrangements should apply on an ongoing basis. While the Authority remains solely responsible and accountable for the tasks conferred on it, from the date on which the relevant direct-supervisory responsibilities are transferred to the Authority, it may need to draw on the expertise, supervisory experience and knowledge of national legal, economic, organisational and cultural specificities held by relevant*** competent authorities***. Cooperation should therefore enable the timely exchange of information necessary for the exercise of supervisory tasks and the provision, where necessary, of administrative assistance, investigatory or enforcement support, participation in on-site activities, liaison functions or other operational forms of*** cooperation***. The*** arrangements should ***be tailored*** to the sector concerned, ***while promoting time- and resource-efficient supervision. To cater for sectoral specificities***, ***the*** arrangements should also allow ▌ , where appropriate, ***for different forms of ongoing cooperation, including coordinated supervisory teams which should be the default form of cooperation unless otherwise agreed, liaison officers or*** the establishment of local presences of the Authority in Member States.

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Where coordinated supervisory teams are established, the cooperation arrangements should***, where appropriate, lay down rules on their composition and functioning so as to ensure that they operate in an efficient*** effective and ***cost-efficient manner, and allow relevant*** authorities ***to opt-out. To ensure that those arrangements and the forms of cooperation provided for therein remain effective and suited to the sector concerned, they should be adopted by the Board of Supervisors on a proposal from the Executive Board and be subject to periodic review***. 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 ***ability to carry out*** its tasks ***autonomously and consistently, and its sole responsibility for final*** supervisory ***decisions***.

(9a) In order to ensure an orderly transition to the steady state phase laid down in this Regulation, it is necessary to provide for sector-specific transitional cooperation arrangements between the Authority and the relevant competent authorities. Those arrangements should ensure continuity of supervision, legal certainty, the transfer of knowledge, documentation and pending supervisory files, and the progressive development of the Authority's operational capacity to perform its tasks autonomously. From the date on which the relevant supervisory responsibilities are transferred, the Authority should be solely responsible and accountable for the exercise of those responsibilities and for the adoption of final supervisory decisions, while being supported during a defined, limited period by the relevant competent authorities and other national authorities in accordance with approved transition plans. Such transitional cooperation should be subject to clear milestones and capacity assessments, and should cease once the Authority is operationally ready and, in any event, upon expiry of the maximum transition period, including any duly approved extension.

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(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.

(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.

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(12) In its capacity as processor of personal data, the ***Authority*** 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 ***Authority*** has the obligation to processes personal data pursuant ***to*** 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.

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

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(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***, following the process in this Regulation,*** 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 ***recommend*** 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.

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(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 ▌ . ESMA should be appropriately financed. ▌

(18a) [ESMA should be financed 50 % from Union funds and 50 % 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 for the new tasks envisaged for ESMA by this Regulation that are not fee funded.]

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(18b) In order to strengthen accountability, transparency and sound financial governance in relation to supervisory fees charged by the Authority, a Fees Committee should be established. That Committee should support the Board of Supervisors and the Executive Board by providing additional internal scrutiny of the methodology, level and evolution of supervisory fees and of the related expenditure financed through those fees. In particular, it should verify compliance with the cost-recovery principle, assess whether fee-financed resources are used efficiently, and consider the impact of fees on different categories of supervised entities and across Member States, including smaller entities and new market entrants. To ensure balanced representation and appropriate supervisory expertise, the Committee should be composed of representatives of national competent authorities appointed by the Board of Supervisors on a rotational basis, taking into account the relative size of supervised markets, Member States' contribution to the funding of the Authority, and the need to reflect different market sizes and supervisory perspectives. The Committee should deliver opinions on the annual and multiannual estimates of supervisory fee revenue and related expenditure, as well as on the annual fee transparency report, before the adoption or publication of the relevant documents. In the interests of transparency, those opinions should be published in an annex to the Authority's annual report and, where the Board of Supervisors departs from such an opinion, the reasons for that departure should also be published.

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(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 ***initiating procedures and preparing reasoned recommendations for*** decisions ***by the Board of Supervisors*** addressed to one or a limited number of competent authorities, including dispute settlements, breaches of Union law***. In the case of*** peer reviews ▌ the Executive Board ***shall give an opinion on the draft report of the peer review committee. The Executive Board's involvement in preparing these decisions is intended*** to increase the ***consistency*** 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 ***with the assistance of*** the Board of Supervisors, following approval by the European Parliament.

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(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 ***non-voting*** members ▌ . 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 ***24*** hours in urgent cases)***. To ensure proper information sharing between the two Boards,*** the Executive Board should be required to ***forward draft decisions to the Board of Supervisors in a timely manner,*** 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.

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(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 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 ***Union CCPs or Tier 2 CCPs***, 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[3]. 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. ▌

[3] 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).

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(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 ***Member State*** 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 ***co-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[5]

[5] 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 ▌ 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.

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(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. ***When developing comprehensive cooperation arrangements with other authorities, ESMA should take due consideration of the CPMI-IOSCO Principles for Financial Market Infrastructures (PFMI).*** 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.

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(27) Regulation (EU) 2024/791 of the European Parliament and of the Council[6] amended Regulation (EU) No 600/2014 of the European Parliament and of the Council[7] 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 ***three*** best buying and selling prices, with the volumes available at those prices, and the indication of the individual trading venue on which those volumes are available.

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6 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).

7 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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(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 ***most relevant market in terms of liquidity***. The proportion of equity volumes traded at the closing auction has increased significantly over time. ▌ However ▌ , that situation raises resilience concerns, as incidents, including outages, on the ***most relevant market in terms of liquidity*** may have a direct impact on the capacity of market participants to value their assets. ▌ To ensure that market participants can rely on a closing price that is alternative to the closing auction price produced by the ***most relevant market in terms of liquidity***, it is necessary to require the provider of the consolidated tape for shares and ETFs to disseminate a volume-weighted closing price ***when an outage prevents the most relevant market in terms of liquidity from running its*** closing ***auction***. ESMA should issue recommendations to specify the methodology that the consolidated tape should apply to determine the volume-weighted closing price.

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(29) Directive 2014/65/EU of the European Parliament and of the Council[8] 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. ***Requirements on the authorisation and operation of trading venues in Regulation (EU) No 600/2014 should be without prejudice to the application of national laws, including company law, for relevant aspects that are not covered by those requirements or by other applicable Union law. Market operators use different governance structures across the Union, including a unitary or dual board structure.***

[8] 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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The requirements for market operators in Regulation (EU) No 600/2014 aim to cater for any governance structure and, therefore, should not interfere with the general allocation of competences within that governance structure in accordance with national company law, including for companies with State ownership. Furthermore, while the Regulation prevents Member States from including additional requirements on the aspects governed by that Regulation, a regulated market should not be prevented from applying more stringent requirements in respect of the issuers of financial instruments for which those issuers seek admission to trading than those imposed by that Regulation. In addition, competent authorities should not be prevented from establishing an arrangement within their jurisdiction that involves certain tasks assigned to the competent authority being delegated to a private entity or entities, where there is recognition of such an arrangement by the regulated market(s) and other relevant market participants, and such arrangement does not result in more stringent requirements than those set out in Regulation (EU) No 600/2014 and meets the criteria set out in the second and third subparagraphs of Article 67(2) of Directive 2014/65/EU.

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(29a) Market operators may wish to expand their activities beyond the operation of a regulated market, including by performing other regulated activities. The performance of additional activities should be permitted, provided that the relevant sectoral legislation is complied with and that it does not adversely affect the operation of the regulated market. This may be the case, in particular, where the performance of such activities gives rise to conflicts of interest that cannot be properly managed. Additional activities of market operators include the development and commercialisation of software, hardware and network solutions for the transmission of orders or other trading data, activities related to the promotion of the regulated market, the management and maintenance of informational flows related to the placement and visualisation of orders, and, in compliance with applicable sectoral legislation, the operation of a commodities or any other authorised exchange.

(29b) The requirement not to impose any additional restrictions on the authorisation and operation of regulated markets should not prevent a Member State, where so required by national public law, to continue to bestow a public entity's tasks and functions on a market operator or regulated market authorised prior to the entry into application of this Regulation, provided that such national law provisions were adopted before 4 December 2025. In addition, as the application of national public law provisions of this nature could negatively impact the effective and coherent exercise of supervisory functions by ESMA, Member States should not be able to continue to apply such provisions in relation to trading venues whose supervision has been transferred to ESMA.

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(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 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.

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(31a) ***Government bond markets play an important role in supporting the management of public debt. Debt Management Offices play a key role in ensuring that governments can reliably finance their essential public functions, including public services, social protection and national security. Sound debt management supports fiscal responsibility by securing funding at sustainable costs while safeguarding long-term public finances. Debt Management Offices in various Member States have issued national rules for primary dealers, to ensure the good functioning of primary and secondary government bonds markets. This Regulation should be without prejudice to such rules, where strictly necessary for the performance of the public debt management function, and to the role of Debt Management Offices in this area. Given the strict interplay between those aspects and the rules governing government bond markets, Member States may require prior approval by the national Treasury or Debt Management authorities of amendments to the rules of markets, or of a segment thereof, situated or operating within their territory, on which exclusively government bonds issued by that Member State are traded.***

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(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.

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(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 ▌ 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, ***while ensuring effective supervision,*** 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 ***with respect to market operators that are established in another Member State where they are already authorised to operate a trading venue and subject to supervision.***

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In addition, for the purposes of facilitating effective oversight by competent authorities, where a market operator is a legal person established in a Member State other than the Member State in which it intends to operate a regulated market, and where ESMA is not the competent authority, that market operator should appoint a person in the Member State where a regulated market is operated. The appointed person should have the authority to act on behalf of the market operator for all matters necessary for the receipt of, compliance with and enforcement of decisions or requests for information issued pursuant to Regulation (EU) No 600/2014. The requirement to appoint such a person should not be construed as entailing an obligation for that market operator to establish a branch in the Member State in which the regulated market is operated. In 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. ***For the purposes of facilitating interaction with a national surveillance authority, the PEMO should make available a dedicated point of contact within its organisation who is directly accessible by that national surveillance authority for matters pertaining to market surveillance.***

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(33) ***Application for authorisation as PEMO may require prior changes to the corporate structure of a group or legal entity. To ensure that access to the PEMO regime remains a choice for operators that are active cross-border, or that wish to become active cross-border, only subject to their own cost-benefit analysis, and since a PEMO will only be able to start operations following authorisation by ESMA, Member States should not subject the reorganisation of a corporate structure for the purposes of seeking authorisation as PEMO to any additional direct or indirect requirements or constraints or to prior approval by the competent authority where the reorganisation becomes effective only after and is conditional upon the issuance of the authorisation of the PEMO.*** 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. ***To enable national surveillance authorities to effectively perform their tasks under Regulation (EU) 600/2014, it is appropriate to require ESMA to notify relevant national surveillance authorities of any new PEMO authorisation requests, as well as of any requests to extend such authorisations. To that end, ESMA should make available to the relevant national surveillance authorities the supporting documents provided by applicants as part of the PEMO authorisation or extension requests.***

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Relevant national surveillance authorities may provide ESMA with factual and other observations which could inform ESMA's assessment as regards the applicant's ability to comply with requirements under Title Ia of Regulation (EU) No 600/2014. In particular, national surveillance authorities should be able to share any information relating to previous authorisation applications or the fitness and probity of board members. Where ESMA intends to withdraw a PEMO's licence, or to remove one or more trading venues from the list of trading venues that a PEMO is authorised to operate, it is appropriate to require ESMA to notify relevant national surveillance authorities and the relevant national surveillance authorities may provide ESMA with factual and other observations to inform ESMA's final withdrawal decision. As ESMA should remain the sole competent authority for the authorisation or withdrawal of authorisation of the entities concerned, the submission of factual or other information by national surveillance authorities to ESMA should only inform ESMA's assessment and should not result in any duplicative assessment by those authorities.

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(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.

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For matters not governed by Union law, the PEMO regime should be without prejudice to national laws whose application is determined on the basis of the location or operation of a trading venue in the territory of a given Member State. It follows that, where a PEMO operates a trading venue that is considered to be situated or operated in the territory of a given Member State, for all matters where the applicable national law is determined on the basis of the location of a trading venue in the territory of that Member State, the national laws of that Member State should apply***. Without prejudice to any future harmonisation in those areas, national law provisions of a given Member State that apply to issuers whose securities are admitted*** to trading ***on*** a trading venue ***authorised in that Member State or to trading in securities admitted to trading on a trading venue authorised in that Member State, should continue to apply also with respect to a trading venue operated by a PEMO that is deemed to be situated or operated in the territory of that Member State. More generally, the PEMO regime should not affect the criteria to identify the applicable law, including tax law, as determined by Union or national laws. Similarly, the PEMO regime should not modify the criteria to determine the competent authority for the scrutiny and approval of a prospectus, as determined in Regulation (EU) 2017/1129.*** 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.

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(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 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 ***three*** 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 ***three*** best bid and offer quotes should correspond to the ***three*** best bid and offer quotes across all quotes for a given share or ETF published in the Union by different systematic internalisers.

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(36a) ***The use of frequent batch auction trading systems in Union equity markets has increased in recent years, with growing volumes of transactions executed through such mechanisms. While those systems may provide benefits to market participants, including by improving execution certainty and reducing price slippage risks for large orders, their design and operation should not undermine the price-forming nature of the auction nor facilitate the circumvention of the single volume cap mechanism. To ensure a level playing field and promote consistent supervisory outcomes across the Union, ESMA should be entrusted with the assessment of whether the frequent batch auction trading system ensures sufficient price formation. To allow ESMA to carry out its assessment in a timely and effective manner, while minimising the administrative burden, trading venues should notify ESMA in advance of the operation of a frequent batch auction trading system or, where trading venues already operate a frequent batch auction, within 30 days following the date of application of this Regulation, providing a detailed justification as to why that system is deemed sufficiently price forming. To ensure legal certainty and avoid undue delays, trading venues that intend to operate a frequent batch auction, should be permitted to commence operations if ESMA does not raise objections within 30 days of receiving the notification. To ensure the effective flow of information between authorities, where ESMA is not the competent authority, trading venues should also notify their competent authority.***

(36b) ***To ensure a level playing field between systematic internalisers and trading venues and enhance execution opportunities for market participants, while safeguarding the orderly functioning of Union markets, when applying a periodic auction trading system, trading venues should apply the tick size regime only to orders.***

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(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.

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(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 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.

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(40) ▌ On 20 March 2025 ▌ , 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 ▌ called for a more integrated supervision at the Union level. ***Pursuant to Title VI of Directive 2014/65/EU, national competent authorities are currently responsible for the oversight of trading venues in the Union. The current framework of national supervision of trading venues has given rise to material divergences in the manner in which the requirements laid down in Union legislation are interpreted and applied by competent authorities across Member States. Those divergences increase compliance costs for operators active on a cross-border basis and*** reduce ***legal certainty for those operators as regards the regulatory treatment of their activities. In consequence, they create an unlevel playing field, impede the effective exercise of fundamental freedoms in the Treaties and undermine the smooth functioning of the single market for financial services. Further harmonisation of rules alone does not constitute an adequate remedy, given that legislation, by its nature, cannot exhaustively prescribe every detail required to ensure uniform*** supervisory outcomes ***under all circumstances. It also undermines the objective of simplifying the EU rulebook. A means of overcoming those divergences and of ensuring the consistent application of*** Union ***requirements, while remaining proportionate, for trading venues is*** to confer ▌ powers ***to a single supervisor at EU level - ESMA*** for significant trading venues ***and*** PEMOs. ▌

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as it is limited to those cases where centralised supervision is necessary to ensure the smooth functioning of the single market for financial services and to appropriately take into account the specificities of operators that are active on a cross-border basis and their risk profile, ESMA should only have direct supervisory powers over significant trading venues and PEMOs. . To determine what should be understood by 'significant trading venues', it is necessary to set out specific conditions. To avoid multiple supervisors for trading venues 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 trading venue within that group meets the conditions to be a significant trading venue.

(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 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. ***Notwithstanding this, national surveillance authorities in the Member State in which a market operator or PEMO is established or where a trading venues is operated, and where ESMA is the competent authority for the market operator, PEMO or trading venue, should be able to request information from ESMA that ESMA has access to in its capacity as competent authority of the market operator, PEMO or trading venue, that may be relevant for the purposes of national security and preparedness, such as cyber resilience reports.***

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(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 ***and*** 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. ***Article 46, point (g), of Regulation (EU) 2022/2554 specifies that the allocation of supervisory competences under that Regulation should be done in accordance with the respective sectoral acts. For trading venues, this Regulation adapts the definition of competent authorities in Article 2(1), point (18), of Regulation (EU) No 600/2014. It follows that, where Regulation (EU) No 600/2014 confers supervisory competences upon ESMA and designates it as the competent authority for a trading venue, ESMA should be deemed the competent authority for ensuring compliance with the requirements set out in Regulation (EU) 2022/2554.***

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(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 ***supervisory*** 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***. To enable the relevant national authorities to effectively perform their tasks under Regulation (EU) 600/2014, it is appropriate to require ESMA to notify relevant national authorities of any new authorisation requests for trading venues for which ESMA is the competent authority.***

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To that end, ESMA should make available to the relevant national authorities the supporting documents provided by applicants as part of the authorisation requests, and the relevant national authority should be able to share any information that is deemed relevant to inform ESMA's assessment of authorisation or withdrawal concerning a trading venue for which ESMA is the competent authority. The submission of factual or other information by relevant national authorities to ESMA should only inform ESMA's assessment and should not result in any duplicative assessment by those authorities. 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.

(44a) Investors increasingly invest through cross-border platforms, use investment firms established in other Member States and trade financial instruments admitted to trading across multiple jurisdictions. While the reporting obligations remain effective overall, it is necessary to ensure that competent authorities can access all relevant information concerning the clients on whose behalf investment firms execute transactions within their supervisory perimeter. The competent authorities should have discretion whether to receive transaction reports based on the domicile of a natural person or the registration of a legal person or both.

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(45) Regulation (EU) No 909/2014 of the European Parliament and of the Council[11] 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 ***enable*** that certain tokenised assets, including e-money tokens can be used***, subject to appropriate safeguards,*** as a means of payment when settling securities transactions or to pay penalties for settlement fails ***where CSD rules allow it***.

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11 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).

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(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[12] 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***, in particular those CSDs*** whose value would 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.

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[12] 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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(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 ***CSDs established in more than one Member State***, 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.

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(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 ***national competent authorities in the Member State in which the CSD concerned is established,*** the ECB and other central banks of issue of ▌ Union currencies that the CSDs settle in. Such cooperation arrangements should cover ***the exchange of information as well as*** 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 ***Member State*** 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.

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(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 ***DLT-enforced*** reconciliation ***mechanisms through programming functionalities. The CSDs using DLT should therefore ensure that such functionalities guarantee*** 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 ***their most relevant*** 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) ***2023/1114*** of the European Parliament and of the Council[13] 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***. Accordingly, e-money tokens intended to be used for the settlement of the payment leg in securities transactions should be authorised under Regulation (EU) 2023/1114***. 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 ***and the minimum scope of financial instruments covered by the link*** should depend on the significance of the CSD.

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13 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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(60a) In accordance with Article 4(2) of the Treaty on European Union and without prejudice to the judicial review by the Court of Justice, this Regulation should not affect the responsibility of Member States with regard to essential State functions concerning public security, defence and the safeguarding of national security, for example concerning the supply of information which would be contrary to the safeguarding of national security.

(60b) The provisions of Regulation (EU) No 909/2014 should promote the integration of the Union financial markets and ensure that issuers established in the Union can freely access financing from investors across the Union. To achieve this objective and remove barriers to the freedom of issuance in the Union, issuers established in the Union should have the right to choose any CSD established in the Union to initially record, or to record subsequently to an initial recording, their securities that are in the process of being admitted to trading, admitted to trading or traded on trading venues. Where issuers established in the Union exercise this freedom, any matters that are not currently regulated under the provisions of Regulation (EU) No 909/2014 should remain subject to the applicable provisions of Union and national legislation. The right for an issuer to arrange for its securities to be recorded in a CSD in any Member State does not, however, oblige CSDs to start offering the initial recording of securities governed by the law of any Member State or third country.

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(60c) The ability of authorised CSDs to provide core services on a cross-border basis promotes competition, which encourages lower prices and improved services across the Union's financial markets. As such, any undue procedural or regulatory barriers to cross-border activity of authorised CSDs should be removed, subject to compliance by the CSDs with all applicable legal requirements. In particular, the freedom to provide services does not free the CSD from complying with any requirements in Union or national law applicable to the specific core or ancillary services it provides. Where CSDs established in the Union exercise their freedom to provide services in another Member State, matters that are not currently regulated under the provisions of Regulation (EU) No 909/2014 should remain subject to the applicable provisions of Union and national legislation.

(60d) CSDs established in third countries should be able to offer their services in the Union, including through the setting-up of a branch. In order to ensure an appropriate level of safety in the provision of CSD services by third-country CSDs, such CSDs should be subject to recognition by ESMA where they intend to set up a branch in the Union or to provide notary or central maintenance services in relation to financial instruments issued by an issuer established in a Member State and where the terms and conditions of the financial instrument concerned are governed by the law of a Member State. References to the law governing the terms and conditions of a financial instrument should be understood as the legal system whose substantive rules apply to the instrument's contractual terms and conditions, including the interpretation, performance and enforcement of the rights and obligations it embodies. This is distinct from the law of the issuer and the law applicable to the holding and custody of the instrument, although in the case of shares the governing law of the instrument will ordinarily coincide with the law of the issuer. For debt securities, this should be understood as the law governing the terms and conditions of the securities, setting out the rights and obligations arising from such securities, but not, to the extent different, the law governing any terms and conditions addressing the status (including level of subordination) of the securities, or giving effect to laws and regulations applicable to the issuer in its jurisdiction of incorporation (including, terms giving effect to an issuer's obligations under Directive 2014/59/EU, such as contractual bail-in provisions).

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(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.

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(63) 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 ***used in their territory*** are not in compliance with Regulation (EU) 2019/1156 or the relevant Commission delegated acts, they retain the right to ***require*** the AIFM, EuVECA or EuSEF manager or UCITS to take ***corrective actions to address the non-compliance.*** Competent authorities of host Member States***, having taken such actions, shall communicate this*** to ESMA***, and other competent authorities through the data platform. Similarly, where the*** competent authorities ***of the home Member State requires corrective actions to be taken in respect of marketing communications used in their territory by UCITS or AIFs distributed on cross-border basis, they shall communicate this to ESMA and other competent authorities through the data platform***. ***The marketing requirements shall apply to UCITS and AIFs that are marketed both on a cross-border basis and in the home Member State only. Member States should be able to opt into the use of the data platform for marketing communications relating to UCITS and AIFs marketed solely in their home Member State.***

(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.

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(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. ***Under the new passporting procedure,*** the data platform will simplify and expedite the passporting procedure for UCITS and AIFMs, allowing for immediate ***access to their chosen host Member States upon notification of their intention to*** market ***and the notification to the data platform by the home competent authorities***, 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 ***this*** procedure. ***In keeping with the "one-stop-shop" approach, the information and documentation submitted through the data platform*** should be ***submitted to ESMA following a "report once" principle. This means that, once received by ESMA through the data platform, it shall not be necessary for the information or documentation to be submitted through other mechanisms or platforms, where such information or documentation may be required for regulatory or supervisory purposes beyond the cross-border marketing of AIFs and UCITS***.

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(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 managed by EU AIFMs to professional investors and the marketing of UCITS across the Union are transferred to Regulation (EU) 2019/1156. ***In the interest of simplification and more efficient access to the single market, and without compromising investor protection, the one-month notification requirement of a new UCITS share class is removed.***

(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 ▌ 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. ▌

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(68) ***As part of its authorisation, where a*** UCITS ***intends to market its units in a*** Member State ***other than its home Member State, a UCITS should enclose with its application, inter alia, its fund rules or instruments of incorporation, its prospectus and, where appropriate, its latest annual report, and its key information documents, translated in accordance with Regulation (EU) No 1286/2014, and the other required documents at least in a language customary in the sphere of international finance. The UCITS should provide information on the appointment of inter alia the management company and the depositary. In the event of any foreseen material changes to the documentation and information submitted to the*** competent ***authorities of the UCITS home Member State subsequent to the application for the initial authorisation, such changes should be notified in advance. For the purposes of this Regulation only, "material change" means a change to information or documentation previously submitted that by reason of its nature, scale or effects, could reasonably be expected to influence an investor's decision to acquire, hold, redeem or dispose of units or shares in a fund, affect compliance with this Regulation, affect the rights or interests of investors or cause the information or documentation previously submitted to be inaccurate, incomplete or misleading. The launch of a new share class previously disclosed in offering documents shall not qualify as a material change. These changes may relate to the governing body of the UCITS (where applicable) or to an existing relationship with a statutorily provided service provider, namely the management company, including change of status as externally managed or vice versa, or the depositary or the statutory auditor. Such changes may also be related to third-party delegates and*** relevant ***entrusted tasks, in particular cross-border distribution arrangements. They may further relate to legal and commercial aspects of the UCITS and its offering, such as changes to the terms regarding issue, sale or redemption, the investment objective and policy of the UCITS, changes to legal form and structuring as well as corporate action related events, e.g. a merger. It is important that the notification of material changes does not create unnecessary barriers in terms of time and costs to market a UCITS, noting the broader objective to improve and simplify access to the Single Market. Similarly, this would apply to AIFMs, EUVECA managers, EuSEF managers.***

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(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.

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(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 ***or settled*** on a DLT market infrastructure under this Regulation should be expanded to cover all financial instruments, regardless of their type, subject to appropriate application of investor protection rules.

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(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 ***300*** billion***. In addition, the threshold may be decreased or increased through a delegated act where certain conditions are fulfilled, and where an increase is limited to 500bn***. 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. ***An operator of a DLT market infrastructure should be responsible for its own compliance with requirements applicable to such operator due to its operation of the relevant system as well as to ensure the compliance by each respective system of its obligations. A system authorised under Regulation (EU) No 909/2014 and permissioned to operate under the pilot regime would qualify as a CSD even where such system is not designated under [Regulation (EU) …/… on settlement finality and repealing Directive 98/26/EC and amending Directive 2002/47/EC on financial collateral arrangements].***

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(77) Regulation (EU) 2022/858 limits the types of eligible entities that can participate in the Pilot, which have to be ***entities*** either ***authorised as*** trading venues ▌ under Directive 2014/65 or ***entities authorised as CSDs under Regulation (EU) No 909/2014***. 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 ▌ apply to ***such*** CASPs.

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(78) Regulation (EU) 2022/858 grants its participants the possibility to request exemptions from specific provisions of the sectoral legislation ***applicable to the entity authorised under such a regime***. However, certain provisions of ***such***sectoral legislation may be identified as incompatible with DLT ***applied*** by applicants to the Pilot themselves, as they develop their business models and apply***, beside its authorisation under sectorial legislation,*** for a permission to operate a DLT market infrastructure, or after obtaining ***such*** permission. To ensure flexibility of the Pilot regime in supporting innovation, the competent authorities should be allowed to grant ▌ exemptions from provisions belonging to the specified parts of sectoral legislation under certain conditions. ▌ Requests ***for exemptions*** should be based on clear justification by the ***operator of the*** DLT TV***, DLT TSS*** or DLT SS ▌ 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 ***exemptions*** by issuing non-binding opinions on the requests ***for exemption*** and assessments made ***of such requests for exemption and decisions to grant exemptions*** by the competent authorities. ***To ensure a smooth process, the applicant shall progress the application under the sectorial legislation as well as the permission to operate under the DLT pilot regime and any requests for exemptions under the DLTPR simultaneously.***

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(78a) Operators of a DLT trading venue should be permitted to grant access to their platforms to natural and legal persons that qualify as retail clients. Pursuant to Article 20(8) of Directive 2014/65/EU, operators of organised trading facilities (OTFs) are required to comply with the investor protection requirements laid down in Articles 24, 25, 27 and 28 of that Directive. Those requirements also apply to operators of DLT OTFs in respect of any person admitted to their DLT market infrastructure. By contrast, pursuant to Article 19 of Directive 2014/65/EU, Articles 24, 25, 27 and 28 of that Directive do not apply to multilateral trading facilities (MTFs), and should therefore not apply to operators of DLT MTFs. To avoid any gap in the protection of retail clients being granted direct access to DLT TVs, it is therefore necessary to introduce specific requirements for DLT MTF operators that seek to admit, as members or participants of their DLT MTF, natural or legal persons qualifying as retail clients within the meaning of Directive 2014/65/EU.

(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 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.

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(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 ***referred to above***, may be provided only by ***DLT SSs or*** credit institutions. ***To avoid overlapping requirements and ensure the consistent application of the specific framework applicable to DLT settlement systems, where an operator of a DLT SS has been exempted, pursuant to Article 5(8) of Regulation (EU) 2022/858, from Article 40 and Title IV of Regulation (EU) No 909/2014, the requirements applicable to the settlement of payments should be those laid down in paragraphs (8a) to (8f) of Article 5 of Regulation (EU) 2022/858. The corresponding requirements of Regulation (EU) No 909/2014 should therefore only apply where those paragraphs (8a) to (8f) expressly provide for their application. In particular, the settlement of payments in e-money tokens by such a DLT SS should be subject to the requirements laid down in Article 5(8d) to (8f) of Regulation (EU) 2022/858, rather than to those laid down in Articles 54, 54a, 54b and 54c of Regulation (EU) No 909/2014.*** 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 ***further*** support the development of euro denominated stablecoins, DLT market infrastructures ***are*** 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.

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(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, ***the regulatory technical standards or guidelines issued under Regulation (EU) 909/2014 shall not apply to*** the ***entities subject to the simplified regime and instead ESMA should be given the mandate to issue technical standards where ESMA consider it necessary to further specify any of the provisions applying to the simplified regime. To strive for harmonisation in the regulatory acquis, ESMA should further specify any of the provisions specified in the list of applicable provisions to the simplified regime, considering the existing*** delegated regulations ***issued under*** Regulation (EU) No 909/2014 ***where relevant and appropriate considering the requirements*** under ***this Regulation*** should be ***suitable to be applied to market structuresand services provided using DLT and innovative structures and solutions***. 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 ▌ 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. ▌

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(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, ▌ a CASP ***or an entity authorised to perform similar services as the DLT notary service or the DLT central account maintenance service under the laws of a Member State*** should be allowed***,*** to perform the DLT notary service or the DLT central ***account*** 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 taking into account the specificities of DLT, DLT notaries and DLT account keepers***, they*** should be subject to the provisions of that regulation that govern the application of the notary ***service*** and the central ***account*** maintenance service and the additional requirements for DLT market infrastructures set out in Regulation (EU) 2022/858. ***For the purpose of applying the requirements under Regulation (EU) No 909/2014 to the DLT notaries and DLT account keepers they are treated as a CSD, that treatment should however not constitute an authorisation as a CSD nor as a designation as the operator of a securities settlement system. To ensure settlement in central bank money a DLT account keeper shall hold an account with the central bank of issue and where the cash leg may be settled in central bank money through the account of another DLT account keeper participating in the scheme. ESMA may develop regulatory technical standards where ESMA considers it necessary to further clarify any of the listed provisions applicable to DLT notaries and DLT account keepers.***

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(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 ***50*** billion of market value of such instruments**.**

(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 ***this*** Regulation ***that apply to*** the DLT notary or a DLT account keeper. ***The notary service and the central account maintenance service are to be provided on an individual basis but jointly by several entities. Where those services are unbundled, a client who suffers a loss is generally not in a position to establish which entity in the chain failed to comply with its obligations, since the relevant processes, records and reconciliations are internal to the entities concerned and are not observable from the outside. The entities providing CSD core services jointly should therefore be jointly and severally liable towards their clients for losses arising from a failure to comply with the requirements applicable to those services, and a client should be able to claim compensation from any of them without having to identify the entity responsible for the failure. The entity that has compensated the client should have a right of recourse against the entity whose failure caused the loss, determined by the allocation of roles and responsibilities agreed between them.***

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(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 ***or join*** an industry group for the purpose of establishing industry standards that facilitate settlement of DLT financial instruments ***between DLT market infrastructures. Such standards should aim to cover standards for data, messaging, reconciliation, settlement-finality mapping and portability and they should be open, transparent, non-discriminatory, avoid proprietary specifications, support market-wide interoperability and should act as an enabler for the establishments of links or connectivity arrangements*** 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.

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(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.

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(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. ***The centralisation of supervisory powers should however remain limited to what is necessary to achieve those objectives and should therefore comply with the principle of proportionality.***

(92) ***On 20 March 2025, 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 called for a more integrated supervision at the Union level. Pursuant to Title VII of Regulation (EU) 2023/1114, national competent authorities are currently responsible for the oversight of*** crypto-asset service providers ***in the Union. The current framework of national*** supervision ▌ of crypto-asset service providers ***has given rise to significant divergences in the manner in which the requirements laid down in*** Union ***legislation are interpreted and applied by competent authorities across Member States. Those divergences increase compliance costs for operators active on a cross-border basis and reduce legal certainty for those operators as regards the regulatory treatment of their activities. In consequence, they create an unlevel playing field, impede the effective exercise of fundamental freedoms in the Treaties and undermine the smooth functioning of the single market for financial services. Further harmonisation of rules alone does not constitute an adequate remedy, given that legislation, by its nature, cannot exhaustively prescribe every detail required to ensure uniform supervisory outcomes under all circumstances. It also undermines the objective of simplifying the EU rulebook. A means of overcoming those divergences and of ensuring the consistent application of Union requirements, while remaining proportionate, is to confer powers to a single supervisor at EU level – ESMA for significant*** crypto-asset ***providers***. ▌

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(92a) While national competent authorities remain responsible for supervising non-significant crypto-asset service providers, ESMA should possess sufficient powers under Regulation (EU) No 1095/2010 and this Regulation to ensure consistent application of this Regulation across the Union. ESMA may develop technical standards where mandated to do so, issue guidelines, conduct peer reviews and coordinate investigations. In emergency situations, ESMA may adopt product intervention measures and issue binding decisions to national competent authorities or directly to CASPs. These powers should enable ESMA to prevent regulatory arbitrage and safeguard consumer protection, market integrity and financial stability without assuming direct supervision of non-significant CASPs.

(93) ***To determine what*** should ***be understood by 'significant crypto-asset service providers' it is necessary to set out specific conditions***.

(94) ESMA***'s powers*** should be ***clearly defined in this Regulation, circumscribed by objective criteria and exercised in relation to significant*** crypto-asset service providers***, identified using specific criteria laid down by the Union legislator. Such powers should amount to a general competence over significant*** crypto-asset ***service providers, to ensure the effective functioning of the internal market and the consistent enforcement of MiCA***.

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(95) ***National*** competent authorities ▌ should ***continue to exercise supervisory responsibilities for non significant*** crypto-asset service providers and ▌ should ***cooperate closely with ESMA in accordance with this Regulation. To ensure consistent application of this Regulation across the Union***, ESMA should ***possess sufficient powers*** under ***Regulation (EU) No 1095/2010 and this Regulation. ESMA should develop technical standards where mandated to do so, issue guidelines, conduct peer reviews and coordinate investigations where necessary. In emergency situations, ESMA may adopt product intervention measures and issue binding decisions to national*** competent authorities ***or directly to CASPs. These powers should enable ESMA to prevent regulatory arbitrage and safeguard consumer protection, market integrity and financial stability without assuming direct*** supervision of ***non-significant CASPs***.

(96) ***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 authorisation 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 ***by these entities becomes significant, as provided in this Regulation, ESMA should cooperate with the competent authorities that authorised those entities under other Union legislative acts on financial services to ensure enhanced supervisory convergence and that the provision of crypto-asset services by these entities does not pose a threat to market integrity***.

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(97) To supervise ***significant*** 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 ***significant*** crypto-asset service providers to cover its costs for supervision, including for overheads**.** . The fee should be proportionate to the size of the ***significant*** crypto-asset service provider. To avoid disruption to existing crypto-asset service providers, it is necessary to lay down ***a transfer procedure*** for crypto-asset service providers that have been authorised pursuant to Regulation (EU) 2023/1114 and ***will be transferred for supervision by ESMA when found to satisfy the criteria to be deemed significant***. 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 ***significant*** 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.

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(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.

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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 ***some of the conditions and methodologies used to determine whether a crypto-asset service provider should be deemed significant and*** the type and the calculation of the amount of supervisory fees that ESMA can charge to the ***significant*** 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 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[14]. 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.

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

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(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[15] 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.

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15 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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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 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.

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(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.

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(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 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[16] and delivered an opinion on [XX].

HAVE ADOPTED THIS REGULATION:

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[16] 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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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,’

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

‘(c) strengthening international supervisory ***and enforcement*** 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. ▌The Chairperson shall participate in a Council session on the performance of the Authority***. This session shall take place annually***. The Chairperson shall make a statement 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.;’

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(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 ▌ ;’

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(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 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;;’

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(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;

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(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.';

(o) to assess and consider risks, including financial stability risks, in the Member State where a trading venue, market operator, CCP and CSD is established or operated or of significant importance, and where ESMA is the competent authority of such entities;

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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 '

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(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:

‘(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;;’

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(7) the following Article 8a ***and 8b are*** 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 ***solely*** responsible ***and accountable*** for the ***tasks conferred on it and shall develop and maintain the capacity necessary to perform those tasks effectively and independently.*** The cooperation arrangements ***established pursuant to this Article shall apply on an ongoing basis***.

2. Both the Authority and the authorities shall be subject to a duty of cooperation in good faith and an obligation to exchange ***timely*** information ***necessary*** 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. ***The authorities shall actively cooperate with and assist*** the Authority ***to carry out*** the tasks ▌ referred to in Article ***8(1) point (l)***, ▌ under the conditions set out in the arrangements ***according to*** this Article. This ***includes*** support with the preparation and implementation of acts relating to the tasks referred to in Article 8(1) point (l) ***where necessary***, including ***administrative*** assistance in ***supervisory, investigatory or enforcement matters*** or performance of specific operational tasks. ***Competent*** authorities shall ***also assist*** the Authority ***in applying national legislation transposing Union law as referred to in Article 1(2). Cooperation by the authorities pursuant to this Article shall be without prejudice to the Authority’s responsibilities and accountability pursuant to this Regulation and the legislation referred to in Article 1(2), including regarding supervisory assessments, decisions or supervisory outcomes***.

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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 ***in consultation*** with the authorities the practical arrangements for cooperation. ***These arrangements shall be transparent and strictly limited to what is necessary for the exercise of the Authority's direct supervisory tasks. The relevant national authorities shall be involved in the preparation and periodic review of cooperation arrangements concerning tasks in which they participate.***

4. The Authority shall bear any ***reasonable, direct and indirect*** 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 ***cooperation***, the procedures and processes, including time-limits, for the cooperation between the Authority and the authorities ***in the area of direct supervision*** and shall be guided by the following principles:

(a) they ***shall*** be tailored ▌ to the sector concerned ***and, where appropriate, to the nature, scale, complexity and cross-border significance of the supervised entity or entities*** and the nature of the supervisory tasks ***concerned***;

▌

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

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

(d) 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;

(e) they shall ensure seamless and secure information flows, including confidentiality safeguards and the handling of third-party information***. They shall ensure that relevant authorities receive timely and proportionate information regarding material supervisory developments concerning entities established in their jurisdiction, specifying the information to be exchanged, the authorities entitled to receive it and applicable time limits***;

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(f) they shall set out ***an appropriate form or forms of ongoing cooperation for each sector, which may include Coordinated Supervisory Teams, liaison officers, or other forms of cooperation and assistance, having regard to the sector, the supervisory tasks, relevant national responsibilities, proportionality, cost-efficiency and the need for local expertise. Coordinated Supervisory Teams shall be the default model unless otherwise agreed. The proposed model should be proportionate having regard to the size, complexity or risk profile of the entities concerned.***

A relevant authority may notify the Authority ***of its decision not to participate in a particular Coordinated Supervisory Team, or specific supervisory activity. Non-participation in a particular model or activity shall not release a relevant authority from the duty of cooperation under paragraph 2 or from any applicable obligation concerning information-sharing, confidentiality, emergency cooperation or assistance.***

Where a relevant authority does not participate in a particular cooperation model or activity, the Authority shall ensure that such non-participation does not result in any gap in supervision. All supervisory models shall , with regard to its direct supervisory tasks ***as defined pursuant to this Regulation, operate under the lead of the Authority and without prejudice to its responsibility for final supervisory decisions.***

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

(h) they ***shall*** determine the modalities***, clear rules*** for the calculation***, invoicing,*** reimbursement ***and dispute resolution mechanism relating to recoverable direct and indirect*** costs incurred by the authorities, taking into account differences across sectors, the nature of the activity supervised or of the tasks performed.

(i) ***relevant authorities may bring material risks to the Authority's attention and request supervisory consideration; and***

(j) ***they shall specify cooperation in emergency situations, including with central banks, resolution authorities and other authorities responsible for crisis management, financial stability, security or preparedness.***

6. The practical arrangements for cooperation shall be approved by the ***Board of Supervisors, based on a proposal from the*** Executive Board***. The Board of Supervisors may require amendments where appropriate before approving those arrangements***. The Executive Board ***and the authorities*** shall ▌ ensure their ***timely and effective*** implementation***.***

The authorities shall, in cases where ***the Authority*** is exercising direct supervisory tasks, follow the instructions given by the Executive Board when performing the tasks ***assigned to them under the cooperation*** arrangements.

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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. ***The Board of Supervisors may request the Executive Board to propose amendments where experience demonstrates that an arrangement is not operating effectively or proportionately.***

Article 8b

Cooperation during the transition period

1. During a preparation phase running between the date of entry into force of the amending regulation and the date of entry into application when the responsibility for the direct supervisory mandates is transferred to ESMA according to this Regulation and sector Regulations, ESMA and the relevant national authorities shall closely cooperate and prepare the transfer of powers to ESMA.
This Article does not apply to sectors or subsectors subject to direct supervision by ESMA prior to [date of this Regulation taking effect].

2. To ensure continuity of supervisory tasks, the orderly transfer of supervisory responsibilities, knowledge and documentation and to support the development of the Authority's supervisory capacity, the Authority and relevant national authorities shall establish sector specific transitional cooperation arrangements for the purpose of carrying out tasks according to Article 8(1), point (l) during a transition period.

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3. The transition period shall commence on the date on which the relevant direct-supervisory responsibilities are transferred to the Authority. From that date, the Authority shall be the responsible supervisor and shall remain responsible and accountable for the exercise of those responsibilities and for all final supervisory decisions. During the transition period, the relevant competent authorities and other national authorities shall support the Authority in exercising its supervisory tasks in accordance with the approved transition plan, including by contributing to supervisory activities and to the preparation of supervisory assessments and proposed decisions, with a view to developing the Authority's capacity to perform its tasks independently. The Authority shall independently assess and validate any work prepared by a participating authority before relying on it in a supervisory decision.

4.

5. For significant crypto-asset service providers, the transition period shall end no later than two years after the transfer date, unless extended in accordance with paragraph 5. For significant trading venues and Pan-European Market Operators, central securities depositories and central counterparties, the transition period shall end no later than three years after the transfer date, unless extended in accordance with paragraph 5.

Before the transitional period expires, the Executive Board shall submit to the Board of Supervisors a reasoned assessment, prepared after consulting the relevant authorities, of whether the Authority possesses the staff, expertise, systems, information and operational capacity necessary to perform its tasks effectively and of the permanent structured cooperation model appropriate for each sector.

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The transition period shall end on the date specified in the relevant cooperation arrangements, and in any event no later than two or three years after the transfer date, as applicable. The Board of Supervisors may, on a reasoned proposal from the Executive Board and after consulting the relevant authorities, determine that the permanent cooperation arrangements should apply before the expiry of the relevant period.

6. For a sector subject to a transition period referred to in paragraph 4, where the Executive Board concludes that the Authority is not yet operationally ready, it may prepare a reasoned request for one extension of no more than 12 months. The request shall identify the outstanding deficiencies, the additional support required and revised measures and milestones necessary to address those deficiencies. The Executive Board shall notify the Board of Supervisors of its intention to request an extension and shall submit the reasoned request to the Commission for final approval. The extension shall take effect only following approval by the Commission [in accordance with the applicable procedure].

No further extension shall be permitted. At the end of the applicable transition period or, where an extension has been approved, at the end of that extension, the transitional cooperation arrangements shall cease to apply and the cooperation framework under Article 8a shall apply.

The Executive Board shall submit the ongoing cooperation arrangements referred to in Article 8a to the Board of Supervisors sufficiently in advance of the end of the transition period. A failure to approve those arrangements shall not constitute grounds for extending the transition period. Pending approval of the ongoing cooperation arrangements referred to in Article 8a, the Authority and the relevant national authorities shall cooperate in accordance with Article 8a(2) and the applicable provisions of the sectoral Union acts referred to in Article 1(2).

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7. The specific provisions covering the transition phase in the cooperation arrangements are without prejudice to ESMA's responsibilities as laid down in this Regulation and relevant sector Regulation. The cooperation arrangements during the transition phase shall ensure that the Authority develops and maintains the necessary capacity to perform its tasks autonomously.

8. The specific provisions covering the preparation and transition periods in the cooperation arrangements shall be sector specific, where appropriate, and shall, in particular, lay down the following:

(a) The modalities of the transfer of responsibility for the supervision of the entities that are to become directly supervised by the Authority, including timelines, the transfer of relevant data, pending procedures, supervisory records, investigation files and working documents, the planning of supervisory activities, investigations and on-site inspections, resource and staffing estimates, consultation procedures, sector-specific milestones and criteria for assessing the development of the Authority's supervisory capacity;

(b) the set-up and functioning of Joint Transition Teams, led by a designated Authority staff member, and how relevant activities, information and expertise will transfer into the ongoing cooperation model or models under Article 8a;

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(c) the modalities for the reimbursement by the Authority of any reasonable, direct and indirect costs incurred by national competent authorities, including resource forecasts, eligible costs, supporting evidence, advance financing where justified, the calculation, invoicing and dispute resolution mechanisms;

(d) reciprocal information sharing, treatment of material risks, cooperation with central banks and resolution authorities, DORA responsibilities and emergency or crisis arrangements;

(e) an obligation for the Authority to provide, on a semi-annual basis, estimates of the resource needs expected from the national competent authorities during the transition period and a report on progress against the milestones referred to in point (a), including any operational, legal or resource constraints affecting the transfer.

The Executive Board shall prepare the specific provisions referred to in this paragraph in consultation with the relevant authorities. The Board of Supervisors shall approve those provisions and any material amendments to them on a proposal from the Executive Board. The Board of Supervisors may require amendments before approving them.'

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(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 ▌ 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 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).;’

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(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.;’

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(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.;’

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(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 ***standard*** to the Commission for adoption according to the procedure set out in paragraph 1. Where the Authority has not 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.

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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.;’

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(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.;’

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(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 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.

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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:

in paragraph 2***, the first subparagraph*** 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 ***Executive Board*** shall outline how ***the Authority*** 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.;'

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(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 ***Board of Supervisors*** shall***, on the basis of a reasoned proposal from the Executive Board***, 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.;’

(ba) paragraph 4 is replaced by the following:

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

The Commission shall issue such a formal opinion no later than 3 months after the expiry of the period specified in the recommendation for the competent authority to take the action necessary to comply with Union law. The Commission may extend that period by 1 month. The Authority and the competent authorities shall provide the Commission with all necessary information.

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(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 ***Board of Supervisors*** shall ***decide whether to, on the basis of a reasoned proposal from the Executive Board***, where 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.’

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(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 ***under Article 30*** or an inquiry under Article 22(4) ***provides specific and substantiated evidence giving reasonable grounds for considering*** that a competent authority may be ***seriously and persistently*** failing to ***supervise*** effectively ***the*** approval ***of*** financial products, services, activities or entities in ***a specified*** sector ***or part of a sector, the Authority may initiate the procedure laid down in this Article where that failure has the potential to cause significant financial damage to customers or consumers, or to threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union***.

▌

2. ***The Authority shall notify*** the competent authority concerned ***of the findings of the peer review or inquiry. The notification shall state the basis on which the Authority considers that the conditions in paragraph 1 may be met and shall identify the relevant facts and evidence, the supervisory practice or failure concerned, the applicable Union framework and the information required.***
Without prejudice to Article 35, the competent authority shall***, within a reasonable period set by the Authority, provide clear, accurate and complete information explaining its supervisory approach and setting out any corrective action taken or proposed. The Authority may request relevant information from other competent authorities after informing*** the competent authority concerned***. Any information required from a financial market participant shall be obtained and transmitted through its*** competent authority ▌ .

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3. Where***, after assessing the information received,*** the Authority ***continues to have reasonable grounds for considering that the supervisory failure persists and that the conditions in paragraph 1 remain met, it shall provide the competent authority with a reasoned statement of concerns specifying the corrective outcome required and a reasonable period for remediation.*** The competent authority shall submit ***and begin implementing a remedial action plan within that period.*** The Authority ***and the competent authority shall engage with a view to ensuring that the supervisory failure and the risks referred to in paragraph 1 are effectively addressed or mitigated***. ***The remediation period may be extended once where the competent authority has implemented substantive remedial measures, those measures are reasonably likely to achieve the corrective outcome within the extended period, and the extension would not give rise to an unacceptable increase in any of the risks referred to in paragraph 1.***

4. ***Where the serious and persistent supervisory failure identified*** pursuant to paragraph ***1 persists after the period for implementing the remedial action plan has expired, the Executive Board may submit*** to the ***Board of Supervisors:***

(a) a reasoned proposal for a recommendation that should include an exhaustive list of corrective measures for the competent authority to address the supervisory failure identified under this Article and, shall specify a reasonable implementation period having regard to the nature and complexity of the corrective measures concerned; and

(b) where necessary, pending the effective implementation of measures in 4(a), a

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recommendation requiring the competent authority to seek the Authority's opinion before granting specified approvals for financial products, services, activities or entities; and shall be temporary, targeted and limited to the period necessary to address the supervisory failure and the risks giving rise to it.

The proposal in 4(a) shall demonstrate that:

(i) the conditions in paragraph 1 are met;

(ii) the procedural steps laid down in paragraphs 2 and 3 have been completed and the period specified for implementing the remedial action plan has expired without the supervisory failure referred to in paragraph 1 having been effectively addressed or the resulting risks adequately mitigated;

(iii) each measure proposed under the first subparagraph is necessary and proportionate to the supervisory failure and risks referred to in paragraph 1 and cannot be replaced by a less intrusive measure capable of achieving the same outcome; and

(iv) the proposed measures are not likely to have effects on customers or consumers, the orderly functioning and integrity of financial markets or financial stability that are disproportionate to their benefits.

The proposal shall specify the corrective measures proposed under point (a), the approvals to which any requirement under point (b) would apply, the period for implementing the corrective measures, the proposed duration of the prior-opinion requirement and the conditions for its termination. The competent authority shall be given a reasonable opportunity to submit final observations.

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4a. The Board of Supervisors shall assess the recommendation referred to in paragraph 4, first subparagraph, point (a), and the recommendation referred to in paragraph 4, first subparagraph, point (b), separately or together and decide by simple majority vote whether or not to approve the recommendation. The representative of the competent authority concerned may participate in the discussion and present its position but shall not vote. Each instrument adopted shall state the reasons on which it is based.

4b. The Board of Supervisors shall review implementation of the recommendation referred to in paragraph 4, first subparagraph, point (a), within the period specified therein, on the basis of a reasoned assessment prepared by the Executive Board. Where the competent authority has failed to implement the recommended corrective measures and the conditions in paragraph 1 remain met, the Executive Board may submit a further reasoned proposal to the Board of Supervisors. The Board of Supervisors may by simple majority vote to maintain, amend or supplement the recommended corrective measures, subject to the conditions laid down in paragraph 4.

4c. A recommendation under paragraph 4, first subparagraph, point (b), shall apply for an initial period not exceeding three months. The Board of Supervisors may renew the recommendation for successive periods, each not exceeding three months, on the basis of a reasoned assessment prepared by the Executive Board and after consulting the competent authority concerned. Each renewal shall be subject to a determination by the Board of Supervisors that the conditions for the recommendation continue to be met and that its renewal remains necessary and proportionate.

If the recommendation is not renewed before its expiry, it shall cease to apply. The Board of Supervisors shall by simple majority vote, adopt a recommendation to lift or narrow the decision without undue delay where the conditions in paragraph 4 are no longer met.

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4d. Where a recommendation under paragraph 4, first subparagraph, point (b) applies, the competent authority shall submit to the Authority a reasoned proposal for each approval concerned, together with the supporting information necessary for the Authority's assessment. The Executive Board shall prepare a draft opinion and submit it to the Board of Supervisors in sufficient time for the Board of Supervisors to assess and decide, by a simple majority vote whether or not to approve the opinion within 15 working days of receiving the complete proposal and supporting information. If no opinion is adopted within that period, the competent authority may grant the approval. The opinion shall be non-binding. The competent authority shall inform the Authority, within 15 working days of receiving the opinion, of the action taken or proposed in response to it. Where it does not follow the opinion, it shall provide a reasoned explanation.

4e. The competent authority concerned may at any time request that a recommendation under this Article be lifted or narrowed where the supervisory failure has been effectively and sustainably addressed, there has been a material change in circumstances, or continuation of the instrument is no longer necessary or proportionate. The Executive Board shall assess the request within 5 working days of receiving the information necessary to complete its assessment and shall submit a reasoned proposal to the Board of Supervisors. The Board of Supervisors shall by simple majority vote lift or narrow the instrument where the conditions in paragraph 4 are no longer met. It may also lift or narrow an instrument on its own initiative after consulting the Executive Board and the relevant competent authorities.'

(14) The following Article 17aaa is inserted:

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‘Article 17aaa

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

1. Where the Authority has ***specific and substantiated evidence giving*** reasonable grounds for considering that an entity authorised under Union law ***and providing*** services or activities ▌ on a cross-border basis has committed a serious ***and continuing*** infringement of ▌ obligations ***laid down*** in this Regulation***, in a*** Union act referred to in Article 1(2)***,*** or ***in*** provisions adopted pursuant to ***such*** Union ***acts, the Authority may initiate the procedure laid down in this*** Article ***where that infringement has the potential to cause significant financial damage to customers or consumers, or to threaten the orderly functioning and*** integrity of financial markets ***or the*** stability ***of the whole or part*** of the ***financial system in the Union***. ▌

2. ***The Authority shall refer its findings to*** the competent authority ***that granted the authorisation to the entity. The referral shall state the basis on which*** the Authority ***considers*** that the ***conditions in paragraph 1 may be met and shall identify the relevant facts and evidence, the provisions of Union law concerned, the cross-border effects and the information required.***
The competent authority shall, within ***a reasonable period set by the Authority, provide clear, accurate and complete*** information ***demonstrating that the alleged infringement has not occurred or does not persist or, where it agrees with the findings, setting out the measures taken or proposed to bring the infringement to an end***.

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3. Where***, after assessing the information received, the Authority continues to have reasonable grounds for considering that the infringement persists and that the conditions in paragraph 1 remain met, it shall provide the*** competent authority ***with a reasoned statement of concerns specifying the corrective outcome required by the*** entity ***and a reasonable period for remediation.*** The competent authority ***shall submit and begin implementing a remedial action plan within that period. The Authority and the competent authority shall cooperate with a view to ensuring that the infringement is brought to an end and that the risks*** referred to in paragraph 1 ***are effectively addressed or mitigated. The remediation period may be extended once*** where the ▌ competent ▌ authority ***has implemented substantive remedial measures, those measures are reasonably likely to achieve the corrective outcome*** within ***the extended period, and the extension would not give rise to an unacceptable increase in any of the risks referred to in paragraph 1***.

4. Where ***the serious and continuing infringement identified pursuant to paragraph 1 persists after the period for implementing the remedial action plan has expired, the Executive Board may submit to the Board of Supervisors a reasoned recommendation proposing the entity to suspend, in whole or in part,*** the relevant ***cross-border services or activities. The recommendation*** shall ***demonstrate that:***

(a) the conditions in paragraph 1 are met;

(b) the procedural steps laid down in paragraphs 2 and 3 have been completed and the remediation period has expired without the infringement having been brought to an end or the resulting risks having been adequately mitigated;

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(c) the suspension is necessary and proportionate, and the risk cannot be adequately addressed by less intrusive means; and

(d) the suspension is not likely to have effects on customers or consumers, the orderly functioning and integrity of financial markets or financial stability that are disproportionate to its benefits.

(e) The recommendation shall further specify the proposed scope and duration of the suspension. The competent authority shall be given an opportunity to submit final observations.

5. The ***Board of Supervisors may adopt by simple majority a decision requiring the suspension*** of the ***entity's activities. The representative of*** the competent authority ***concerned may participate in the discussion and present its position but shall not vote. The decision shall state the reasons on which it is based and specify the infringement,*** the corrective ***outcome required, the*** services ***or*** activities ***and Member States concerned, and the duration of the suspension***.

6. ***A suspension under paragraph 5 shall be temporary, targeted and limited to the period necessary to*** address ***the infringement and the risk giving rise to it. Its initial period of application shall not exceed three months. The Board of Supervisors may renew the decision for successive periods, each not exceeding three months, on the basis of a*** reasoned ***assessment prepared by the Executive Board. Each renewal shall be subject to a determination by the Board of Supervisors that the conditions for the decision continue to be met and that its renewal remains necessary and proportionate if the Board of Supervisors is satisfied conditions in paragraph 1 continue to be met.***

If the suspension is not renewed before its expiry, it shall cease to apply. The Board of Supervisors shall lift or narrow the suspension without undue delay where those conditions in paragraph 4 are no longer met.

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7. The ***decision referred to in paragraph 5*** shall ***be addressed to*** the competent authority***, which shall notify the*** entity ***and implement the measures necessary to give effect to decision of ESMA under applicable Union and national law***. ***The Authority shall simultaneously notify the relevant host competent authorities of its decision. The host competent authority shall take, within their respective powers, the measures necessary to support its application in their territories.***

7a. The entity or its competent authority may at any time request that the suspension be lifted or narrowed where the infringement has been effectively and sustainably remedied, the risk has materially reduced, there has been a material change in circumstances, or continuation of the suspension is no longer necessary or proportionate. The entity may submit such a request through its competent authority, together with the supporting information. The competent authority shall transmit the request without undue delay, together with its assessment.
The Executive Board shall assess the request within 5 working days of receiving the information necessary to complete its assessment and shall submit a reasoned recommendation to the Board of Supervisors. The Board of Supervisors shall lift or narrow the suspension, where the conditions in paragraph 4 are no longer met. It may also do so on its own initiative after consulting the Executive Board and the relevant competent authorities. The competent authority shall notify the entity of the decision. The entity may resume the services or activities to the extent specified in that notification.

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7b. For the purposes of this Article, the Authority may address a duly justified and reasoned request for information to any competent authority or other relevant person. Any request for information from, and all other engagement with or notification to an entity that remains under national supervision shall take place through its competent authority. The competent authority shall transmit the entity's submissions without undue delay and shall not refuse or delay transmission solely because it disagrees with them.

7c. This Article shall not apply where the Authority is the competent authority of the entity concerned.'

(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.;'

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(aa) Paragraph 1b is replaced by the following:

The Chairperson shall assess whether the Authority should act in accordance with paragraph 1. Following that assessment, the Executive Board shall decide whether to initiate the procedure. Where the intervention is at the Authority's own initiative, the Executive Board shall notify the competent authorities concerned of its decision regarding the intervention.

Pending the Executive Board's decision, where the legislative acts referred to in Article 1(2) require a joint decision to be taken, all competent authorities involved in the joint decision shall defer the adoption of their individual decisions. Where the Executive Board decides to initiate the procedure, all competent authorities involved in the joint decision shall defer the adoption of their decisions until the procedure set out in paragraphs 2 and 3 of this Article is concluded.

(aaa) Paragraph 2 is replaced by the following:

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

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(b) paragraph 3 is replaced by the following:

‘3. Where the competent authorities concerned fail to reach an agreement within the conciliation phase referred to in paragraph 2, the ***Board of Supervisors*** shall ***decide whether to, on the basis of a reasoned proposal from the Executive Board, adopt*** a decision requiring those authorities to take specific action, or to refrain from certain action, in order to settle the matter ***and*** ensure compliance with Union law. The decision ▌ shall be binding on the competent authorities concerned ***and*** may require ***them*** to revoke or amend a decision ▌ or to ***exercise*** powers ***available*** under ▌ 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 ***Board of Supervisors may, on the basis of a reasoned proposal from the Executive Board,*** 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.;’

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(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 where there are*** 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 ***in*** Article 1(2), the ***Board of Supervisors may, on a proposal from the Executive Board, or acting*** on its own initiative or at the request of one or more of the relevant competent authorities, ***decide whether to*** set up ***a collaboration platform. The Executive Board shall*** coordinate ***that*** collaboration platform to strengthen the exchange of information, propose solutions and ▌ 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 ***in*** Article 1(2).

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3. Without prejudice to Article 35, at the request of the ***Executive Board*** or any competent authority ***participating in the collaboration platform***, 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**,** 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 ***Board of Supervisors may, on a reasoned proposal from the Executive Board, or acting on its own initiative,*** call for the competent authority ***concerned*** to carry out an on-site inspection pursuant to the legislative acts referred to ***in*** Article 1(2). The competent authority shall ***carry out*** the on-site inspection without ***undue*** delay and shall invite the Authority and ***the*** 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 ***Board of Supervisors may, on a reasoned proposal from the*** Executive Board***, adopt*** appropriate recommendations for action ***addressed*** to the competent authorities concerned. ▌

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(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.

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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. ***Member States, through the*** 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 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.
This Article and Article 28b apply mutatis mutandis to the recovery of amounts due on the basis of settlements and of periodic penalty payments.
The decision of the competent authority imposing an administrative fine shall be enforceable in all Member States.

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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.
If the competent authority is, under its national law, not itself tasked with recovering the administrative fines, it shall transfer all requests for assistance to the authority in its Member State responsible for such recovery.

3. The request referred to in paragraph 2 shall be transmitted to the requested authority by means of a ***uniform instrument in*** 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;

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(f) the amount of the fine to be paid***, including interest and costs, if any***;

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

(h) ***if available,*** 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 ▌ 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 ***and, where required under the national law of the Member State of the requested authority, the decision imposing the administrative fine*** to the requested authority ***translated into*** 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 ***provided*** in another language.

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(b) The decision imposing the administrative fine, accompanied, where required under the national law of the Member State of the requested authority, ***with*** 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 ***uniform digital instrument permitting enforcement by the requested authority shall constitute the sole basis for the enforcement measures taken or initiated by the requested authority,*** in accordance with paragraphs 3 and 4 of Article 28a***. It shall not be subject to any act of recognition, supplementing or replacement in the Member State of the requested authority. It*** shall constitute the sole legal basis for the enforcement measures taken by the requested authority without any further formality, supplement or replacement being required. The requested authority shall, upon receipt, forthwith take all the necessary measures for ***the*** enforcement ***of the sanctioning decision issued by the applicant authority*** 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.

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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.
If the requested authority is unsuccessful in recovering the fine or periodic penalty payment, it may request the applicant authority to bear the costs incurred.

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;

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(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.

(da) the estimated costs of the recovery proceedings would be higher than the fine or periodic penalty payment to be recovered.

5. Article 28b and paragraphs 1 to 4 of this Article shall not preclude the application of the Council Framework Decision 2005/214/JHA([1]) 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.

In case of disagreements on the application of this Article ***or Article 28a***, 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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7. The Authority shall develop the electronic format of the ***uniform*** digital ***instrument*** referred to in paragraph 3 of Article 28a ▌ ;

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[1] 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'

(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.;'

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(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.;’

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(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 ***Executive Board*** 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 ***Executive Board***, following an open call for participation, shall propose the chair and the members of a peer review committee which shall be approved by the ▌ Board ***of Supervisors***. The proposal shall be deemed to be approved unless, within 10 days of the ***Executive Board*** proposing it, the ▌ Board ***of Supervisors*** adopts a decision to reject it. ▌

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

'A peer review report shall be prepared by the peer review committee***, sent to*** the Executive Board***, and subsequently adopted by the Board of Supervisors***. When drafting that report, the peer review committee shall consult the ▌ Board ***of Supervisors*** in order to maintain consistency with other peer review reports and to ensure a level playing field. The ▌ Board ***of Supervisors*** 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 ▌ adopted by the ▌ Board ***of Supervisors***. When drafting that report, the ***Board of Supervisors*** shall ***be consulted*** 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.;'

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(d) paragraph 8 is replaced by the following:

‘8. For the purposes of this Article the ▌ Board ***of Supervisors*** shall adopt a ***methodology for*** peer review ***and a*** 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***, approved by the Board of Supervisors,*** with third country regulatory and supervisory authorities and international organisations for the purpose of fostering international supervisory ***and enforcement*** cooperation, including through the exchange of information and/or staff. ***In this context, the Authority may use its own powers to obtain and share with third country authorities information necessary for the enforcement of their laws and regulations.***

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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***, as well as to support supervisory and enforcement activities of the Authority and of the third country regulatory and supervisory authorities***.

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

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(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.;’

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

‘1. At the request of the Authority, the ***relevant national*** 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. ***The Authority shall, correspondingly, provide the relevant national authorities, including, where relevant, central banks and resolution authorities, without undue delay, with all the necessary information to carry out the duties assigned to them by Union acts and national law and to enable them to effectively assist the Authority in the exercise of its direct supervisory tasks.***

Where a ***relevant national authority or the*** 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.

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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.

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.;'

(25a) Article 37(5) is amended as follows:

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(25b) The Securities and Markets Stakeholder Group may submit opinions and advice to the Authority on any issue related to the tasks of the Authority with particular focus on the tasks set out in Articles 10 to 16 and Articles 29, 30 and 32 and 39o.

(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.’

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(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 ***that*** 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.

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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 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.

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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.

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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.

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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.

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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 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.

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4. In good time before the inspection the Authority shall inform the relevant competent authority of the Member State where ***the inspection*** 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 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.

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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 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.

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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.

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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 ***a*** financial market participant under the Authority's supervision has, intentionally or negligently, infringed this Regulation or other relevant Union ***acts*** 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.

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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 ***the*** 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 ***the*** 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.

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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, ***continues*** to comply with legal requirements.

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2. The Authority shall withdraw the registration, authorisation or the recognition of ***a*** 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:

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(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;

(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;

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(i) previous infringements of this Regulation or other relevant Union acts by ***the*** 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;

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(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:

(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:

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(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) ▌ 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.

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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. ▌Paragraph ***1*** 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 right of access to the file shall not extend to confidential information or the Authority preparatory documents.

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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.

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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)***, it*** 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).

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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 ▌ .

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 ▌ .

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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Article 39o

Fees Committee

1. ***The Authority shall establish a Fees Committee to oversee the Authority's supervisory fees under Article 39n.***

2. ***The Committee shall comprise six representatives of national competent authorities, appointed by the Board of Supervisors from among its members or alternates on a rotational basis. A member of the Executive Board may attend the Committee as relevant. When making appointments, the Board of Supervisors shall ensure appropriate balance between Member States, considering: (i) the relative size of their supervised markets; (ii) contributions to the funding of the Authority; and (iii) the need to represent different market sizes and supervisory perspectives.***

   Members shall serve a three-year term, renewable once. The Committee shall elect a Chairperson from among its members for the duration of their term. The Chairperson will attend and vote at Executive Board budget discussions on the budget.

3. ***The Fees Committee shall:***

   (a) verify that the fee methodology and the fees charged align with the cost recovery principle in Article 39n, ensuring that they do not exceed costs actually incurred or reasonably foreseen by the Authority;

   (b) assess whether resources financed through fees are allocated efficiently across the Authority's supervisory activities;

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(c) assess the impact of fees on the different categories of financial market participants and across Member States, including smaller entities and new entrants; and

(d) monitor fee evolution over time, including year-on-year changes in overall fee revenue and individual fee categories, and identify the drivers of change.

4. Based on its assessment referred to in paragraph 3, the Committee shall deliver opinions to the Board of Supervisors and Executive Board on; (i) the annual estimate of fee revenue and related expenditure in the draft single programming document referred to in Article 63(1); and (ii) the annual fee transparency report referred to in Article 39n(7).

The Committee shall also deliver an opinion on the Authority's multiannual estimates of supervisory fee revenue and related expenditure, assessing whether projected expenditure growth is justified by: (i) changes in the Authority's mandate; (ii) wage and price developments; or (iii) other objectively identified supervisory needs.

These opinions shall be delivered before adoption or publication of the relevant documents and published as an annex to the Authority's annual report. Where the Board of Supervisors departs from the Committee's Opinion, the Board's reasoned justification shall also be published in the annual report.

5. The Executive Board shall provide the Committee with information necessary to carry out its tasks under paragraph 3 and 4, in sufficient time for the Committee to deliver its opinion.

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6. The Committee may, where it considers it necessary for the performance of its tasks, invite a representative of the Securities and Markets Stakeholder Group and the Executive Board to attend a meeting or provide input on a specific matter. Any input received shall be taken into account before the Committee adopts the relevant opinion.

7. The Committee's opinions are non-binding. Where the Board of Supervisors departs from an opinion, it shall state its reasons in writing.

8. The Board of Supervisors shall establish the working arrangements of the Committee, including meeting frequency and rules of procedure.'

(28) Article 40 is amended as follows:

(a) in paragraph 1, the following point ▌ is inserted ***at the end***:

'(ba) 5 independent members of the Executive Board ***may participate, who shall be non-voting***;'

(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.;'

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(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***, subject to article 41,*** be in charge of taking the decisions in accordance with Articles 9a to 16a***, and of adopting decisions pursuant to Article 9(5), Article 17(3) and (6), Article 17aa, Article 17aaa, Article 18(3) and (4), Article 19 (3) and (4), Article 19a (1) and (4), Article 22(4) and Article 30(4),(6) and (8)*** 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.;’

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(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:

(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.;’

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(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 ***qualified*** majority of its voting members. ***Members referred to in Article 40 (1) point (ba) shall not vote on these decisions***;'

(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

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Where the Executive Board carries out the tasks referred to in ***paragraph 8 of*** Article ***46a***, 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 ▌ 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***, as well as the members of the Board of Supervisors from Member States whose competent authorities exercise relevant supervisory functions in relation to that entity, shall be invited to*** participate in the deliberations during the relevant meetings of the Executive Board. ***The Board of Supervisor member(s) will attend without voting rights. The member concerned shall receive, sufficiently in advance, the agenda and the documentation necessary to participate meaningfully in those deliberations. Where more than one national authority exercises relevant statutory responsibilities, national arrangements shall determine the representative, who may be accompanied by representatives of the other relevant authorities.***

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Where supervisory matters in relation to a central counterparty or central securities depository are discussed, ***representatives*** of the ECB ***and other central banks of issue of Union currencies other than the Euro*** 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 ▌ following an open selection procedure which shall be published in the Official Journal of the European Union. The Commission shall ***draw up*** a shortlist of ***qualified*** candidates for the position of the Executive Board members referred to in paragraph 1, point (b) ***with the assistance of the Board of Supervisors***. ***Based on the shortlist the Council shall adopt a decision to appoint the members of the Executive Board, after confirmation by*** the European Parliament ▌ .

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4. ***The Executive Board members shall be selected on the basis of merit, skills, integrity and independence, supervisory and market experience in the area of financial markets, and other relevant qualifications.*** Throughout the appointment process, the principles of gender and geographical balance shall be taken into account to the extent possible. The Executive Board members ***shall*** collectively ***have*** an appropriate understanding of the sectors in which the Authority exercises direct supervisory tasks***, including in prudential supervision, experience relevant to supervisory convergence and an understanding of the markets in which the directly supervised entities operate, and shall collectively reflect the different structures, specificities and levels of development of capital markets in the Union***.

5. The term of office of the Executive Board members referred to in paragraph 1, point (b), shall be five years ***and may not be extended.***

6. No individual may serve more than seven years in ***the*** role of Chair, ***or*** Executive Director, or ***five years in the role of*** 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:

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‘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.***Decisions*** in accordance with ▌ Article 39h ▌ , Article 39i, and Article 65 and any decisions ***adopted by the Executive Board under this Regulation or*** sectoral legislation ***which produce binding external legal effects in relation to a financial market participant under the Authority's supervision*** 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**.**
Executive Board agendas and documents relating to decisions subject to this non-objection procedure shall be provided to the Board of Supervisors as soon as they are available. In emergency situations the aforementioned period shall not exceed ***24*** hours.
The Board of Supervisors may confirm that it does not intend to object before the expiry of this period, to allow the decision to be adopted without delay.
At the request of nine voting members of the Board of Supervisors, a draft decision referred to in paragraph 2 shall be discussed at an ad hoc meeting of the Board of Supervisors before its adoption by the Executive Board.

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

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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:

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‘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

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.

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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:

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‘Article 46a

Tasks of the Executive Board

1. The Executive Board shall be responsible for the overall planning and execution of the ▌ Authority***’s direct-supervisory, operational and administrative tasks*** in accordance with this Regulation ***without prejudice to the responsibilities of the Board of Supervisors under Article 43***.

2. The Executive Board may ▌ 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 ***any direct*** supervisory matters. The Board of Supervisors shall provide its opinion at its next meeting following the request or as agreed with the Executive Board. ***This paragraph shall be without prejudice to the final decision-making responsibilities of the Board of Supervisors under Article 43.***

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. ***On its own initiative or at the request of the Board of Supervisors,*** the Executive Board shall ***decide to initiate the procedures and prepare reasoned recommendations for*** decisions pursuant to Article 9(5), Article 17(3) and (6), Article 17aa, Article 17aaa, Article18(3) and (4), Article19 ***(3) and (4)***, Article 19a (1) and (4), Article 22(4), and Article 30 ***(4), (6) and (8) for adoption by the Board of Supervisors. The Board of Supervisors shall consult*** the Executive Board ***on its decisions according to Article 30 (8).***

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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.

▌

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.

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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.'

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(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. ***During the 12 months preceding the end of the Chairperson’s initial term of office, the Board of Supervisors shall carry out an assessment of the Chairperson. The assessment shall take into account an evaluation of the Chairperson’s performance and the Authority’s future tasks and challenges. Based on that assessment, the Commission may propose to the European Parliament that the Chairperson’s term of office be extended. Following confirmation by the European Parliament, the Council may adopt a decision extending the Chairperson’s term of office. The extension shall not require a new open selection procedure or the preparation of a new shortlist.***;’

(d) ▌ paragraph 4 ***is deleted;***

▌

(e) the following paragraph 6 is added:

‘6. No individual may serve more than 7 years in ***the*** role of Chair ***or*** Executive Director, or ***five years in the role of*** 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.’

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(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. ***During the 12 months preceding the end of the Chairperson’s initial term of office, the Board of Supervisors shall carry out an assessment of the Chairperson. The assessment shall take into account an evaluation of the Chairperson’s performance and the Authority’s future tasks and challenges. Based on that assessment, the Commission may propose to the European Parliament that the Chairperson’s term of office be extended. Following confirmation by the European Parliament, the Council may adopt a decision extending the Chairperson’s term of office. The extension shall not require a new open selection procedure or the preparation of a new shortlist.***;’

(b) ▌ paragraph 4 ***is deleted;***

▌

(c) the following paragraph 6 is added:

‘6. No individual may serve more than 7 years in ***the*** role of Chair ***or*** Executive Director, or ***5 years in the role of*** 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.;’

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(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***(8)***.

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.;’

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(46) Article 58 is amended as follows:

(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.;’

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(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.

2. The expenditure of the Authority shall include, at least, staff, remuneration, administrative, infrastructure, professional training, reimbursements of costs to competent authorities under Article 8a and 8b and operational expenses.;’

(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.

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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:

'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.;'

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(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.

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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:

'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.'

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(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.

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4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement 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:

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

(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.

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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***(2)***;

(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;

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(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:

‘(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”.’;’

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(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***, in the case of less significant CCPs,*** 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***, in the case of less significant CCPs,*** the CCP’s competent authorities.;’

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(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[1], 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:;

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[1] 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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(4) Article 7 is amended as follows:

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

‘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***, via the central database***.

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.

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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 ***the grounds of*** a possible loss of revenue in respect of itself or another entity belonging to the same group.

The CCP may charge a reasonable commercial fee for the establishment of such access link on a cost recovery basis, unless otherwise agreed by both parties.

Where the CCP fails to provide a written response to the trading venue within the time limit referred to in paragraph 3, ***the trading venue shall inform ESMA via the central database. Upon such communication,*** ESMA may ▌ request ▌ information from the CCP ***or the trading venue***.

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

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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***, including, where relevant, potential mitigating measures that the trading venue could implement in order for*** the CCP ***to grant such access.*** Immediately after providing the written response to the trading venue, ***the CCP shall*** inform***, via the central database,*** ESMA and the competent authorities referred to in paragraph 2 of that decision.

5. Where the CCP has denied access***, or where the CCP and the trading venue disagree on the conditions for such access, including on the fee charged for the establishment of the access link referred to in paragraph 4***, the trading venue may submit a complaint to ESMA ***via the central database***.

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***, via the central database,*** a decision requiring the CCP to grant access to its services within one month of the notification of that decision.

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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. ***This period may be extended by up to one month where both parties agree.'***;'

(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-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:

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‘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***, via the central database,*** 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.

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***, including, where relevant, potential mitigating measures that the CCP could implement in order for*** the trading venue ***to grant such access.*** Immediately after providing the written response to the CCP, ***the trading venue shall*** inform***, via the central database,*** ESMA and the competent authorities referred to in paragraph 2 of that decision.

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Where there is no indication that the conditions for denial of request as referred to in paragraph 7 are met, ESMA may issue***, via the central database,*** 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 fails to provide a written response to the CCP within the time limit referred to in paragraph 3, ***the CCP shall inform ESMA via the central database. Upon such communication,*** ESMA may ***request information from*** the trading venue ***or the CCP***.

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.

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

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 may charge a reasonable commercial fee for the establishment of such access link on a cost recovery basis, unless otherwise agreed by both parties.

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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***, via the central database,*** 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.

5.Where the trading venue has denied access, ***or where the trading venue and the CCP disagree on the conditions for such access, including on the fee charged for the establishment of the access link referred to in paragraph 4,*** the CCP may submit a complaint to ESMA***, via the central database***.

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. ***This period may be extended by up to one month where both parties agree.***

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.;'

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(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).;’

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(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:

(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 ▌ 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 ***and 49***.;'

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

'(b) ESMA may, with respect to Articles ▌ 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;'

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(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.;’

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(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.;’

(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 ***and 49***. That college shall be chaired and managed by ***the national competent authority and a member of the ESMA Executive Board***.

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

‘(a) ***ESMA Executive Board Member:’***

(c) ▌

▌

(d) ▌

(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.;’

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(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 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.;’

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(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. ***Following this notification, the CCPs concerned shall be considered as significant CCPs. Those CCPs shall be supervised by ESMA following a potential adaptation period set by ESMA, in consultation with the national competent authorities thereof, which shall not exceed 6 months.***

1aa. After a period of at least 36 months, Member States that designated ESMA, in accordance with paragraph 1a, as the competent authority for a less significant CCP, may designate one or more national competent authorities as the CCP’s competent authorities in consultation with ESMA. That Member State shall notify the Commission, ESMA, and the competent authorities thereof via the central database. Following this notification, those CCPs shall be considered less significant CCPs and shall be supervised by national competent authorities following a potential adaptation period set in agreement with ESMA, which shall not exceed 24 months.’

(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.;’

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(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 ***consecutive*** period of ***two years*** prior to the assessment is more than EUR 100 billion ***per year***;

(b) the average gross notional outstanding of OTC derivatives transactions cleared by the CCP over a ***consecutive*** period of ***two years*** prior to the assessment is more than EUR 500 billion ***per year***;

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(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 ***consecutive*** period of ***two years*** prior to the assessment, is more than EUR 25 billion ***per year***;

▌ it belongs to the same group as ▌

(d) a CCP authorised under Article 14 or a Tier 2 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***, in consultation with the CCP's national competent authority,*** may set a potential adaptation period that shall not exceed 6 months, after which the CCP shall become supervised by ESMA.

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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.

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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 ***24*** 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 authorities, the ECB, where a CCP clears financial and non-financial instruments denominated in euro, and the central banks of issue of the ▌ 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***, in consultation with the CCP's national competent authority,*** 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.

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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.

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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.

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:

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(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;

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(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 itself. In both cases ESMA shall set the agenda, including the decisions to be considered for adoption by the shareholders;

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(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.

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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:

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(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;

(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 ▌ Union currencies other than euro, of the financial and non-financial instruments cleared or to be cleared by the significant CCP***;***

(g) the competent authorities supervising CCPs with which interoperability arrangements have been established.

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Article 22e

Specific consultation regarding significant CCPs

1. With regard to supervisory assessments conducted , and decisions to be taken ***with respect to the requirements under***, Articles ***15, 17, 20, 21,*** 41, 44, 46, 49, 50 and 54 in relation to significant CCPs, the Executive Board shall consult the ***relevant authorities*** referred to in Article 22d, points (e) and (f), before finalising its assessment.

For the purposes of the consultation referred to in the first subparagraph, ESMA shall share with the relevant authorities referred to in Article 22d, points (e) and (f), the documents, information, and draft assessment reports and decisions as soon as possible via the central database.

Each relevant authority referred to in article 22d, points (e) and (f) may respond. Where the relevant authority referred to in Article 22d, points (e) and (f) 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 relevant authority referred to in Article 22d, points (e) and (f) proposes amendments or objects to assessments related to, or draft decisions pursuant to Articles 15, 17, 20, 21, 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 relevant authority referred to in Article 22d, points (e) and (f) and provide its assessment to the central bank of issue.

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2. Where the Executive Board does not reflect in its decision the amendments proposed by a ***relevant authority referred to in Article 22d, points (e) and (f)***, the Executive Board shall inform that ***relevant authority referred to in Article 22d, points (e) and (f)*** 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 ***agree*** cooperation arrangements ***supplementary to those referred to*** 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***, notably those referred to in Article 22e of this Regulation***. In particular, such arrangements may cover support and assistance by the relevant authorities, ***and/or information sharing*** as relevant, in respect of all of the following:

(a) the carrying out of ***their respective competences*** 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 ***and 49a***;

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(c) any supervisory task to ensure the financial stability and monitor the operational resilience and market conduct of the significant CCP, including stress-testing;

(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 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.;'

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(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, the CCP's resolution*** 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.

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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:

(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;'

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(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).;’

(d) 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.;’

(e) 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.;’

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(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:

(i) the introductory wording is replaced by the following;

‘In relation to CCPs, ESMA shall:;’

(ii) points (a), (b), (ba) are deleted;

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(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;

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(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;

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(23) Article 24d is replaced by the following:

‘Article 24d

Decision making within the Executive Board ▌

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.

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 member*** of the Executive Board ***of ESMA***, 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.’’

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(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.;’

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(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 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.;’

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(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) in Article 81(3), point (e) is replaced by the following:

‘(e) the national competent authorities in the Member States of the CCPs accessing the trade repositories;’;

(***35***) 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].;’

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(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:

‘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.;’

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(***36***) 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.;’

(***37***) 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;;’

(***38***) 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.;’

(***39***) Article 90 is deleted;

(***40***) Annex IV to Regulation (EU) No 648/2012 is amended in accordance with Annex II to this Regulation;

(***41***) Annex V to Regulation (EU) No 648/2012 is replaced by Annex III to this Regulation.

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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’);

(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.;’

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(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;;’

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(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 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;

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(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:

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‘(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:

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‘(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 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;;’

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(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 ***three*** 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 ***three*** best bid and offer quotes published pursuant to Article 14 with their corresponding volume;

(iii) the transaction price and volume executed at that price;

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(iiia) the volume-weighted closing price***, upon occurrence of an outage of the*** trading ***venue that is the most relevant market in terms of liquidity, that prevents that trading venue or that market from running a closing auction***;

(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 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 ***three*** best bids and offers into the order book;

(3) the indication, in an auction trading system, of the prices or volumes,

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(4) the publication by the trading venues of the elements listed in points (1), (2) and (3);

(5) the entry of the ***three*** 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:

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(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;;'

(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;

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(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:

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‘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:

   (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 ***Member State where it intends to operate that regulated market, or in a Member State where it already operates a trading venue and is subject to supervision;***

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(c) where ESMA is not the competent authority of the regulated market, and where the market operator is a legal person established in a Member State other than the Member state where it intends to operate that regulated market, it it has appointed, by a written mandate, a person in the Member State where it intends to operate that regulated market that shall be authorised to act on the market operator's behalf. The market operator shall mandate such appointed person for the purpose of being addressed, in addition to or on its behalf, by the competent authority of the Member State where it operates the regulated market on all matters relating to compliance with and enforcement of decisions or requests for information issued in relation to this Regulation.

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 ***additional*** activities ***in compliance with applicable sectoral legislation, provided that performance of those activities does not create conflicts of interest that adversely affect*** the operation of ***the*** regulated market ***and the ability of the market operator to comply with the provisions set out in this Regulation***.

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Member States shall not impose any additional requirements on the authorisation and operation of regulated markets than those set out in this Regulation. ***This is without prejudice to national rules which apply to regulated markets, or segments thereof, situated or operating in the territory of a Member State, on which exclusively debt instruments issued by that Member States are traded, and which are strictly necessary for the performance of the public debt management function.***

A Member State may continue to apply specific national law provisions entrusting market operators or regulated markets with precisely defined public tasks or functions with respect to a market operator or regulated market authorised in its territory, provided that:

(i) those national law provisions were already in application on 4 December 2025;

(ii) those national law provisions define a precise scope of functions that are effectively justified under public law interests;

(iii) the competent authority of that market operator or regulated market is not ESMA;

(iv) that market operator or regulated market was authorised and entrusted with the precisely defined public tasks or functions before [the entry into application of this paragraph].

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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.

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2. The competent authority shall ▌ within ***seven months*** of receipt of the 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 and adopt a reasoned decision granting or refusing authorisation***. ***It shall notify the applicant market operator and, where ESMA is the competent authority, the national surveillance authority within 5 days of that decision.***

Where the application is not complete, the competent authority shall inform ▌ the applicant ***as soon as possible*** of the additional information to be provided***, in writing, and shall specify the*** additional information ***needed***. ***For the period between the date of request for additional information by the competent authority and the receipt of such additional information from the applicant, the assessment period of seven months shall be interrupted. The competent authority may request further additional information or clarifications throughout the assessment process. These additional requests shall only result in an interruption of the assessment period where such additional information or clarification is essential for the continuance of the assessment of the application.***

Where ESMA is the competent authority***, ESMA*** shall***, without undue delay following the receipt of a complete application,*** notify the ***relevant national surveillance authority, and make available to that authority all supporting documents submitted by the applicant***. ***The relevant national surveillance authority may, within three months following the notification, provide ESMA with factual and other observations that may inform ESMA in its assessment.***

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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 ***and intends*** to withdraw the authorisation of a regulated market***, ESMA shall, without undue delay, notify the relevant national surveillance authority of such intention. The relevant national surveillance authority may, within one month following the notification, provide ESMA with factual and other observations that could inform ESMA's final decision.***

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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;

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(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 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.

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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;

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(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 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.

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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.

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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.

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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;

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(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.

1b. Where a market operator relies on another entity in accordance with the conditions set out in paragraph 1a, and in relation to critical operational functions, that market operator shall notify the competent authority of the regulated market in respect of which the entity performs tasks or dedicates resources no later than 30 days after those arrangements take effect.

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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.

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3. The written agreement referred to in paragraph 2 shall at least specify:

(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.

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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.

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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

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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 ***tick size regime shall apply to orders, quotes and executed transaction prices. 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.

By way of derogation from subparagraph 1, when applying a periodic auction trading system, the market operator of a regulated market shall apply the tick size regime only to orders

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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 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 2ha

Specific conditions for the operation of a frequent batch auction trading system

1. The market operator of a regulated market that operates a frequent batch auction trading system shall ensure that such trading system is sufficiently price forming.

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2. The market operator of a regulated market that intends to operate a frequent batch auction trading system shall notify ESMA and, where ESMA is not the competent authority, its competent authority, thereof at least 30 days before the commencement of the operation of the frequent batch auction trading system. That notification shall be accompanied by an explanation of why that frequent batch auction trading system is deemed sufficiently price forming.

After receiving a notification pursuant to the first subparagraph, ESMA shall assess whether the functioning of the frequent batch auction trading system ensures that the auction is sufficiently price forming.

Where ESMA deems that the auction is not sufficiently price forming, it shall notify the concerned market operator as soon as possible, and in any case within 30 days following the notification referred to in the first subparagraph. ESMA shall indicate in the notification the reasons why it deems that the auction is not sufficiently price forming.

The market operator may start the operation of the frequent batch auction trading system where it does not receive a notification from ESMA within 30 days following the notification referred to in the first subparagraph.

Where a market operator receives a notification from ESMA pursuant to the third subparagraph, it may start the operation of the frequent batch auction trading system only following confirmation by ESMA that such trading system is sufficiently price forming or, where ESMA does not object within 30 days following the re-submission by the market operator of the amended functioning of the frequent batch auction trading system pursuant to subparagraph 1.

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3. Paragraph 2 shall also apply to market operators of regulated markets that on [PO: please introduce date of application of this provision] already operate a frequent batch auction trading system. They shall notify ESMA and, where ESMA is not the competent authority, its competent authority, pursuant to paragraph 2, first subparagraph, within [PO: please introduce date of application of this provision + 30 days].

4. The market operator of a regulated market that operates a frequent batch auction trading system shall notify ESMA and, where ESMA is not the competent authority, its competent authority, of any changes to the parameters of the frequent batch auction trading system 30 days before those changes take effect.
Where ESMA deems that those changes materially negatively affect the price forming nature of the frequent batch auction, it shall notify the concerned market operator, and, where ESMA is not the competent authority, the competent authority, as soon as possible within 30 days from the date of notification. In those cases, the market operator may change the functioning of the frequent batch auction only following confirmation by ESMA that those changes do not materially negatively affect the price forming nature of the frequent batch auction.

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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.

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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 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.

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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.

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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 competent authority and, where ESMA is the competent authority, its national surveillance authority.

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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.

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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.

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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.

3. By way of derogation from the previous paragraphs, Member States may make the implementation of amendments to the rules of a regulated market, or of a segment thereof, situated or operating within their territory, on which exclusively debt instruments issued by that Member State are traded, subject to prior approval. In that case, Member States shall designate the authority responsible for granting such an approval. Where ESMA is the competent authority, that national authority shall closely co-operate with ESMA.

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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.

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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 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.

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4. National surveillance authorities in the Member State in which a market operator or PEMO is established or where a trading venue is operated, and where ESMA is the competent authority for the market operator, PEMO or trading venue, should be able to request information from ESMA that ESMA has access to in its capacity as competent authority of the market operator, PEMO or trading venue, that may be relevant for the purposes national security and preparedness.

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.

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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;

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(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 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

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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.

ESMA shall, within seven months of receipt of the application, adopt a reasoned decision granting or refusing authorisation and notify the applicant investment firm and the national surveillance authority within 5 days of that decision.

ESMA shall, without undue delay following the receipt of an application, notify the relevant national surveillance authority, and make available to that authority all supporting documents submitted by the applicant. The relevant national surveillance authority may, within three months following the notification, provide ESMA with factual and other observations that may inform ESMA in its assessment.

Where the application is not complete, ESMA shall inform the applicant as soon as possible of the additional information to be provided. For the period between the date of request for additional information by ESMA and the receipt of such additional information from the applicant, the assessment period of seven months shall be interrupted. ESMA may request further additional information or clarifications throughout the assessment process. These additional requests shall only result in an interruption of the assessment period where such additional information or clarification is essential for the continuance of the assessment of the application.

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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.
Where ESMA intends to withdraw the authorisation pursuant to subparagraph 1, it shall, without undue delay, notify the relevant national surveillance authority of such intention. The relevant national surveillance authority may, within one month following the notification, provide ESMA with factual and other observations that could inform ESMA's final decision.
Where ESMA withdraws the authorisation, it shall notify the investment firm and the national surveillance authority within 5 days of that decision.

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.

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ESMA shall, within ***six months*** of receipt of the 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.

Where the application is not complete with respect to the applicant's request to operate an MTF or OTF, ESMA shall inform the applicant, in writing, as soon as possible of and specify the additional information to be provided.

Where the application is not complete with respect to the applicant's request to provide investment services or activities other than the operation of an MTF or OTF, the competent authority of the home Member State shall inform the applicant, in writing, and shall specify the additional information needed.

For the period between the date of request for additional information by ESMA or the competent authority of the home Member State and the receipt of such additional information from the applicant, the assessment period of seven months shall be interrupted. ESMA or the competent authority of the home Member State may request further additional information or clarifications throughout the assessment process. These additional requests shall only result in an interruption of the assessment period where such additional information or clarification is essential for the continuance of the assessment of the application.

The competent authority of the home Member State shall***, within seven months of receipt of the application,*** adopt a reasoned decision granting or refusing the authorisation on the basis of the opinion transmitted by ESMA and notify the investment firm ***and ESMA*** within five working days of ***that decision***. The competent authority shall refuse the authorisation to operate an MTF or OTF where ESMA gives a negative opinion.

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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 ***and ESMA within five days of that decision***.

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.

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The competent authority ***of the home Member State of the investment firm*** shall***,*** within ***70*** working days of receipt of the ▌ application***, issue an opinion on the extension of the authorisation and transmit that opinion without undue delay to ESMA***.

Where the application is not complete, the competent authority ***of the home Member State of*** the investment firm ***shall inform the applicant as soon as possible, in writing, of the*** additional information ***to be provided***. ***For the period between the date of request for additional information by the competent authority of the home Member State of the investment firm and the receipt of such additional information from the applicant, the assessment period of 70 working days shall be interrupted. The competent authority of the home Member State of the investment firm may request further additional information or clarifications throughout the assessment process. These additional requests shall only result in an interruption of the assessment period where such additional information or clarification is essential for the continuance of the assessment of the application.***

▌

ESMA shall adopt a reasoned decision granting or refusing the authorisation on the basis of the opinion transmitted by the competent authority ***of the home Member State of the investment firm*** and shall notify the investment firm ***and that competent authority*** within five working days of ***that decision***. ESMA shall refuse the extension of the authorisation where the competent authority gives a negative opinion.

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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 ***and the competent authority of the home Member State within five days of that decision***.

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.

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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, within ***70*** working days of receipt of the ▌ 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.

Where the application is not complete, ESMA shall inform the applicant, in writing, as soon as possible of the additional information to be provided. For the period between the date of request for additional information by ESMA and the receipt of such additional information from the applicant, the assessment period of 70 working days shall be interrupted. ESMA may request further additional information or clarifications throughout the assessment process. These additional requests shall only result in an interruption of the assessment period where such additional information or clarification is essential for the continuance of the assessment of the application.

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 ***and ESMA*** within five working days of ***that decision***. 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 ***and ESMA within five days of that decision***.

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.

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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.

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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.

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 2ha***, 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 2m(3),*** 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.

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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).

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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 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.

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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.

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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), 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;

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(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.

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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.

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;

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(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;

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(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.

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.

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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.

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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.

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.

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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.

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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 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 ▌ may apply ***to*** 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]***, where that legal person:***

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(a) operates or intends to operate more than one trading venue in more than one Member State; or

(b) operates at least one trading venue that has members and participants from more than five Member States.

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 venue or*** 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. ▌

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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. ▌

3. ▌

▌

2. ESMA shall, within ***seven*** months of receipt of ***the*** application, ▌ adopt a reasoned decision granting or refusing authorisation and ▌ notify the applicant PEMO ***and*** the relevant national surveillance authorities ***within five days of that decision***. ***Where the application is not complete, ESMA shall inform the applicant as soon as possible, in writing, of the additional information to be provided.***

For the period between the date of request for additional information by ESMA and the receipt of such additional information from the applicant, the assessment period of seven months shall be interrupted. ESMA may request further additional information or clarifications throughout the assessment process. These additional requests shall only result in an interruption of the assessment period where such additional information or clarification is essential for the continuance of the assessment of the application.

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3. ***Following the notification referred to in the first subparagraph of paragraph 2, or following the notification referred to in Article 2za(3), ESMA shall, without undue delay, make available to the relevant national surveillance authorities all supporting documents submitted by the applicant PEMO, or by the PEMO requesting an extension of its authorisation. The relevant national surveillance authorities may, within three months following the notification, provide ESMA with factual and other observations regarding the request.***

4. 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.

5. ***Where a group or a legal entity carries out a re-organisation of its corporate structure for the purposes of seeking authorisation as a PEMO, Member States shall not subject that re-organisation to any additional direct or indirect requirements or constraints and shall not require its approval by the competent authority where the re-organisation becomes effective only after and is conditional upon the issuance of the PEMO authorisation.***

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***,*** ***Member States shall not put in place any additional direct or indirect requirements or constraints or require prior approval by the competent authority of that trading venue where the operation of that trading venue by*** the PEMO ***is effective only after and is conditional upon the issuance of the extension of the PEMO*** authorisation ***to cover*** the operation of ***that*** trading venue***.***

In the cases referred ***to in this paragraph,*** Article ***2e(3)*** shall ***not apply***.

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6. 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).

Where ESMA intends to withdraw the authorisation of a PEMO or to remove one or more trading venues from the list of trading venues that a PEMO is authorised to operate, ESMA shall, without undue delay, notify the relevant national surveillance authorities of such intention. Those national surveillance authorities may, within one month following the notification, provide ESMA with factual and other observations that could inform ESMA's final decision.

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.

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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 shall make available to national surveillance authorities a dedicated point of contact to enable those authorities to perform their tasks under Regulation (EU) 600/2014. Member States shall not impose any restriction on the location of that point of contact.***

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.

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.

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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.

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Article 2zg

Regulatory technical standards and delegation

1. ESMA shall develop draft regulatory technical standards to:

(a) 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;

(b) 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;

(c) 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;

(d) specify the information to be provided pursuant to Article 2zb (1).

(e) specify the characteristics of frequent batch auction trading systems referred to in Article 2ha;

(f) specify the parameters to determine whether a frequent batch auction trading system is sufficiently price forming pursuant to Article 2ha;

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(g) specify the information to be notified pursuant to Article 2ha(2) and (3).

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

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.

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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.

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(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;

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.

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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.;'

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(5) Article ***7 is amended as follows*:*'(a)in paragraph 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.;

(b)paragraph 2 is amended as follows:

(i)point (a) is replaced by the following:
'(a) the details of transactions that investment firms, including systematic internalisers and market operators and investment firms operating a trading venue shall make available to the public for each class of financial instrument concerned in accordance with Article 6(1), including identifiers for the different types of transactions published under Article 6(1) and Article 20, distinguishing between those determined by factors linked primarily to the valuation of the financial instruments and those determined by other factors. Where a transaction is executed on a systematic internaliser, the identifier of that systematic internaliser shall be made public, in the case of execution of a retail order referred to in Article 15(2), subparagraph 3, after an appropriate deferral period lapses;'

(ii)the following point (aa) is added:
'(aa) the deferral period after which the identifier of the systematic internaliser as referred to in point (a) shall be published, taking into account the efficiency of price formation and the need to ensure that systematic internalisers are not exposed to undue risks;';'

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(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:

(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.;’

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(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.;’

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(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;

(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.;’

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(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.;’

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(13) Article 20(2), is replaced by the following:

'The information which is made public in accordance with paragraph 1 of this Article and the time-limits within which it is published shall comply with the requirements adopted pursuant to Article 6, including the regulatory technical standards adopted in accordance with Article 7(2) points (a) and (aa). Where the measures adopted pursuant to Article 7 provide for deferred publication for certain categories of transaction in shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on a trading venue, that possibility shall also apply to those transactions when undertaken outside trading venues.'

(***14***) 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 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;

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(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.;'

(***15***) 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.;'

(***16***) 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.;'

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(***17***) 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 Article 14(7), unless provided otherwise in the regulatory technical standards adopted pursuant to paragraph 3, points (b) and (d), of this Article.;’

(***18***) 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;

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(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;

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(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.

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;

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(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).;'

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(***19***) 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 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;

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(***20***) 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.;

(iv) in the second subparagraph, the following point (e) is inserted:

(e) the competent authority of the Member State where the client, that is a natural or a legal person, is domiciled or registered, provided that the competent authority chooses to receive all or parts of that information.’;’

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(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;

(***21***) 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.;’

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(b) in paragraph 2, the first subparagraph is amended as follows:

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

'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.;'

(***22***) in Article 27h(1), the second subparagraph is deleted;

(***23***) in Article 27ha(2), the second subparagraph is deleted;

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(***24***) 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.;’

(***25***) 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;

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(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

(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.

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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.

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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.

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;

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(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.

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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.

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.;'

(***26***) the title of Title VI is amended as follows:

'NON-DISCRIMINATORY ACCESS TO TRADING VENUES, CSDs AND CCPs;'

(***27***) 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***, where that CSD:***

(i) has been granted access to that trading venue pursuant to Article 53 of Regulation (EU) No 909/2014, and

(ii) has in place the necessary arrangements to settle those transactions.'

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(***28***) 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.

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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***, via the central database***.

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 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. ***The CCP may charge a reasonable commercial fee for the establishment of such access link on a cost recovery basis, unless otherwise agreed by both parties.***

Where the CCP fails to provide a written response to the trading venue within the time limit referred to in paragraph 3, ***the trading venue shall inform ESMA via the central database. Upon such communication,*** ESMA may ▌ request ▌ information from the CCP ***or 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 Article 36 are met, ESMA may issue***, via the central database,*** a decision requiring that CCP to grant access to its services within one month of the notification of the decision.

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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. ▌ Immediately after providing the written response to the trading venue, ***the CCP shall*** inform***, via the central database,*** ESMA and the competent authorities referred to in paragraph 2 of that decision.

5. Where the CCP has denied access***, or where the CCP and the trading venue disagree on the conditions for such access, including on the fee charged for the establishment of the access link referred to in paragraph 4***, the trading venue may submit a complaint to ESMA***, via the central database***.

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***, via the central database,*** 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. ***This period may be extended by up to one month where both parties agree.***

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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***, via the central database,*** 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. ***The trading venue may charge a reasonable commercial fee for the establishment of such access link on a cost recovery basis, unless otherwise agreed by both parties.***

Where the trading venue fails to provide a written response to the CCP within the time limit referred to in paragraph 3, ***the CCP shall inform ESMA via the central database. Upon such communication,*** ESMA may ▌ request ▌ information from the trading venue ***or 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 are met, ESMA may issue***, via the central database,*** 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. ▌ Immediately after providing the written response to the CCP, ***the trading venue shall*** inform***, via the central database,*** 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, ***or where the trading venue and the CCP disagree on the conditions for such access, including on the fee charged for the establishment of the access link referred to in paragraph 4,*** the CCP may submit a complaint to ESMA***, via the central database***.

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***, via the central database,*** 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. ***This period may be extended by up to one month where both parties agree.***

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;

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(b) the conditions under which access shall be granted by a CCP under Article 35, including the non-discriminatory***, fair*** and transparent basis as regards initial connectivity ***fees,*** access fees ***and fees for the establishment of the access link***, 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***, fair*** and transparent basis as regards initial connectivity ***fees,*** access fees ***and fees for the establishment of the access link***;

(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.;'

(***29***) in Title VIa, the title of Chapter 1 is replaced by the following:

'CHAPTER 1

Scope, competences and procedures;'

(***30***) Articles 38a to 38f are deleted;

(***31***) the following Article 38fa is inserted:

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‘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 ▌ ;***]***

   (c) ***]***investment firms that operate at least one significant trading venue ▌ with respect to the operation of MTFs or OTFs.***]***

2.[A trading venue shall be considered significant where ***at least one*** of the following conditions ***is met:]***

   (a) ***[***the trading venue is important for the economy of the Union***,*** as referred to in Article 38fb(1)***, and is part of a group that includes other trading venues that are authorised to operate in at least two Member States other than the Member State where that trading venue is situated or operated;]***

   (b) ***[***the trading venue has a ***Union-wide market footprint*** as referred to ***in*** Article 38fb(2).***]***

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[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.
At the latest by [PO: insert date = two years after the date of application of this amending Regulation], the Commission shall submit a report to the European Parliament and to the Council on the application of the criteria and thresholds set out in this paragraph and in Article 38fb. The report shall assess whether, in light of market developments, the criteria and thresholds adequately identify trading venues and groups of trading venues that should be subject to direct supervision by ESMA, having regard to their share of Union trading activity. Where the Commission assesses that those criteria and thresholds are not adequate and should be amended to adjust the scope of trading venues and groups that should be subject to direct supervision by ESMA, the report shall be accompanied, where appropriate, by legislative proposals.]

[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.***]***

[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.***]***

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3. ***[***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**.**.;***]'***

(***32***) ***[***the following Article 38fb is inserted:***]***

'[Article 38fb***]***

[Methodology, transitional plans and list of significant trading venues***]***

1. ***[***For the purposes of Article 38fa***(2), point (a)***, 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;***]***

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[For the purposes of Article 38fa(2), point (a), a trading venue shall also be considered important for the economy of the Union where the ratio between the number of transactions on that trading venue or, where the trading venue is part of a group, the aggregated number of transactions at group level, and the total number of transactions on trading venues in the Union is equal to or greater than 5 % for derivatives relating to any of the following ***category of underlying**:]*

(a) ***[***equity;***]***

(b) ***[***credit;***]***

(c) ***[***interest rate;***]***

(d) ***[***currency;***]***

(e) ***[***commodities***; or]***

(f) ***[emission allowances]***

For the purposes of calculating the ratio referred to in the second subparagraph, transferable securities as defined in Article 4(1)(44)(c) of Directive 2014/65/EU shall be excluded

2. ***[***For the purposes of Article 38fa***(2), point (b)***, a trading venue shall be considered to have a ***Union-wide market footprint where both*** of the following conditions ***are met for the same class of financial instruments or for the same category of derivatives with the same underlying**:]*

(a) ***[it meets*** at least one of the following ***conditions**:]*

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(i) ***[for financial instruments referred to in the first subparagraph of paragraph 1, the ratio between the trading volume in any class of financial instruments 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 15%;]***

(ii) ***[for derivatives as referred to in the second subparagraph of paragraph 1, the ratio between the number of transactions in any category of derivatives with the same underlying on that trading venue or, where the trading venue is part of a group, at group level, and the total number of transactions in the Union in that category of derivatives with the same underlying is equal to or greater than 15 %. For the purposes of calculating that ratio, transferable securities as defined in Article 4(1)(44)(c) of Directive 2014/65/EU shall be excluded.]***

(iii) ▌

(b) ***[it meets at least one of the following conditions during each of the three calendar years preceding the assessment by ESMA, as*** referred to in paragraph ***3;]***

(i) ***[***for ▌ financial instruments referred to in ***the first subparagraph of*** paragraph 1 ▌ , the ratio between the ***trading volume on the*** trading venue ***or, where the trading venue is part of a group, at group level,*** 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 ***or, where the trading venue is part of a group, at group level,*** is equal to or greater than ***85%;]***

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(ii) [for derivatives as referred to in the second subparagraph of paragraph 1, the ratio between the number of transactions on that trading venue or, where the trading venue is part of a group, at group level, in any category of derivatives with the same underlying 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 derivatives belonging to the same category of derivatives with the same underlying on that trading venue or, where the trading venue is part of a group, at group level, is equal to or greater than 90%. For the purposes of calculating that ratio, transferable securities as defined in Article 4(1)(44)(c) of Directive 2014/65/EU shall be excluded.]

▌

3. ***[***ESMA shall identify the trading venues that are considered significant pursuant to the ***conditions*** set out in ***Article 38fa(2)***. 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 ***Article 38fa(2)***.***]***

[If ESMA concludes that a trading venue meets the conditions set out in ***Article 38fa(2)***, 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 ▌ .***]***

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4. ***[***ESMA shall verify whether the trading venues under its supervision continue to meet the conditions set out in ***Article 38fa(2)***, 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 ***Article 38fa (2)*** over a period of three consecutive years, it shall, without undue delay, notify the trading venue and its national surveillance authority of that situation.***]***

5. ***[***The national surveillance authority shall, within three months of receipt of the notification referred to in ▌ paragraph ***4***, 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 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 ***first*** subparagraph of ***this*** paragraph ▌ .***]***

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6. ***[***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 ***Articles 38fb(1) and 38fb(2)***, 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 the necessary procedural steps, including the contents of the supervisory transition plans referred to in ***paragraph 3 and in*** the second ***subparagraph of paragraph 5***, to ensure a smooth and orderly transfer of competences and duties.***]***

▌

7. ***[***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.;***]'***

(***33***) the following Articles 38fc and 38fd are inserted:

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‘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).

   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:

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(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:

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(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.

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.

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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***;***

(d) any information to be submitted to or received from ESMA and competent authorities, as required under Articles 35 and 36.

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.

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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.;

(da) CCPs and trading venues for the purpose of transmitting information to ESMA and competent authorities, or for the purpose of receiving information from ESMA and competent authorities, under Articles 35 and 36;'

(***34***) Article 38g is amended as follows:

(a) the title is replaced by the following:

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‘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:

‘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);

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(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);

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(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;

(zb) Article 8(1);

(zc) Article 8a(1) and (2);

(zd) Article 8b;

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(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);

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(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;

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(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 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.;'

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(e) paragraph 3 is deleted;

(***35***) 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.;’

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(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 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).;’

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(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.;’

(***36***) Articles 38i to 38m are deleted;

(***37***) 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.;’

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(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.;’

(***38***) Article 38o is deleted;

(***39***) Article 50 is amended as follows:

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

‘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.

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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.;'

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(***40***) 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), point (b), of Directive 2009/65/EC, which provide investment services and activities and which execute transactions in financial instruments.;’

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(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.;’

(***41***) 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.;’

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(***42***) 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:

‘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.;’

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(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.;’

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(***43***) 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] 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.;’

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(***44***) 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.

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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).;'

(***45***) Annex I to this Regulation is added as an Annex to Regulation (EU) No 600/2014.

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Article 4

Amendments to Regulation (EU) No 909/2014

Regulation (EU) No 909/2014 is amended as follows:

(1) Article 1 ***is amended as follows:***

(a) the following paragraph 3a is added;

'3a. This Regulation is without prejudice to the responsibility of Member States regarding essential State functions concerning public security, defence and national security in accordance with Union law.'

(b) 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), ***Article 48a*** 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.;'

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(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(2)***;

(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, ***including*** 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;;’

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(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:

‘(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;’;’

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(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 ***or*** 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 ▌ designated pursuant to Article 10(1) ***in which a CSD is established*** ;;’

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(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:

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‘(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.’;’

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(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:

‘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 ***international open communication procedures and standards for the communication of the allocations and confirmations as referred to in*** paragraph 2;

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(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].**'**;'

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(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***, where provided for in the CSD's rules,*** 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 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.;’

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(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.

▌ 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. ***Following this notification, the CSDs concerned shall be considered as significant CSDs and shall be supervised by ESMA following a potential adaptation period set by ESMA, in consultation with the national competent authorities thereof, which shall not exceed 6 months.***

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After a period of at least 36 months, Member States that designated ESMA, in accordance with paragraph 2, as the competent authority for a less significant CSD, may designate one or more national competent authorities as the CSD's competent authorities in consultation with ESMA. That Member State shall notify the Commission, ESMA, and the competent authorities thereof via the central database. Following this notification, those CSDs shall be considered less significant CSDs and shall be supervised by national competent authorities following a potential adaptation period set in agreement with ESMA, which shall not exceed 24 months.

2. 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.

3. 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).

4. 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:

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‘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:

   (a) it meets the criteria laid down in Article 11a(1) ***for two consecutive years***;

   (b) it belongs to the same group as ***a CSD that is established in the territory of another Member State;***

   ▌

   (ii) ▌

   (c) ▌

   (d) ▌

(i) 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.

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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***, in consultation with the CSD's national competent authority,*** 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.

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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.

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 ***24*** 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***,*** ***in consultation with the national competent authority of the CSD,*** 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.

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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.

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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 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;

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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.

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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 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[1];

(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.

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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.**'**;

_____

[1] 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).'

(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.

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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:

(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;

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(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.

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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;

(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;

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(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.;'

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(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:

‘3. For each significant CSD, ESMA, the national competent authority and the relevant authorities shall ***agree*** cooperation arrangements ***supplementary to those referred to*** 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 ***shall cover information sharing and cooperation between ESMA, the national competent authority and the relevant authorities, and*** may cover support and assistance by the relevant authorities and the national competent authority**,** in respect of all of the following:

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(a) the carrying out of ***their respective competences*** 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.

The arrangements between ESMA and the national competent authority should also include, to the extent necessary and appropriate, arrangements for cooperation in relation to competences of the national competent authority currently falling outside the remit of this Regulation. Those arrangements shall consider the supervision of a significant CSD in both going concern and emergency situations, including with regard to essential State functions concerning public security, defence and the safeguarding of national security.

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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).

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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.

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.;'

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(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.;’

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(b) paragraph 3 is replaced by the following:

'3. The competent authority shall, following the acknowledgement of receipt referred to in Article 21a(2), notify the applicant CSD whether the application contains the documents and information required.

The notification shall be sent within:

(a) 20 working days of the acknowledgement of the receipt referred to in Article 21a(2), where the applicant CSD has applied for an initial authorisation pursuant to Article 16; or

(b) 10 working days of the acknowledgement of the receipt referred to in Article 21a(2), where the applicant CSD has applied for an extension of an existing authorisation or for the outsourcing of a core service, pursuant to Article 19.

Where, during the applicable period specified under the second subparagraph of this paragraph, the competent authority considers that not all documents or information required pursuant to paragraph 9 have been submitted, it shall request the applicant CSD to submit such additional documents or information, via the central database. The application shall be rejected where the competent authority decides that the applicant CSD has failed to comply with any such request. The competent authority shall inform the CSD thereof via the central database.'

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▌ 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:

'During the period specified under paragraph 8, the competent authority shall conduct ***an*** 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 ▌ . Within three months of the ***notification*** referred to in ***paragraph 3 of this*** Article ▌ where the applicant CSD has applied for an initial authorisation pursuant to Article 16, or within one month of the ***notification*** referred to in ***paragraph 3 of this*** Article ▌ 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

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(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;

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(d) 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 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:

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‘8. Within six months from the ***notification*** referred to in ***paragraph 3 of this*** Article ▌ where the applicant CSD has applied for an initial authorisation pursuant to Article 16, or within three months from ***the notification*** referred to in ***paragraph 3 of this Articlewhere*** 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.**’**;’

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(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.

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:

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(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.

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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.';'

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(19) Article 19 is amended as follows:

(a) in paragraph 1, the introductory wording is replaced by the following:

‘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;

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(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. ▌

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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.

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;'

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(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.’;’

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(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 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.

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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.;'

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(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.;’

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(c) in paragraph 6, the first and second subparagraphs are replaced by the following:

‘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.;’

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(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***:***

(a) the second subparagraph, and share the updated information with its competent authority as follows:

(b) with respect to information referred to in points (a), (b) and (d) of the second subparagraph, where there has been a change compared to its previous submission of such information;

(c) with respect to information referred to in point (c) of the second subparagraph, where the competent authority requires it for the purposes of the review and evaluation process in accordance with Article 22(1a).;'

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(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 ▌ the competent authority shall ***carry out on-site inspections in a branch in a host Member State only upon notifying*** the national competent authority of ***that*** Member State ***thereof***.

The competent authority shall notify the national competent authorities of the host Member States and ESMA about its intention to conduct an on-site inspections in the CSD.

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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.;'

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(b) paragraph 5 is amended as follows:

(i) the first subparagraph is replaced by the following:

‘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 ***Article17a;’***; ▌

(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

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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.

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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:

'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 ***co-chaired*** and managed by ***the competent authority of the home Member State and*** ESMA ('the ***co-chairs***')***.***';'

(d) ▌

(i) ▌

'(b) ▌

(ii) ▌

'(d) ▌

(e) ▌

(iii) ▌

'(f) ▌

▌

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(e) 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 ***and the competent authority of the home Member State*** 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:

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‘(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;

(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 ***issued by an issuer established in a Member State and where the terms and conditions of the financial instrument concerned are*** 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.;’

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(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 ***referred to in paragraph 2, point (b),*** 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.

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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:

'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.';

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(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 ***its*** core services shall not be considered as outsourcing, ***when*** the CSD ***operates a DLT platform itself and does not enter*** into an arrangement with a third party to provide ***those*** core services using DLT. ***This provision is without prejudice to paragraph 1 where any material function, node operation, software maintenance or access control is performed by a third party.***

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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:

'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.

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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:

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‘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:

‘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.;’

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(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.

This requirement shall not apply to CSDs for which none of the currencies available on such infrastructure is one of the most relevant currencies referred to in Article 12(1), point (b).

3. CSDs shall comply with the obligations set out in paragraph 2 of this Article at the latest by:

(a) 24 months after entry into force of this amending Regulation where the currency is available on such infrastructure on that date; or

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(b) 24 months after one of the most relevant currencies in which settlement takes place referred to in Article 12(1), point (b) becomes available on such infrastructure.

4. Where ESMA determines that a currency available on the settlement infrastructure referred to in paragraph 2 of this Article is considered as one of the most relevant currencies in which settlement takes place at a CSD in accordance with Article 12(1), point (b), that CSD shall comply with the obligations set out in paragraph 2 of this Article by 24 months after ESMA's determination and publication on its website pursuant to Article 12(2).

5. 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:

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‘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;

   (e) the CSD has direct access to the relevant information in relation to the provision of services using DLT.

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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.;'

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(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.

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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, 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;

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(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.;'

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(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.

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 (‘CSD-spoke’) and that is subject to the requirement set out in Article 40(2),*** shall establish and maintain a bilateral link with a ***CSD-hub***.

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3a. Every CSD-spoke that is not subject to the requirement set out in Article 40(2), shall establish and maintain an arrangement with a CSD-hub that is composed of two standard links, where each of the involved CSDs is a receiving CSD in one of the links and the requesting CSD in the other link.

4. Paragraphs 2***, 3 and 3a*** 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-hubs*** involved in a bilateral link referred to in ***paragraph 2*** shall ensure that all financial instruments issued in each of the CSDs involved are available for settlement through that bilateral link.

5a. CSD-hubs involved in a bilateral link referred to in paragraph 3 or in an arrangement referred to in paragraph 3a shall ensure that all financial instruments that are issued in the CSD-spoke are available for settlement through that bilateral link or arrangement.

5b. Every CSD-spoke involved in a bilateral link referred to in paragraph 3 or in an arrangement referred to in paragraph 3a shall ensure that at least all financial instruments that meet all the following conditions are available for settlement through the bilateral link or arrangement where the CSD-hub is the receiving CSD:

a. they are issued in the CSD-hub;

b. they are denominated in euro;

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c. they are admitted to trading or traded on a trading venue."

6. Receiving CSDs in links composing the bilateral link ***or the arrangement*** established pursuant to paragraphs 2***, 3 or 3a*** 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 ***, 3 and 3a***, as applicable, at the latest by [OP enter date = ***24*** 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 ***or arrangements*** with that CSD pursuant to paragraphs ***2 3, or 3a*** and their competent authorities;

   (d) the CSDs referred to in point (c) of this paragraph shall have ***24*** months to ***reestablish*** their compliance with the requirements set out in paragraphs 2***, 3 or 3a***, with another CSD hub.

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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***, 3 and 3a***.

9. 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

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.

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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.

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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:

'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.;

Where an issuer exercises the right referred to in the first subparagraph, the provisions of the national law chosen for regulating the issuance or of the national law regulating the recording of the securities as well as the provisions governing the terms and conditions of the securities shall continue to be applicable to such securities, their issuer and their record keeping. Any national law provisions that remain applicable shall not amount to an undue barrier to exercising the right referred to in the first subparagraph.' '

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(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.;’

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(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:

‘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:

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‘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 2 is replaced by the following:

When a party submits a request for access to another party in accordance with paragraph 1, such request shall be treated promptly and a response to the requesting party, shall be provided within three months. The party submitting a request shall inform, via the central database, its competent authority, the competent authority of the receiving party and ESMA.

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Where a receiving party fails to provide a written response to the requesting party within three months, the requesting party shall inform ESMA via the central database. Upon such communication, ESMA may request information from any party.

Where there is no indication that the conditions for denial of request are met, ESMA may, issue, via the central database, a decision requiring that party to grant access to its services within one month of the notification of that decision.

(b) 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***, including, where relevant, potential mitigating measures that the requesting party could implement in order for the receiving party to grant such access and shall inform, via the central database, its competent authority, the competent authority of the receiving party and ESMA***. In the case of a refusal***, or where the receiving party and the requesting party disagree on the conditions for such access, including on the fee charged for the establishment of the access link referred to in paragraph 1***, the requesting party has the right to complain to ESMA ***via the central database***.

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***, within one month of the date of the complaint.'***;'

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(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 ***not to meet any of the conditions for refusal referred to in paragraph 3, first subparagraph***, ESMA shall issue***, via the central database,*** an order requiring that party to grant access to its services within one month ***of the notification of that decision***.

A party that grants access to the requested party shall ensure that such access is fully operational within three months of the date of the positive response to the request for access. This period may be extended by up to one month where both parties agree’; ’

(c) 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’ ’

(b) paragraphs 1 and 2 are replaced by the following:

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‘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 ***or the services related to e-money tokens referred in Article 54c*** and does not carry out any other activities under ***theauthorisation*** referred to in point (a) of this subparagraph;**’**;’

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(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;

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(50) the following Articles 54a, 54b and 54c are inserted:

‘Article 54a

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.

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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.

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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 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.

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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;

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(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 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;

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(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) ***the*** 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.

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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, 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;

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(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.

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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

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:

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(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 ***readily available*** 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.;'

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(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 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.;’

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(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.

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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:

'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.;'

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(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.;’

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(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:

‘(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***, or the services related to e-money tokens referred in Article 54c*** that are covered by the authorisation.

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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].;'

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(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;

(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.;’

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(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.;’

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(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.

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].;’

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(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.;’

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(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:

‘(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.;’

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(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..’

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Article 6

Amendments to Regulation (EU) 2019/1156

Regulation (EU) 2019/1156 is amended as follows:

(1) Article 1 is replaced by the following:

‘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[1];

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[1] 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'

(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, ***as defined in Article 2(1) point (f) of Directive 2009/65/EC***;

(k) 'host Member State of the AIFM' means a Member State ***as defined in Article 4(1), point (r)(ii), of Directive 2011/61/EU***;

(l) 'EU AIFM' means an AIFM as defined in Article 4(1), point (l), of Directive 2011/61/EU[1];

(m) 'EU AIF' means an AIF as defined in Article 4(1), point (k) of Directive 2011/61/EU;

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(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 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.;

(q) “retail investor’ means an investor who is not a professional investor;

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(r) 'material change', for the purpose of this Regulation, means a change to information or documentation previously submitted that, by reason of its nature, scale or effects, could reasonably be expected to influence an investor's decision to acquire, hold, redeem or dispose of units or shares in a UCITS or AIF, affect compliance with this Regulation, affect the rights or interests of investors or cause the information or documentation previously submitted to be inaccurate, incomplete or misleading.

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[1] 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'

(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.;'

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(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[1], or in accordance with national law, or are required to draw up a key information document in accordance with Regulation (EU) No 1286/2014.[2];

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[1] 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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[2] 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'

(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[1].

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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.;

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[1] 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).'

(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.;'

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(e) paragraph 6 is replaced by the following:

‘6. The Commission shall adopt, by means of a delegated acts in accordance with 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.;’

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(ea) the following paragraph 6a is inserted:

'6a. Where competent authorities have reasonable grounds to suspect that the marketing communications referred to in paragraph 1 that are used in their territory do not comply with the requirements of this Article, in accordance with the applicable powers referred to in Article 14a and 14b they may direct the AIFM or UCITS to immediately correct the non-compliance.
Where the AIF or UCITS is marketed in more than one Member State, competent authorities shall communicate those actions within two working days to ESMA and other relevant competent authorities through the data platform referred to in Article 12.

Competent authorities may exercise the powers referred to in the first subparagraph from the date on which the marketing intentions of the UCITS or AIF are notified to the data platform referred to in Article 12.'

(5) Articles 5 and 6 are deleted;

(6) Article 7 is replaced by the following:

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‘Article 7

Monitoring of marketing communications

-1.

1. ▌Competent authorities▌ 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.

▌

2a. Competent authorities may monitor compliance with the requirements of Article 4 as regards the marketing communications used in their territories that are targeted at retail investors.

The second subparagraph shall not apply in respect of AIFs marketed to retail investors under national private placement regimes as referred to in Article 43 of Directive 2011/61/EU.

2b. For the purposes of paragraph 2, UCITS must submit the marketing communications referred to in Article 4(1) to that platform prior to initiating marketing activity and shall clearly indicate the Member States in which those marketing communications are being used.

2c. UCITS are responsible for ensuring the reliability and usability of the information and documentation submitted in accordance with paragraph 3 to allow competent authorities access to the marketing communications used in their territory.;

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3 The requirements of paragraph 2b do not apply to marketing communications where a marketing communication has been submitted in respect of that UCITS and where there are no material differences between those marketing communications;'

(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.

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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 Member States of the AIFM and the AIFs they market, and the documentation referred to in paragraphs 2 and 5 of Article 17f;

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(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 ***submitted*** 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***, in order for them to perform their tasks and fulfil their obligations under this Directive***.

3. ESMA shall ensure that the information and documentation ***submitted*** 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

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(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.

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 ;

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(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. ***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 ***in relation to matters governed*** by this Regulation.;'

(15) The following Articles 14a to 14e are inserted:

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‘Article 14a

Powers of the competent authorities of the UCITS

1. The competent authorities of the UCITS home Member State shall be competent ***for supervising the*** UCITS ***compliance with*** this Regulation and ***Directive*** ***2009/65/EU***, ***including*** where relevant, Article 19 of ***that*** Directive ▌ .

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 ***4,*** 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.

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.

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▌Where the competent authorities of the ▌ host Member State ▌ of the ▌ UCITS ***acts*** in accordance with ***paragraph 6a of Article 4 and requires corrective actions to be taken, that requirement shall take effect immediately upon its notification to the UCITS. The competent authorities of the host Member State of the UCITS shall notify ESMA and other relevant competent authorities of such action within two working days through the data platform*** referred to in ▌ Article ***12***

4. Where the competent authorities of the UCITS home Member State decide to withdraw the authorisation, or to suspend the issue, repurchase ***and*** 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.

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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.

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.

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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 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.

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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.

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.

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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 ***Articles 4 and*** 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.

▌Where the competent authorities of the host Member State of the AIFM ***acts*** in accordance with ***paragraph 6a of Article 4 and requires corrective actions to be taken, that requirement shall take effect immediately upon its notification to the AIFM. The competent authorities of the host Member State of the AIFM shall notify ESMA and other relevant competent authorities of such action within two working days through the data platform*** referred to in ▌ Article ***12***

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4. Where the competent authorities of the home Member State of the AIFM decide to withdraw the authorisation, or to suspend the issue, repurchase ***and*** 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 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.

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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 ***AIF***'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.

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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 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.

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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, ***the Executive Board*** 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, ***the Executive Board*** identifies existing or potential cross-border issues it shall propose corrective actions to the relevant competent authorities for their removal.

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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, ***the Executive Board may submit to the Board of Supervisors a reasoned proposal for the*** exercise ***by the Authority of one or more*** of the powers conferred on it under ▌ 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 (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.

▌

7. ESMA shall publish a report on its activity in accordance with paragraphs 1 to 4 at least annually.

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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:

‘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.

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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.

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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.

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.

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Article 17c

Passporting based on authorisation of a UCITS

1. ▌ Where a UCITS ***intends*** to market its units in a Member State other than its home Member State, it shall ***provide a list of*** those Member States in its application for authorisation to the competent authorities of its home Member State.

The application ▌ 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 ***confirmation*** that the UCITS is marketed by the management company that manages the UCITS.

The application ▌ shall also include information on the ***management company's capacity to perform its*** tasks referred to in Article 17b.

2. For the purposes of paragraph 1, a UCITS shall enclose with its application ▌ 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.

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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 ▌ the information and documentation submitted by the UCITS in accordance with paragraphs 1 and 2 ▌ .

4. Upon authorisation ***of the UCITS***, 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 ***of the UCITS***, the competent authorities of the UCITS home Member State shall notify ESMA by ***submitting*** 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 ▌ UCITS is to be marketed in their territory and shall have immediate and direct access to the documentation ***submitted*** pursuant to the first subparagraph.

The competent authorities of the UCITS home Member State shall promptly notify the UCITS of the ***submission*** 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.

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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 ▌ Member ***States not previously notified as part of its authorisation***, 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 ***submitting*** 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 ***submitted*** 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 ***submission*** referred to in the second subparagraph. As of the date of that ***submission***, the UCITS may access the markets of the new host Member States.

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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 1 and 2, the UCITS shall give written notice thereof to the competent authorities of its home Member State at least ***10*** 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 ***submitted*** 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.

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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.

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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, ***submit*** that de-notification to ESMA through the data platform referred to in Article 12 and promptly notify the UCITS of that ***submission***.

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 ***submission*** 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.

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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[1], as a credit institution in accordance with Directive 2013/36/EU of the European Parliament and of the Council[2], 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 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.

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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; ***and***

(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**.**

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▌

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 ▌ the information and documentation submitted by the AIFM in accordance with paragraph 2 ▌ .

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 ***submitting*** the information referred to in paragraph 2 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 ***submitted*** pursuant to the second subparagraph.

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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.

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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 ***submitting*** 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 ***submitted*** pursuant to the first subparagraph.

The competent authorities of the home Member State of the AIFM shall promptly notify the AIFM of the ***submission*** 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

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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 ***submitted*** 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.

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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

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;

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(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; ***and***

(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**.**

▌

The information referred to in the first subparagraph shall be provided at least in a language customary in the sphere of international finance.

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3. The competent authorities of the home Member State of the AIFM shall verify ▌ the information and documentation submitted by the AIFM in accordance with paragraph 2 ▌ .

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.

5. Upon authorisation, the competent authorities of the home Member State of the AIFM shall notify ESMA by ***submitting*** 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 ***submitted*** pursuant to the first subparagraph.

The competent authorities of the home Member State of the AIFM shall promptly notify the AIFM of the ***submission*** 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.

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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 ***submitted*** the updated letter of authorisation and the information and documentation referred to in paragraph 2 through the data platform referred to in Article 12.

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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 ***submitted*** 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 the date of that ***submission***, 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.

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11. Where a change referred to in the paragraph 9 is implemented after information has been ***submitted*** 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 AIFs it manages in that Member State. Such intention shall be made public by electronic means.

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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, ***submit*** 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 ***submission*** 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.

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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 ▌ ;

(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.;

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[1] 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).

[2] 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).'

(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 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.

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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.

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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.;'

Section 1

Amendment to Article 96 of Regulation (EU) 2021/23

By [date 6 months before the application of MISP changes to EMIR], the Commission shall submit a report to the European Parliament and to the Council assessing the adequacy of the existing crisis-management framework for CCPs. That report shall at least:

(a) assess the state of play of the Union crisis-management framework for CCPs and, in particular, the adequacy of the financial resources and resolution tools available to resolution authorities, the effectiveness of the governance arrangements and the potential financial consequences of the resolution of a CCP, including the fiscal consequences for Member States; and

(b) assess whether it is necessary to enhance crisis-management mechanisms for CCPs in the Union. Where appropriate, the report shall be accompanied by a legislative proposal.

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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:

‘(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) ***of paragraph 2***, EBA and the authorities referred to in points (d), (e), (k) and (l) of ***that*** paragraph ▌ 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.;’

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(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:

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(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 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 ***shall*** 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:

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(a) granting and withdrawing specific permissions to operate DLT market infrastructures***, operate settlement schemes,*** provide DLT notary ***services*** 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 settlement schemes*** and providing DLT notary ***services*** and DLT central account maintenance services;

(e) supervising DLT market infrastructures***, settlement schemes*** and providers of DLT notary ***services*** and DLT central account maintenance services; and

(f) ***co-operation, as applicable,*** between operators of DLT market infrastructures***, operators of settlement schemes, providers of DLT notary services and DLT central account maintenance services***, 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***' or 'DLT MI'*** means a DLT trading venue, a DLT settlement system or a DLT trading and settlement system;',

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(b) point (6) is replaced by the following:

▌ ***(6)*** ‘DLT trading venue’ or ‘DLT TV’ means a multilateral trading facility or an organised trading facility ▌ 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;’,

(cc) point (12) is replaced by the following:

(12) ‘financial instrument’ means those instruments specified in Section C of Annex I, of Directive 2014/65/EU, including such instruments issued by means of distributed ledger technology;’’

(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 ***and, for the purpose of this Regulation, includes a system operated by a CASP trading platform where such multilateral system brings together multiple third-parties 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***;’ ▌

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(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 ***and, for the purpose of this Regulation, includes a system operated by a CASP trading platform where such 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;’***

(ee) the following point (16) is replaced by the following:

(16) ‘business day’ and working day means for the purposes of administrative deadlines under this Regulation, all days other than public holidays, Sundays and Saturdays as calculated in accordance with Regulation (EEC, Euratom) No 1182/71 [and business day and working days means for the purpose of operational settlement provisions the business cycle of a system operating the relevant system]; ’

(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:

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(a) one or more competent authorities as defined ***in*** 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 ***classified as significant pursuant to Article 85 of Regulation (EU) 2023/1114***;

(cc) one or more competent authorities designated in accordance with Article 93 of Regulation (EU) 2023/1114; and

(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 (***21s***) 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([1]);

(21b) 'CASP trading platform' means a CASP authorised to operate a trading platform for crypto-assets as defined in Article 3(1), point(***18***), 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;

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(21d) 'DLT notary' means the provider of DLT notary services ***in accordance with Article 10a***;

(21e) 'DLT central ***account*** 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 ***account*** maintenance services ***in accordance with Article 10a***;

(21g) 'settlement scheme' means the set of rules and procedures authorised for the purpose of settling DLT financial instruments in accordance with Article 10c ▌;

(21h) ***a 'CCP***' means ***a legal person*** as defined in Article ***2(1) of Regulation (EU) No 648/2012 and where authorised in accordance with Article 14 of such Regulation***;

(21i) 'home Member State' means the Member State ***in which*** a DLT notary or a DLT account keeper has its registered office ***or, where under its national law it has no registered office, its head 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 ▌ applicable to ***the DLT SS and DLT TSS where*** subject to ▌ Article 7a;

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(21l) ‘regular regime’ means the set of provisions ▌ applicable to DLT market infrastructures ***not permissioned to operate under*** the simplified regime ▌ ;

(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***;***

(21na) ‘central bank money’ means central bank money as defined in Article 2(1) point (8a) of Regulation (EU) No 909/2014;

(21nb) ‘e-money token’ means e-money token as defined in Article 3(1), point (7), of Regulation (EU) 2023/1114 and listed in the ESMA-register established in accordance with Article 109 of Regulation (EU) 2023/1114;

(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;

(21q) ‘packaged retail investment product’ means a packaged retail investment product as defined in Article 4(1) of Regulation (EU) 1286/2014;

(21r) ‘non-complex financial instrument’ means a financial instrument that meets the conditions under Article 25(4), point (a), of Directive 2014/65/EU;’

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(21s) 'retail client' means retail client as defined in Article 4(1) point 11 of Directive 2014/65/EU.

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[1] 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)'

(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 ***300*** 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 ***exceed EUR 300*** billion, the DLT market infrastructure shall not admit that DLT financial instrument to trading or record it.

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

‘2a. ***The operator of the DLT market infrastructure shall activate the transition strategy referred to in Article 7(7)*** 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 ***exceeds 125%*** of the ***threshold laid down in the first subparagraph of paragraph 2 of this*** Article ▌. 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 ***of this Article***.

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.

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(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 ***exceeds 125% of the threshold laid down in the first subparagraph of paragraph 2b of this Article***, 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 ***of this Article***.***””***

(e) ▌ paragraph 4 ▌ is replaced by the following:

‘‘The operator of a DLT market infrastructure shall calculate the aggregate market value of DLT financial instruments admitted to trading or recorded on that DLT market infrastructure as follows. The aggregate market value shall be calculated as the average of the daily closing price, or another reliable valuation where no closing price is available, of each DLT financial instrument, multiplied by the number of DLT financial instruments that are traded or recorded on that DLT market infrastructure with the same International Securities Identification Number (ISIN) accumulated over a 90 days period and then divided by the same 90 days, providing a 90 days average aggregate market value. Where only part of an issue is recorded on, or admitted to trading on the DLT market infrastructure, only the DLT financial instruments so recorded or admitted to trading shall be taken into account.

On the basis of the ***aggregate market value*** calculated in accordance with the first subparagraph, the operator of the DLT market infrastructure shall:

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(a) assess ***at the moment of admission to trading, or initial recording of a new DLT financial instrument*** whether the aggregate market value of DLT financial instruments ***taken together with the new DLT financial instrument would exceed*** the threshold referred to in paragraphs 2 ***or 2b*** of this Article ▌ and ***where it does, the operator shall not admit such new DLT financial instrument to trading or record it;***

(b) ***assess, on a monthly basis, whether the aggregate market value of DLT financial instruments exceeds the percentage of the threshold referred to in paragraphs 2a or 3 of this Article; and where it does the operator shall*** 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 ***of this Article'***.'

(fa) Paragraph 6 is deleted.

(g) paragraph 7 is replaced by the following:

'7. Regulation (EU) No 596/2014 applies to DLT financial instruments admitted to trading on a DLT TV or on a DLT TSS, ***and*** those that are operated by a CASP trading platform in accordance with this Regulation.'

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(h) the following ***paragraphs 7a and 7b are*** added:

‘7a. The Commission is empowered to adopt a delegated act according to Article 15a to amend paragraphs 2***, 2a, 2b and 3*** of this Article ***and Articles 10b(5) and 10c(9)*** by adjusting the thresholds specified ***in paragraphs 2 and 2b and Article 10b(5) and 10c(9) and the percentage of the thresholds specified in paragraphs 2a and 3 of this Article and Article 10c(9)*** therein in light of market developments.

When considering the adjustment of thresholds set out in paragraphs 2***, 2a, 2b and 3 of this Article and Articles 10b(5) and 10c(9)*** the Commission shall take into account the following:

(i) whether an adjustment or omission of adjustment poses risks to financial stability;

(j) 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;

(k) whether market conditions and demonstrated market demand justify an adjustment.;

In assessing demonstrated market demand as set out in the first subparagraph, and for the purpose of paragraphs 2, 2a, 2b or 3, the Commission shall consider among other factors the number of DLT MIs that have an aggregate market value that has exceeded 80% of any of the thresholds referred to in the paragraphs 2, 2a, 2b or 3.

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7b.Competent authorities shall report to ESMA on a yearly basis how many DLT MIs have exceeded 80% of any of the thresholds referred to in the paragraphs 2, 2a, 2b or 3 in the preceding year. ESMA shall make an aggregated and anonymised version of this information publicly available, and the European Commission shall consider the content of such aggregated reports when performing an assessment of demonstrated market demand.

The threshold adjusted under the first subparagraph of Article 3(2) may not exceed EUR 500 bn '

(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 ***comply with*** 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 ***shall*** not apply in respect of those ▌ requirements from which the ▌ operator ***of*** the DLT TV has been exempted under paragraphs 2 and 3 of this Article, provided that ▌ operator complies with:***'***;'

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

‘1a. A CASP trading platform operating a DLT TV shall ***comply with***:

(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 ***8, Articles 10 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 ***8 and Articles 10 to 13*** of that Directive.

A CASP trading platform operating a DLT TV ***or a DLT TSS shall inform its competent authority where it holds clients' DLT financial instruments and funds. Where such CASP trading platform holds retail clients' DLT financial instruments and funds,*** the CASP ***shall belong to an investor-compensation scheme recognised under Directive 97/9/EC in respect of claims related to the DLT financial instruments and funds of its retail clients. Member States shall ensure that the obligation to belong to an investor compensation scheme and the cover for investors apply mutatis mutandis to such CASPs trading platform to their investors, respectively.***

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The first subparagraph shall not apply in respect of those applicable requirements from which the CASP trading platform operating a DLT TV has been exempted 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 ***of this Article*** shall not apply, respectively, in respect of those ***applicable*** requirements from which the ▌ operator ***of*** a DLT TV has been exempted under 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:

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(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.

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(e) paragraph 3 is replaced by the following:

‘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 ***of this Article***, it shall demonstrate that the exemption requested is:

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(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.;'

(da) the following paragraph 2a is inserted:

'Where the operator of a DLT TV that is an MTF admits persons referred to in paragraph 2 of this Article that qualify as retail clients, it shall ensure that:

(a) they have given informed consent to trading on the DLT TV that is an MTF as members or participants and explicitly acknowledged that the investor protection rules in Directive 2014/65/EU do not apply;

(b) retail clients do not have access to packaged retail investment products where a valid key information document has not been published pursuant to Regulation (EU) 1286/2014 and not made accessible to retail clients via a valid link.

The DLT TV that is an MTF shall not make available for trading to persons referred to in paragraph 2 of this Article that qualify as retail clients other products or instruments than:

(i) non-complex financial instruments

(ii) packaged retail investment products where a valid key information document has been published pursuant to Regulation (EU) 1286/2014

The DLT TV that is an MTF shall comply with any product intervention measure taken under Articles 40 to 42 of Regulation (EU) 600/2014

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The DLT TV that is an MTF shall comply with the requirements under Article 24(3) of Directive (EU) 2014/65, and does not present the instruments it offers for trading in a way that deceives or manipulates retail clients or otherwise materially distorts or impairs their ability to make free and informed decisions;''

(g) paragraph 5 is replaced by the following:

'5. Paragraphs 2, 3 and 4 of this Article and Article 4a ***shall*** apply, mutatis mutandis, to ***an operator*** operating a DLT TSS in accordance with Article ***6(1), Article 6(1a) or 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 ***an*** operator ***of a DLT TV***, 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 ▌ 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;

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(c) ***where compensatory measures are proposed in respect of a requested exemption,*** the exemption ***and*** compensatory measures ***collectively achieve comparable*** objectives ***as*** the provision ***in respect of which an exemption*** has been ***requested*** ;

(d) the exemption requested does not undermine financial stability, market integrity and investor protection;

(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 ▌ operator ***of a DLT TV*** shall submit a request for exemptions 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 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.

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3. Within ***40 business days*** of declaring the request complete, the competent authority shall submit ***its draft decision on the exemptions requested, the*** draft assessment of the ***request together with the complete*** request referred to in paragraph 2 ***of this Article*** to ESMA ▌. Within ***40 days*** of receiving the draft assessment, ESMA shall provide the competent authority with a non-binding opinion on the draft ***decision and*** assessment ***of*** 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 ***90 business days*** of declaring the request complete inform the ***requesting operator of the DLT TV*** 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 ***comply with*** the requirements that apply to a CSD operating a securities settlement system under Regulation (EU) No 909/2014. ***A participant that settles transactions in a DLT SS on its own account or on behalf of a third-party shall settle such transactions in DLT financial instruments in accordance with Article 5 of Regulation (EU) No 909/2014, where such instruments qualify as transferable securities, money-market instruments, units in collective investment undertakings and emission allowances.***

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The first subparagraph does not apply in respect of those ***applicable*** requirements from which the operator of a DLT SS has been exempted under paragraphs 2 to 9 of this Article, provided that ***the operator of the*** 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 ***applicable*** requirements from which the operator of a DLT SS has been exempted under 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;

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(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:

(i) the DLT financial instruments are recorded on the distributed ledger;

(ii) 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;

(iii) 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

(iv) 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 ▌ operator ensures, at a minimum, by means of robust procedures and arrangements, that the ***operator of 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

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(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.

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)***(a)***, 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 ▌ operator proposes compensatory measures to meet the objectives of those Articles and, at a minimum, ensures that:

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(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 ***the operator of the*** 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 ▌ ;

(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.

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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 98/26/EC and amending Directive 2002/47/EC on financial collateral arrangements where the ***operator of the DLT SS including 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 ***of the DLT SS*** from Article 40 and Title IV of Regulation (EU) No 909/2014, provided that ***the DLT SS*** settles on the basis of delivery versus payment and ***that the operator and the DLT SS*** complies with paragraphs 8a to 8f ***of this Article.'***;'

(b) The following paragraphs 8a to 8h are inserted:

'8a. ***A DLT SS shall settle*** payments ▌ through central bank money, including in tokenised form, where practical and available**.** Where not practical and available ***to settle in central*** bank money, ***the DLT SS shall settle payments:***

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(a) using commercial bank money, including in tokenised form, through its own accounts, accounts opened with another CSD or a credit institution, or

(b) using e-money tokens

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.

8b. ***Article 54, Article 59 and Article 60 of Regulation (EU) No 909/2014, shall apply to a DLT SS,*** where the settlement of payments is carried out in commercial bank money ***and where the DLT SS intends to settle such payments*** through ***its*** accounts ▌ .

Article 54a, with the exception of paragraph 5, Article 59 and Article 60 of Regulation (EU) No 909/2014 shall apply to a DLT SS, where the settlement of payments is carried out in commercial bank money and where the DLT SS intends to settle the payments through the accounts opened with another CSD designated in accordance with Article 54a.

Article 54b, with the exception of paragraphs 5 point (c), 6, and 12, points (c), Article 59 and Article 60 of Regulation (EU) No 909/2014, shall apply to a DLT SS and the designated credit institution, where the settlement of payments is carried out in commercial bank money and where the DLT SS intends to settle the payments through the accounts opened with such credit institution authorised in accordance with Article 8 of Directive 2013/36/EU.

The designation under the first, second and third subparagraphs of this paragraph shall be made in accordance with Articles 55, 56, 57 and 58 of Regulation (EU) No 909/2014.

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▌ Where the settlement of payments is carried out in e-money tokens, ***in accordance with point (b) of the first subparagraph of paragraph 8a of this Article,*** the service of providing ▌ accounts for e-money tokens***, and the related service thereto of processing of payments of e-money tokens,*** may be provided by the operator of a DLT SS, a credit institution, a CASP authorised to provide ***services that allow it to*** custody ***e-money tokens or process payments in*** e-money tokens in accordance with ***Article 59 of*** Regulation (EU) 2023/1114 or by any other financial entity permitted to provide custody of e-money tokens ***or process payments e-money tokens in it*** in accordance with Article 60 of that Regulation, subject to the notification procedure specified in that Article. ***Title IV of Regulation (EU) No 909/2014 shall not apply to such settlement of payments carried out in e-money tokens in accordance with this paragraph.***

8d Services related to e-money tokens, other than providing ▌ accounts for e-money tokens and processing of payments of e-money tokens ***referred to in paragraph 8c***, that amount to services listed in Section C of the Annex to Regulation (EU) No 909/2014 shall be provided by a ***DLT SS complying with the requirements applicable to a DLT SS laid down in the first and second subparagraph of paragraph 8b of this Article or by a*** credit institution complying with ***the requirements applicable to a designated credit institution laid down in the third subparagraph of paragraph 8b of this Article***, ***including*** with the exception of Article 54b(5), point (c).

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In derogation from Article 54b(5), point (b), of Regulation (EU) No 909/2014, a designated credit institution referred to in the first paragraph may carry out CSD core services in accordance with Article 10b or 10c.

▌

8e. ***Paragraph 8b to 8d shall not apply to systems operating under the simplified regime, including to credit institutions providing services to such*** settlement ***systems, where in accordance with Article 7a(5)*** Title IV of Regulation (EU) No 909/2014 does not apply ***to such systems operating under the simplified regime, including to credit institutions providing services to such*** settlement ***systems***.

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, or where the settlement of payments is carried out using e-money tokens, the DLT SS shall identify, measure, monitor, manage, and minimise any risks arising from the use of such means.

8f. References to cash in Article 40, Title IV of Regulation (EU) No 909/2014 and for the services listed in Section C of the Annex to Regulation (EU) No 909/2014 shall include e-money tokens.

8g. At the request of ***an*** operator ***of a DLT SS***, the competent authority may exempt that DLT SS from Article 45a of Regulation (EU) No 909/2014, provided that ▌ DLT SS demonstrates compliance with Article 7.

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8h. At the request of ***an*** operator ***of a DLT SS***, the competent authority may exempt that DLT SS from Article 48a of Regulation (EU) No 909/2014, provided that ***the operator of the*** 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 ***operator of the*** DLT SS ▌ demonstrates its participation in the industry group ***and the competent authority shall reassess the need for an exemption whenthe*** 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 ***an*** operator ***of a DLT SS***, the competent authority may exempt that DLT SS from Articles 50, 51 or 53 of Regulation (EU) No 909/2014, provided that ***the operator of the*** 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, ***an operator of such DLT SS*** 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.

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10. Where ***an operator of*** a DLT SS requests an exemption under paragraphs 2 to 9 ***of this Article***, 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.;'

(e) paragraph 11 is replaced by the following:

'11. Paragraphs 2 to 10 of this Article and Article 5a shall apply, mutatis mutandis, to an operator operating a DLT TSS in accordance with Articles 6(1), 6(1a) or Article 6(2).

Where the settlement of payments is carried out using representation in the DLT TSS of pre-funded 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) the DLT TSS is operated under the simplified regime:

i. the operator of a DLT TSS is authorised as an investment firm; and

ii. the operator of a DLT TSS identifies, measures, monitors, manages, and minimises any risks arising from this settlement model;

(b) where the DLT TSS is operated under the regular regime:

i. the operator of a DLT TSS is authorised as an investment firm;

ii. the operator of a DLT TSS identifies, measures, monitors, manages, and minimises any risks arising from this settlement model;

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iii. the credit institution holding the accounts with prefunded commercial bank money is subject to the requirements applicable to a designated credit institution laid down in the third subparagraph of paragraph 8b of this Article, with the exception of Article 54b(5), point (c).'

(7) The following Article 5a is inserted:

'Article 5a

Other exemptions regarding DLT SS

1. At the request of ***the*** operator ***of a DLT SS***, the competent authority may exempt that DLT SS from specific provisions of Titles II and III ***and any additional requirement set out in accordance with Article 54b(12)*** of Regulation (EU) No 909/2014, other than those covered by Article 5 provided that, for each ▌ 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;

(ba) where compensatory measures are proposed in respect of a requested exemption , the exemption and compensatory measures should collectively achieve comparable objectives as the provision in respect of which an exemption has been requested;

(c) the exemption requested does not undermine financial stability, market integrity and investor protection;

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(d) ***the operator of*** 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 ▌ operator ***of a DLT SS*** 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.

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 ***40 business days*** of declaring the request complete, the competent authority shall submit ***its draft decision on the exemptions requested, the*** draft assessment of the ***request together with the complete*** request referred to in paragraph 2 to ESMA ▌. Within ***40 business days*** of receiving the draft assessment, ESMA shall provide the competent authority with a non-binding opinion on the draft ***decision and*** assessment ***of*** 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.

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The competent authority shall, within ***90 business days*** of declaring the request complete inform the ***requesting operator of the DLT SS*** 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

1. An investment firm, ***or a*** market operator ▌ operating a DLT TSS shall ***comply with***:

(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.

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1a.A CASP trading platform operating a DLT TSS shall comply with:

(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 TSS as an MTF, with the exception of Articles 5 to 8, Articles 10 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 TSS as an OTF, with the exception of Articles 5 to 8 and Articles 10 to 13 of that Directive;

(c) mutatis mutandis, the requirements that apply to a CSD under Regulation (EU) No 909/2014, EU where it operates the DLT TSS with the exception of Articles 9, 16, 17, 18, 20, 26, 27, 28, 31, 42, 43 and 44, of that Regulation.

▌

Capital held in accordance with capital requirements applicable to an investment firm, market operator or a CASP ***trading platform*** 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 ***shall*** not apply in respect of those ***applicable*** requirements from which the investment firm***,*** market operator ***or CASP trading platform*** operating the DLT TSS has been exempted under Article 4(2) and (3) and Article 5(2) to (9), provided that ▌ investment firm***,*** market operator or CASP ***trading platform*** complies with:

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(a) Article 7;

(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 ***the*** requirements from which the investment firm***,*** market operator ***or a CASP trading platform*** operating the DLT TSS has been exempted under Articles 4a or 5a ▌

▌

2. A CSD operating a DLT TSS shall ***comply with***:

(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 ***and Article 15*** 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 ***and Article 15*** of that Directive, where it operates the DLT TSS as an OTF.

The first subparagraph ***shall*** 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) ▌ , provided ▌ that CSD complies with:

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(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

▌

▌

(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 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 ([1]), Regulation (EU) ***2023/1114*** 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 ([2]), in order to ensure investor protection.;

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[1] 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).

[2] 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).'

(b) paragraph 7 is amended as follows:

(a) in the first subparagraph. point (a) is replaced by the following:

'(a) that ***the percentage of*** 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 ***and where the percentage of a threshold set out in Article 3(3) is exceeded, the transition strategy shall comply with the requirements set out in Article 7a***.;'

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(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 ***in the view of the applicant*** is expected to remain below the threshold laid down in Article 3(2b) of this Regulation, an investment firm, market operator or ▌ CASP ***trading platform*** applying for a specific permission to operate a DLT TSS in accordance with Article ***10(1) and a legal person applying for authorisation in accordance with Article 10(2), may request in accordance with paragraph 8 of this Article*** 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 ***in the view of the applicant is*** expected to remain below the threshold laid down in Article 3(2b) of this Regulation, a CSD ***may apply*** for a specific permission to operate a DLT SS in accordance with Article 9 or a DLT TSS in accordance with Article 10, as applicable, ***and may request in accordance with paragraph 8 of this Article*** to participate in the simplified regime ***under the conditions*** laid down in this Article.

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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 ***of this Article'***.

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 ***40 business days*** 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 ***90 business days*** 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 ***an operator of*** a DLT SS or a DLT TSS ▌ .

4. A CSD authorised ***under Article 9 or Article 10*** 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 ***(ESCB)***, 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.

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The 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 ***Article 8 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), ***34(1) to 34(5),*** 36, 37, 38(1), 38(2), 39(3), 39(5), 40(1) ▌, 41(1), 42 to 44, 45 (1) to (3), 45(6); and

   (d) Title ***IV***. ▌

   Those entities ***under the simplified regime*** 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.

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6. ***ESMA, in close co-operation with the ESCB, may develop draft regulatory technical standards*** to further specify ***any of*** the requirements ***of Regulation (EU) 909/2014*** applicable to entities operating in the simplified regime***. When developing the*** draft regulatory technical standards***, ESMA shall draw inspiration from the*** regulatory technical standards adopted under Regulation (EU) No 909/2014 ***and ESMA shall ensure regulatory technical standards applicable to those*** entities ***are proportionate to the size, risk and nature of activities undertaken by those entities.***

(a) adapt them to the requirements applicable to those entities in accordance with paragraph 5; and

(b) ensure regulatory technical ***standards*** applicable to those entities are proportionate to the size, risk and nature of activities undertaken by those entities.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

8. Where ***an entity intends*** to operate a DLT SS under Article 9 or to operate a DLT TSS under Article 10 in the simplified regime***, such entity*** shall notify the competent authority of their intention to benefit from the simplified regime***, request a specific permission*** 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) ***and percentage of a threshold laid down in Article 3(3)***.

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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 ***under*** Article 9 ***or operate a DLT TSS under*** Article 10, respectively.

9. Where the calculation according to Article 3(4) of this Regulation demonstrates that the ***aggregate market value*** of the operator ***of the DLT SS or DLT TSS*** has reached ***80% of the threshold laid down in the first subparagraph of Article 3(2b)***, 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 ***of the DLT MI*** intends to transition to the regular regime. ***The operator may also voluntarily accompany such a monthly report with a notification that the DLT SS or DLT TSS intends to transition to the regular regime.***

10. Where the operator ***of the DLT MI*** does not intend to transition to the regular regime, it shall demonstrate to the competent authority without undue delay and at the latest within ***40 business days*** 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) ***and the percentage of a threshold referred to in Article 3(3)***.

11. Where the operator ***of the DLT MI*** notifies the competent authority of its intention to transition to the regular regime, ***it shall be deemed to operate under the regular regime from the date of notification pursuant to paragraph 9 of this Article and*** shall comply with the requirements of the regular regime ***at the latest*** within ***80 business days*** from the date ***of the notification*** except for the requirements in respect of which the operator has been granted an exemption in accordance with ***Articles 4, 4a, 5, 5a or 6, as applicable to the type of DLT market infrastructure it operates***.

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In derogation of the first subparagraph of this paragraph, where an entity operating in the simplified regime intends to transition to the regular regime and has informed its competent authority thereof in accordance with paragraph 9, it shall comply with Article 47 of Regulation (EU) No 909/2014 as follows:

(a) at the latest within 80 business days from the date of the notification pursuant to paragraph 9 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;

(b) at the latest within 120 business days from the date of the notification pursuant to paragraph 9 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.

The operator ***of the DLT MI*** shall submit a plan to transition to the regular regime to the competent authority without undue delay and at the latest within ***40 business days*** from the date of the notification ***pursuant to*** paragraph ***9***. This plan shall include the necessary information to enable the competent authority to assess whether the operator ***will*** be able to comply with the requirements of the regular regime within the period referred to in the first ***and second subparagraphs of this paragraph***. The operator ***of the DLT MI*** shall notify the competent authority of any material changes to the plan to transition to the regular regime.

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Where there are strong indications that the operator will be unable to complete the transition within the period referred to in ***first and*** second ***subparagraphs***, 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.

Where the operator of a DLT SS or DLT TSS has notified its competent authority of its intention to transition to the regular regime in accordance with paragraph 9 of this Article , the competent authority shall assess all requirements that will apply to the operator of the DLT SS or DLT TSS operating under the regular regime. However, the competent authority may in such assessment rely on part of the assessment previously made pursuant to Article7a for such DLT SS or TSS to participate in the simplified regime, to the extent that the requested transition will not result in a material change or otherwise materially affect the previous assessment. The operator of the DLT SS or DLT TSS shall confirm to the competent authority that there is no change to the underlying facts of that part of the assessment.

▌

12. The operator of a DLT SS or a DLT TSS ***(as applicable)*** that has ***obtained, before the [PO: please insert the date of the entry into force of this Regulation], a permission*** under ***Articles 9 and 10 of*** this Regulation ***to operate a DLT SS or DLT TSS (an original DLT SS or original DLT TSS)*** shall be deemed ▌, to operate under the simplified regime ***with regards to the services provided before the entry into force of this Regulation. The provisions of the previous sentence apply*** as long as ***the original DLT SS or original DLT TSS*** remains below the threshold laid down in Article 3(2b) and ***the percentage of the threshold laid down inArticle*** 3(3) of this Regulation, as applicable ***and unless such operator has requested an accelerated transition in accordance with paragraph 12a or a transition in accordance with paragraph 9***.

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Where the operator of an original DLT SS or original DLT TSS (as applicable) requests an accelerated transition in accordance with paragraph 12a within [60 business days from [PO: please insert the date of the entry into force of this Regulation], the competent authority shall assess such request within 30 business days from the moment it declares the receipt of the request as complete and informs the applicant thereof.

The operator of the original DLT SS or original DLT TSS (as applicable) shall provide all information required by the competent authority and shall ensure the request entails sufficient information for the competent authority to declare the request as complete and enables the competent authority to assess the conditions laid down in paragraph 12a.

Where the operator of a DLT SS or a DLT TSS ***(as applicable)*** referred to in the first subparagraph intends to transition into the regular regime it shall do so in accordance with this Article.;

13. An accelerated transition shall apply where an operator of an original DLT SS or original DLT TSS (as applicable) intends to provide services under the regular regime and where it has requested such transition which fulfils all of the following conditions:

(a) the request does not seek any new exemption under Articles 4, 4a, 5, 5a or 6;

(b) transition into the regular regime does not result in the relevant original DLT SS or DLT TSS needing to make material changes to their operational structure or governance due to the extended scope of financial instruments;

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(c) the operator of the original DLT SS or original DLT TSS (as applicable) has confirmed in writing that no material changes have occurred since the last review made by the competent authority;

(d) the request provides evidence of how the operator of the original DLT SS or DLT TSS (as applicable) will comply with the capital requirements set out in Article 7a(10a), point (b), by the time the DLT SS or DLT TSS (as applicable) is permissioned to operate under the regular regime; and

(e) transition into the regular regime will not result in the introduction of material new risks.

Where any of the conditions are not met, the competent authority will inform the operator of the DLT SS or DLT TSS requesting the accelerated transition thereof and that the request will be processed in accordance with paragraph 10a. The request submitted in accordance with this paragraph shall be deemed a notification submitted under paragraph 9 of this Article.

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[1] ▌

(11) Article 8 is amended as follows:

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

‘Specific permission to operate DLT TV’

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(b) ***paragraphs 1 to 3 are*** replaced by the following:

‘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.;’

▌

‘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 ***or has been granted an exemption in accordance with Article 4a 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, and for a specific permission, it shall submit in its application the information required under Article 7 of Directive 2014/65/EU, 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 4 of this Regulation or has been granted an exemption in accordance with Article 4a of this Regulation.’

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‘3a. Where a legal person simultaneously applies for authorisation as a CASP ***trading platform*** and for a specific permission ***under this Article***, it shall submit in its application the information required under Article 62 of Regulation (EU) 2023/1114.

(c) 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) ***and (h)*** 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);

(h) the exemptions that the applicant is requesting under Article 4 ***or Article 4a***, 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.

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(d) the following paragraph 4a is inserted:

‘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.;’

(e) in paragraph 6, the first subparagraph is replaced by the following:

‘Within 30 ***business*** 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.;***’’***

(f) in paragraph 8, ***the introductory wording*** is replaced by the following:

‘(i) ESMA may develop guidelines to promote the consistency and proportionality of:

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

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(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;'

(g) paragraphs 9 to 13 are replaced by the following:

'9. Within 90 ***business*** 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.

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11. The specific permission shall specify the exemptions that are granted in accordance with Article 4 ***and Article 4a and*** any compensatory measures ▌ .

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 ▌

(b) the total number of requests for exemptions that have been made under Article 4 ***and Article 4a***, 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;

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▌

(c) the operator of the DLT TV has exceeded the threshold referred to in Article 3(2)▌ ;

(d) the operator of the DLT TV has exceeded the ***percentage of the*** threshold referred to in Article 3(2a)▌ and has not activated the transition strategy; or

(e) 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.▌ ;'

(12) Article 9 is amended as follows:

(a) paragraphs 2 ***to*** 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.

2a. Where a CSD or a legal person applies for a specific permission to operate a DLT SS in accordance with paragraphs 1 and 2 of this Article, and intends to operate the DLT SS under the simplified regime, the CSD or the legal person (as applicable) shall specify its intention to operate under the simplified regime in its application for the specific permission and comply with the procedure set out in Article 7a(8).

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 ***5 or*** 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 ***5*** 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.;’

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(bb) paragraph 9 is replaced by the following:

'9. Within 90 business 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 applicant applies simultaneously for authorisation as a CSD under Regulation (EU) No 909/2014 and for a specific permission under this Regulation, the assessment period may be extended for a further period up to that specified in Article 17(8) of Regulation (EU) No 909/2014.'

(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 ***and Article 5a***, any compensatory measures ▌ and whether the DLT SS operates under the simplified regime.'

(b) in the third subparagraph, ***points (a) and (b) are*** 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***

(b) the total number of requests for exemptions that have been made under Articles 5 and 5a indicating the number and types of exemptions granted or refused, together with the justifications for any refusals.'

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(c) 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;

▌

(c) the DLT SS has exceeded the threshold referred to in Article 3(2) or 3(2b) as applicable;

(d) the DLT SS has exceeded ***the percentage of*** the threshold referred to in Article 3(2a) or 3(3), as applicable, and has not activated the transition strategy; or

(e) 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.▌;’

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(13) Article 10 is amended as follows:

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

‘1. An investment firm, ▌ a market operator ▌ , ▌ a CASP trading platform ▌ , or ***a CSD*** authorised ▌ 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 ***for authorisation*** as a CSD under Regulation (EU) No 909/2014, or ***for authorisation*** 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.

2a. Where an investment firm, a market operator, a CASP trading platform, or a CSD authorised under Regulation (EU) No 909/2014 apply for a specific permission to operate a DLT TSS in accordance with paragraphs 1 and 2 of this Article, and intends to operate the DLT TSS under the simplified regime, the relevant entity shall specify its intention to operate under the simplified regime in its application for the specific permission and comply with the procedure set out in Article 7a(8).

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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 ***trading platform***, 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:

'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 ***trading platform*** 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, ***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.;'

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(c) paragraph 9 is replaced by the following:

‘9. Within 90 ***business*** 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 ▌ 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;’

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(f) paragraph 12 is amended as follows:

(a) first subparagraph introductory wording is replaced by the following:

‘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 ***percentage of the*** threshold referred to in Article 3(2a) or 3(3), as applicable, and has not activated the transition strategy; or;’

(bb) point (c) is deleted.

(g) paragraph 13, second subparagraph is amended as follows:

‘(a) the second subparagraph is replaced by the following:

Where an operator of a DLT TSS requests a new specific permission, exemption or modification, the procedure set out in Article 6 shall apply.’

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(14) The following Articles 10a to ***10f*** are inserted:

‘Article 10a

Specific permission to provide individual CSD services

1. ***The*** competent authority ***may grant a permission (***specific permission***)*** to provide, on an individual basis, the DLT notary service or the DLT central ***account*** 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 ***(CSD core services) to the following entities:***

(a) an authorised investment firm;

(b) an authorised market operator;

(c) an authorised credit institution;

(d) an authorised CSD or CCP;

(e) an authorised CASP; and

(f) an entity permissioned in accordance with paragraph 6 of this Article.

2. An application for a specific permission ▌ 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;

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(b) a description of the functioning of the distributed ledger technology used, as referred to in Article 7(2); ***and***

(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).

The competent authority shall consider an application complete where such application contains all the information required under the first and second subparagraphs of this paragraph 2.

3. Within 20 ***business*** days of receiving the application for a specific permission, the competent authority shall ***decide*** 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 ***information. Once this*** additional ***time limit has passed*** the competent authority shall ***decide if the application is complete or not and*** inform the applicant ***of that decision*** .

4. Within 40 ***business*** days of the date ***from which the competent authority informed the applicant under paragraph 3 of this Article,*** of receipt of a complete application ▌ , 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 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.

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An entity authorised under the specific permission to provide CSD core services shall be able to provide such services within the territory of the Union in accordance with Article 10f.

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5. ESMA may develop guidelines to establish standard forms, formats and templates for the purpose of the application referred to in paragraph ***2 and of the reporting referred to in paragraph 7 of this Article***.

6. The competent authority may grant a specific permission under paragraph 1, point (f) to an entity where that relevant entity is authorised within a Member State to provide services functionally similar to the services provided by a DLT notary or DLT account keeper, where it is established in the Union, where it is subject to ongoing prudential, organisational, governance and conduct supervision and where it complies with the requirements listed in Article 10b(2).

The competent authority may withdraw the specific permission where the DLT notary or the DLT account keeper infringes the provisions of this Regulation.

The competent authority shall withdraw the specific permission under this paragraph by applying mutatis mutandis the conditions and procedures laid down in Article 20 of Regulation (EU) No 909/2014.

7. A DLT notary and a DLT account keeper shall on a yearly basis or at the at a frequency requested by their competent authority or ESMA (having regard to the size, systemic importance, nature, scale and complexity of the activities) report key details of their activities, including; scope, scale, issuances, overall services and material risks identified and an attestation of compliance with the applicable requirements of its specific permission. Upon request from their competent authority or ESMA, the DLT notary or DLT account keeper shall also report information necessary to assess the attestation of compliance.

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The reporting obligation shall not require the resubmission of information already available to the competent authority or ESMA.

The competent authority shall make all such information available to ESMA on request through a common reporting mechanism for the purposes of supervisory convergence and maintaining a register. ESMA shall publish only high-level, aggregated or factual information necessary for the public register. Compliance findings, confidential supervisory assessments, detailed contractual arrangements and commercially sensitive information shall not be made public.

8. ESMA may develop guidelines to further specify the details of activities set out in the first subparagraph and ESMA shall, where relevant, base the specific reporting details on the general reporting requirements for CSDs laid down in Articles 41 and 42 of Commission Delegated Regulation (EU) 2017/392, however adjusted to ensure the information reported is proportionate to the scope and scale of the activities. To assist in ensuring harmonisation, ESMA may provide a template for the submission of information. To also assist in the requirement set out in subparagraph 2 is met, ESMA may also provide guidance on where certain information is already available to the competent authority or ESMA.

Article 10b

Provision of individual CSD services

1. ***A*** DLT notary and DLT account keeper shall ***comply with*** the provisions of Title III of Regulation (EU) No 909/2014 ***specified in the second paragraph of this Article*** that govern the ***provision and*** application of the ***DLT*** notary ***service and DLT*** central ***account*** maintenance service referred to in section A of the Annex to Regulation (EU) No 909/2014, respectively ▌ .

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2. ***A*** 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.

A DLT notary and DLT account keeper shall comply with the requirements set out in the following Articles of Regulation (EU) No.909/2014:

(a) 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), 30(6) and 45(4) of Regulation (EU) No 909/2014; and

(b) Article 35 of Regulation (EU) No 909/2014, except for where such international open communication procedures, standards for messaging and reference are not compatible with the DLT-based services provided by the DLT notary and DLT account keeper.

A DLT notary shall comply with: Article 32, Article 34(2), (3) and (5), Articles 37, 43 and 44 of Regulation (EU) No 909/2014

A DLT account keeper shall comply with: Article 32, Article 34(2), (3) and (5), Articles 37(3), 38, 43 and 44 of Regulation (EU) No 909/2014.

For the purpose of this Article, where a provision of Regulation (EU) No 909/2014 is applied in accordance with this paragraph; a DLT notary and DLT account keeper shall be deemed a CSD and references to "securities settlement system" shall be deemed to refer to a DLT notary service or DLT central account maintenance service (as applicable).

Nothing in this Regulation shall prevent the same entity from acting simultaneously as a DLT notary and a DLT account keeper, provided that it complies with the regulatory requirements applicable to both services.'

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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 ***such DLT financial instruments*** are represented ***or recorded*** on a distributed ledger ▌ by a DLT notary for the initial recording of those ***instruments***.

By way of derogation from Article 3(2) of Regulation (EU) No 909/2014, where transactions in DLT financial instruments ▌ take place on a trading venue, ***the relevant instruments*** shall be recorded on or before the intended settlement date by a DLT notary ***in cooperation with a DLT account keeper***, a DLT SS, a DLT TSS or a CSD operating solely under Regulation (EU) No 909/2014.

4. Transactions in DLT financial instruments ***taking place on a trading venue and*** maintained in securities accounts managed by DLT account keepers in accordance with this Article shall be settled through a DLT SS, DLT TSS, ***or*** 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 ***new*** DLT financial instruments maintained in securities accounts managed by DLT account keepers that have an aggregate market value***,*** ***calculated in accordance with*** Article ***3(4), that does not exceed EUR 50 billion*** at the ***moment*** of settlement***, as set out in the relevant rules or procedures,*** of the ***DLT financial instruments***.

▌

6. By way of derogation from paragraph 4, DLT account keepers may settle ***transactions in*** DLT financial instruments ***traded on a trading venue*** outside a DLT SS, DLT TSS, or a CSD operating solely under Regulation (EU) No 909/2014, where they comply with the requirements for such settlement laid down in Article 10c.

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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.

An entity referred to in the first subparagraph that provides CSD core services jointly shall remain fully liable for the CSD services it performs. Such entity shall not rely on the allocation of responsibilities referred to in paragraph 8 to limit its regulatory obligations for the services it performs.

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.

7a. Where CSD core services are provided jointly in accordance with paragraph 7 of this Article, the entities involved in that joint provision shall be jointly and severally liable towards their clients for any loss arising from a failure to comply with the requirements applicable to those services under this Regulation or under Regulation (EU) No 909/2014, in respect of the DLT financial instruments serviced jointly.

A client may claim compensation for such loss from any of the entities involved in the joint provision of CSD core services, and shall not be required to identify the entity whose failure caused the loss.

An entity that has compensated a client in accordance with the first and second subparagraphs shall have a right of recourse against the entity whose failure caused the loss, in accordance with the allocation of roles and responsibilities referred to in paragraph 8 of this Article.

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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***, however such written agreement cannot amend the obligation of an entity as laid down in the second subparagraph of paragraph 7 of this Article or the liability laid down in paragraph 7a of this Article***. Each of them shall notify that written agreement to their respective competent authorities ***and ESMA***, together with clear information on which entity provides CSD core services for which DLT financial instruments ▌ .

The allocation of roles and responsibilities between entities referred to in the first subparagraph, that are providing CSD core services jointly, shall be clearly defined, transparent and legally enforceable at all times.

Entities referred to in the first subparagraph, that are providing CSD core services jointly, shall have 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.

Clients of entities referred to in the first subparagraph that are receiving CSD core services shall be informed of the roles, responsibilities and liability arrangements applicable to each entity involved in the joint provision of CSD core services in a clear and accessible manner.

ESMA may develop guidelines to further specify best practices in the allocation of roles and responsibilities between entities referred to in the first subparagraph.

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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. ***ESMA shall include in the register main information on the roles, responsibilities and liability arrangements applicable to each entity involved in the joint provision of CSD core services.***

10. ESMA ***may*** develop regulatory technical standards to ***further*** specify the provisions ***applicable to*** the DLT notary and ***DLT account keeper under paragraphs 1 and 2***.

▌

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 10c

Settlement within a settlement scheme

1. ***Where a*** DLT account ***keeper settles*** transactions in DLT financial instruments under Article 10b***(6), it shall settle such transactions*** only within a settlement scheme authorised under Article 10d.

Such DLT account ***keeper*** shall only settle transactions with other DLT account keepers that are part of the same settlement scheme.

2. ***A*** DLT account ***keeper*** settling transactions within a settlement scheme shall ensure that ***the settlement scheme meets all of the following conditions***:

(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;

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(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***;***

(a) by designating the system under Regulation (EU) …/… on settlement finality and repealing Directive 98/26/EC and amending Directive 2002/47/EC on financial collateral arrangements; or

(b) by meeting the objectives of a designation under such [Regulation][(EU) …/… on settlement finality and repealing Directive 98/26/EC and amending Directive 2002/47/EC on financial collateral arrangements within the contractual arrangements governing the settlement scheme], ensuring:

(i) settlement finality is achieved ***no later than by the end of the business*** day of the ***actual*** settlement date;

(ii) ***the*** moments of entry and of irrevocability of transfer orders are clearly defined ***in its common rules and standardised procedures;***

(c) the settlement scheme effectively manages its legal, business and operational risks.

3. ***A*** DLT account ***keeper*** settling transactions within a settlement scheme shall ensure that the settlement scheme ***it is*** part of ▌ 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 ***6 and 7 of this Article***; and

(c) ensuring protection of assets of clients of DLT account keepers.

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4. ***A*** DLT account ***keeper*** 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. ***A*** DLT account ***keeper*** 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 ***as specified in*** 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***, to ensure the preservation of settlement activities within the settlement scheme and the timely recovery of its operations.

A DLT account ***keeper*** participating in a settlement scheme shall identify, monitor and manage the risks that service and utility providers might pose to its operations.

6. ***A*** 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;

   (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;

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(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. ***A*** 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;

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(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. ***A*** DLT account ***keeper*** 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***, including the role and responsibilities of the designated operator appointed in accordance with Article 10d(1)***.

▌

9. Where ***the settlement of a new DLT financial instrument would result in*** the aggregate market value***, calculated in accordance with Article 3(4), exceeding EUR 50 billion,*** the DLT ***account keeper participating in the*** settlement scheme ▌ shall ***not admit that DLT financial instrument to settlement***.

A DLT account keeper participating in a settlement scheme shall, at least monthly, calculate in accordance with Article 3(4), the aggregate market value of all the DLT financial instruments that are admitted to settlement by the DLT account keepers in a settlement scheme. Where the aggregate market value has exceeded 125% of the threshold laid down in the first subparagraph of this paragraph, each DLT account keeper shall without undue delay activate the transition plan laid down in Article 10e. Each DLT account keeper shall notify ESMA of the activation of the transition plan of the settlement scheme and of the timescale for the transition in accordance with Article 10e.

The calculation and notification requirements referred to in the third subparagraph of this paragraph may be undertaken by the designated operator on behalf of the other DLT account keepers. All DLT account keepers shall remain individually responsible and liable for the completeness and veracity of the calculation and notification provided on their behalf.

▌

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10. ***A*** DLT account ***keeper participating in a settlement scheme*** shall report to ***the designated operator (where applicable) and*** ESMA on a monthly basis the following information:

(a) ***the*** transfers ***by such DLT account keeper*** that take place ***within*** the settlement scheme they participate ***in*** , including aggregate volumes;

(b) the aggregate market value of DLT financial instruments admitted for settlement ***by such DLT account keeper***, calculated in accordance with Article 3(4);

(c) ***the*** 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.

Such DLT account ***keeper*** 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***, including the designated operator,*** participating in the settlement scheme on behalf of other participants. All ***DLT account keepers shall*** remain individually responsible for the completeness and veracity of information reported on their behalf.

11. ESMA may develop guidelines ▌ for the following purposes:

(a) to establish standard forms, formats and templates for application for authorisation under Article 10d;

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(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 ***jointly*** the settlement scheme for authorisation to ESMA in accordance with this Article before settling any transaction in that settlement scheme.

The DLT account keepers participating in a settlement scheme may designate an operator of the settlement scheme and decide for such operator to undertake certain tasks and duties. Where an operator is designated, such operator shall be one of the DLT account keepers participating in the settlement scheme and shall operate the settlement scheme on behalf of all the participating DLT account keepers. Each DLT account keeper shall provide the designated operator with information necessary to fulfil its obligations under this Article and Articles 10c and 10e.

Where an operator is designated, the obligations of each of the participating DLT account keepers under this Article and Articles 10c and 10e may be fulfilled by the designated operator on behalf of such DLT account keepers in accordance with the conditions of the arrangement. All DLT account keepers shall however remain individually responsible and liable for the obligations fulfilled on their behalf by the designated operator.

A DLT account ***keeper*** 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***(8)***;

(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 ***10c (2) to (7) and 10e(1)***;

(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 ***plan*** of the settlement scheme***, as referred to in Article 10e.***

Such DLT account ***keeper*** 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 ***and the designated operator (where applicable)*** information about the new composition of the settlement scheme at least ***20 business days*** before they begin settling DLT financial instruments.

A settlement scheme shall fulfil the following conditions to be authorised by ESMA under the paragraph 4;

(a) The settlement scheme comprises at least two DLT account keepers; and

(b) The common standards and procedures of the settlement system shall, to the extent possible, reflect market standards including standards developed under the industry group set up in Article 10g to enable interoperability between settlement schemes.

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2. Within 30 ***business*** 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 ***shall*** provide ***such*** 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 ***40 business days*** of receipt of the application from ESMA.

4. Within ***100 business days*** from the submission of a complete application, ESMA shall inform the applicant DLT account keepers ***or designated operator (where applicable)*** in writing with a fully reasoned decision whether the authorisation has been granted or refused. ***Where a designated operator has received the information, such operator shall immediately inform the participating DLT account keepers.***

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***(9)***.

6. ESMA shall withdraw the authorisation of the settlement scheme ***where***:

(a) ***the settlement scheme*** has not settled transactions for nine consecutive months;

(b) ***the settlement scheme*** has been authorised by irregular means, ***including where any of the DLT account keepers have made*** false statements ***that materially affected*** the process of ***the*** authorisation;

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(c) ***the settlement scheme*** no longer meets ***one of*** the conditions ***laid down in Article 10c(2) or does not comply with one of the principles laid down in Article 10c(3),*** under which the authorisation was granted and ***has*** not taken remedial action requested by ESMA;

(d) ***a DLT account keeper repeatedly*** fails to adhere to the requirements set out in Article 10c ***and 10e(1) or commits*** repeated infringements of this Regulation.

Before ESMA takes a decision to withdraw the authorisation ESMA shall take into account the possibility of applying any of the measures set out in the third subparagraph of paragraph 7 of this Article to mitigate the issue identified. Where ESMA has requested a remedial action in accordance with point (b) or (c) of paragraph 7 of this Article, ESMA shall withdraw the authorisation where ESMA determines that a remedial action has not been taken within the timeframe set or that the action taken is not appropriate. ESMA may also suspend the participation of specific DLT account keepers in the settlement scheme.

When determining the date of entry into effect of the decision to withdraw the authorisation or suspend participation, ESMA shall endeavour to minimise potential market disruption.

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 ***10c to 10e***; and

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(c) ensure ongoing compliance with Articles ***10c to 10e***.

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 ***that DLT account keeper*** infringes the requirements of Article 10c ***or 10e(1)***;

(b) require a DLT account keeper to take remedial action to bring ***the settlement scheme or*** its participation in the settlement scheme back into compliance with Article 10c ***and Article 10e(1)***;

▌

(c) require a DLT account keeper to present a plan to ***remediate the situation and*** restore compliance with supervisory requirements and set a deadline for its implementation;

(d) 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 ***business*** days on any single occasion, where there are reasonable grounds for suspecting that Article 10c has been seriously infringed;

(e) exclude a DLT account keeper from participation in ***the*** settlement scheme where that DLT account keeper repeatedly infringes the requirements of Article 10c ***and Article 10e(1)***;

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(f) adopt a decision requiring a DLT account keeper to bring an infringement listed in the Annex to an end;

(g) 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 ▌ 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 ***of this Article***.

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.

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 ***plan*** for the settlement scheme

1. DLT account keepers participating in a settlement scheme shall ***jointly*** establish and make publicly available a clear and detailed transition ***plan*** for reducing the activity of a particular settlement scheme, in the event:

(a) that ***the percentage of*** the threshold referred to in ***the second subparagraph of*** Article ***10c(9)***, has been exceeded;

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(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 ▌ settlement scheme ▌

The transition ***plan*** shall be ready to be deployed in a timely manner.

2. The transition ***plan*** shall set out how participants, issuers and clients of participants are to be treated in the event of a withdrawal ***in accordance with Article 10d(6), a*** discontinuation of the settlement scheme authorisation or the cessation of the ***settlement scheme***. The transition ***plan*** shall set out how clients, in particular retail ***clients***, are to be protected from any disproportionate impact from the withdrawal or discontinuation of an authorisation or the cessation of the ▌ settlement scheme. The transition ***plan*** shall be updated on an ongoing basis subject to the prior approval of ESMA.

3. ***A DLT account keeper participating in*** 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 ***or discontinuation of the settlement scheme*** authorisation ***or the cessation of the settlement scheme*** referred to in paragraph 1. Those procedures shall form a part of the transition ***plan***.▌

4. Where an operator has been designated, each DLT account keeper shall inform the designated operator of the procedures referred to in paragraph 3 of this Article and the obligations set out in the paragraphs 1 and 2 of this Article shall be discharged by the designated operator on behalf of other DLT account keepers. All DLT account keepers shall remain individually responsible and liable for the obligations fulfilled on their behalf.

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Article 10f

Cross-border provision of individual CSD services

1. DLT notaries and DLT account keepers may provide DLT notary ***services*** and DLT central ***account*** 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 ***DLT notary services and DLT central account maintenance*** services;

   (b) ***the DLT notary services and DLT central account maintenance*** 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 ***such*** services; ***and***

   (d) any changes to the information previously reported in respect of points (a), (b) and (c).

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The competent authority of the home Member State shall, within ***5 business*** days of receipt of the information referred to in the first sub-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 ***the*** second sub-paragraph ***of paragraph 2 of this Article*** 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 ***20 business days*** from the date of having submitted the information referred to in ***the first subparagraph of paragraph 2 of this Article and at the latest 30 business days after having submitted such information referred to in the first subparagraph of*** 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 ***within 10 business days of having been informed in accordance with paragraph 3 of this Article***.

In derogation to paragraph 4 of this Article, the competent authority may in this situation delay the DLT notary or the DLT account keeper from providing its services in such host Member State for a period of 30 business days and instruct the DLT notary or the DLT account keeper to take corrective measures to address the concerns identified by the host Member State.

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6. Where, despite the measures taken by the competent authority of the home Member State, the irregularities referred to in paragraph 5 ***of this Article*** 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 ***the notary*** service ***or central account maintenance service***, in particular retail ***clients***. Such measures include preventing the DLT account keeper or the DLT notary from conducting ▌ 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. ▌

(15) The following Article 10g is inserted:

Article 10g

Interoperability between DLT market infrastructures

1. Operators of a DLT SS, ***operators of*** a DLT TSS and DLT account keepers participating in ▌ settlement schemes shall form ▌ an industry group and ***agree on*** industry standards that facilitate settlement of DLT financial ***instruments*** between ***the systems operated by*** the members of the group, including standards for establishing links ▌ within the meaning of Article 2(1) point (29) of Regulation (EU) No 909/2014. ***The members of the industry group shall appoint a chair and a co-chair among the members of the group. ESMA, the Commission, the ECB and the ESCB shall each have the option to be observers in the industry group.***

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CSDs operating solely under Regulation (EU) ***No 909/2014*** that provide CSD core services on DLT, DLT account keepers ▌ that are not part of settlement schemes ***and DLT notaries may make a*** request ***to the chair of the industry group*** to be a part of the group referred to in the first subparagraph. ***The chair*** shall admit ***such*** eligible entities into the group.

In addition to the participation laid down in the first and second subparagraph, the procedural rules of the industry group shall ensure that:

(a) the group is open to participation ***by*** any entity with a demonstrated interest in drawing up industry standards referred to in the first subparagraph;

(b) ***risks*** of breaching competition law ***are*** sufficiently mitigated. ▌

In developing the industry standards, the industry group shall periodically consult the ***Commission, the ECB*** and ESMA, and take into account their views.

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.

The mandate to establish the industry group shall end 1 month after; the last report has been provided under point (c) of paragraph 2 or the technical advice has been provided under paragraph 3, whichever is the latest.

2. Entities participating in the establishment of industry standards under paragraph 1 shall submit to ESMA***, the Commission and ECB*** 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 ***of this Article***, ***expected*** challenges in agreeing on them and potential ways to resolve those challenges;

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(b) at the latest within 30 months of entry into application of this Regulation, the ***industry*** standards referred to in paragraph 1***;***

(c) until ESMA informs the chair of the industry group that no further reports are needed, at least every two years from date the technical standards were submitted under point (b), a progress report on the implementation of the industry standards referred to in paragraph 1 and any material changes made to such standards since the last report.

3. Within 40 months of entry into application of this Regulation, ESMA***, in consultation with ESCB,*** 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.;'

(***16***) Article 11 is amended as follows:

(a) in paragraph 1 ***the*** 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 ***co-operate*** with the competent authorities.;'

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(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;;’

(***17***) The following Articles 11a and 11b are inserted:

‘Article 11a

College of supervisors for DLT market infrastructures

1. ***Where at least one of the criteria set out in Article 24a(1) of Regulation (EU) No 909/2014 is fulfilled] the competent authority shall establish*** a college of supervisors ▌ in accordance with Article 24a of Regulation (EU) No 909/2014 ***to carry out the tasks in relation to the CSD core*** activities of a DLT SS or a DLT TSS ▌ .

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 ***of this Article***:

(a) competent authorities of DLT account keepers ***providing the DLT central account maintenance service or*** DLT notaries providing the ▌ DLT notary service with regards to DLT financial instruments settled by the DLT SS or DLT TSS;

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(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 ***functions and duties*** referred to in paragraph 10d(7) in relation to DLT account keepers that are part of a settlement scheme.

2. ***ESMA shall establish*** the college ▌ within ***20 working days*** of the date when the settlement scheme has been authorised under Article 10d.

3. ESMA shall manage and chair the college ***("the chair")***.

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.

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7. A competent authority that is not a member of the college may request from ***the chair of*** 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. ***The chair*** 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.

10. The functioning of the college shall be based on a written agreement between all of its members.

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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.;'

(***18***) Article 12 is amended as follows:

(d) 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.;'

(e) the following paragraph 1a is added:

'1a. The competent authority for a CASP ***trading platform*** operating a DLT TV or DLT TSS shall be ***ESMA for crypto-asset service providers classified as significant pursuant to Article 85 of Regulation (EU) 2023/1114 or one or more*** competent ***authorities*** designated ▌ in accordance with Article ***93*** of Regulation (EU) 2023/1114 ▌ ;'

(f) 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.;'

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(g) 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.;'

(***19***) Article 14 is amended as follows:

(h) paragraph 1 is amended as follows:

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

'By 24 March ***2032***, 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;'

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(7) point (n) is replaced by the following:

‘(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; ***and***;’

(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 ***of this Article***, the Commission shall***, within three months of receipt of that report,*** 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.;’

(***20***) Article 15 is replaced by the following:

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‘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 ***[OP insert date = 24 months after the entry into force of Article 8 this Regulation]*** .’;’

(***21***) 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(7a) and 10d***(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(7a) and 10d***(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.

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4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement 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(7a) and 10d***(10) 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.;'

(***22***) 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) ▌

▌

▌ the following point (c) is added:

'(c) ESMA for ***crypto-asset service providers authorised pursuant to Article 63***:

▌

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Article 60 is amended as follows:

In paragraph (11) the following subparagraph is added:

The right of an entity to provide crypto-asset services referred to in paragraphs 1 to 6 of this Article shall also be revoked where an entity referred to in paragraphs 1 to 6 does any of the following:
(a) has not provided crypto-asset services for nine consecutive months; or
(b) has seriously infringed this Regulation, including the provisions relating to the protection of holders of crypto-assets or of clients of crypto-asset service providers, or market integrity.
Competent authorities shall consult ESMA prior to revoking the right of an entity to provide crypto-asset services in accordance with the second subparagraph of this paragraph.

(b) *In paragraph 12 the second subparagraph is replaced by the following:*

ESMA shall make the notification available in the register referred to in Article 109 by the starting date of the intended provision of crypto-asset services.

(c) *A new paragraph 12a is inserted:*

The competent authorities shall cooperate with ESMA in the performance of supervisory tasks concerning crypto-asset service providers, in order to ensure the orderly functioning of markets in crypto-assets, a level playing-field between crypto-asset service providers, preserve the integrity of the internal market and support financial stability. Competent authorities shall consult ESMA where the activity of an entity referred to in paragraphs [1] to 6 under their supervision may affect the orderly functioning or integrity of crypto-asset markets, the level-playing field between crypto-asset service providers, the protection of holders of crypto-assets or clients of crypto-asset service providers, or financial stability.

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Article 63 is amended as follows:

(b) ***paragraph 9 is*** replaced by the following:

9.***Competent authorities*** shall, within ***20*** 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. ***Competent authorities*** shall notify the applicant ***and ESMA of their*** decision within five working days of the date of that decision.

By derogation from the last subparagraph, where the applicant is considered by the competent authority as likely to breach the threshold of significance per Article 85 within two years from the date of assessment***, the competent authority shall notify to ESMA a reasoned draft decision granting or refusing an authorisation as a crypto-asset service provider. ESMA shall within 15 working days of receipt of the draft decision issue a reasoned assessment, considering, in particular, convergence in the application of authorisation requirements in line with this Regulation and identifying potential risks to market integrity, market sovereignty and investor protection and transmit its decision to the competent authority concerned.***

The competent authority shall make the final decision within 10 days from receipt of ESMA's assessment and notify immediately such final decision to the applicant and to ESMA. That decision shall take into account ESMA's assessment.

When undertaking their assessments, the competent authority and ESMA shall take into account the nature, scale and complexity of the crypto-asset services that the applicant crypto-asset service provider intends to provide.;'

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(c) The following paragraph 9a is inserted:

‘9a. ***Competent authorities*** 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 ▌ information by ***competent authorities*** and the receipt by ***competent authorities*** of a response thereto from the applicant crypto-asset service provider. ▌

▌

11. The following article is inserted:

‘Article 69a Reporting by crypto-asset service providers

1. Crypto-asset service providers shall report twice per year to their competent authority and ESMA the following information:

a. The number of their active users in the Union;

b. The value of the crypto-assets they hold under custody belonging to clients;

c.The volume of transactions executed on behalf of clients.

2. ESMA shall develop draft implementing technical standards to establish standard forms, formats and templates for the purpose of reporting referred to in paragraph 1. ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by [date].

Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.”

▌

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12. Article 76 is amended as follows:

▌ 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, ▌ 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 ▌ , 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, ▌ 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 ▌ ;’

(***13***) 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.;’

▌

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(14) Article 85 is ***replaced by the following***;

Classification of crypto-asset service providers as significant

1. A crypto-asset service provider authorised under Article 63 shall be deemed significant where:

(a) It has at least 15 million active users in the Union, on average, in one calendar year, where the average is calculated as the average of the daily number of active users throughout the previous calendar year; or

(b) It fulfils at least 3 of the following criteria:

i.The number of active users in the Union, on average, in one calendar year, where the average is calculated as the average of the daily number of active users throughout the previous calendar year, is larger than 1 million;

ii. The value of crypto-assets under custody or administration on average, in one calendar year, is higher than EUR 1 billion;

iii. The volume of transactions concluded on behalf of clients in the Union is larger than EUR 4 billion during the previous calendar year.

iv. There is material interconnectedness of the crypto-asset service provider with other crypto-asset service providers that raises concentration, financial stability and market integrity concerns;

v. There is material interconnectedness of the crypto-asset service provider with the financial system or financial market infrastructures, including the provision of crypto-asset services on a Union scale;

2. For the purpose of point (b) in paragraph 1, a crypto-asset service provider shall be considered as a significant crypto-asset service provider where at least 3 of the criteria set out in that paragraph are met during the period covered by at least four consecutive reports of information, as referred to in Article 69a.

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3. ESMA shall identify the crypto-asset service providers that are considered significant pursuant to paragraph 1. 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 crypto-asset service providers operating in the Union meet the criteria for significance.

Where ESMA concludes that a crypto-asset service provider fulfils the criteria set out in paragraph 1, ESMA shall notify the crypto-asset service provider that is considered significant and its competent authority thereof.

ESMA and the competent authority of a crypto-asset service provider 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 transfer of competences and duties to ESMA 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].

4. ESMA shall verify whether the crypto-asset service providers under its supervision continue to meet the criteria set out in paragraph 1, every 12 months starting in the year following the first full calendar year after the date on which date ESMA became the competent authority for significant crypto-asset service providers.

Where ESMA concludes that a significant crypto-asset service provider no longer meets the criteria set out in paragraph 1 over a period of four consecutive reporting periods, it shall, without undue delay, notify the crypto-asset service provider and the national competent authority of its home Member State of that situation.

5. The national competent authority shall, within three months of receipt of the notification referred to in the second subparagraph of paragraph 4, notify ESMA and the crypto-asset service provider of the date on which the crypto-asset service provider shall become exclusively subject to national supervision and therefore subject to the supervisory competences and duties of the national competent authority.

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6. Where the crypto-asset service provider shall be subject to national supervision, ESMA and the competent authority of a crypto-asset service provider that is considered significant shall 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 from ESMA to the national competent authority of the crypto-asset service provider as well as identifying the effective date of the transfer, by which the transfer of such competences and duties shall apply.

7. The national competent authority shall become the competent authority of the crypto-asset service provider on the effective date of the transfer of competences and duties as set out in paragraph 6. The effective date of the transfer of competences and duties shall be no later than one year following the date of the notification by the national competent authority referred to in paragraph 5.

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 139 to supplement this Regulation by further specifying the criteria set out in paragraph 1(b) points (iv) and (v) for a crypto-asset service provider to be classified as significant and determine:

(a) The circumstances under which the crypto-asset service provider's interconnectedness with other crypto-asset service providers raises concentration, financial stability and market integrity concerns;

(b) the circumstances under which crypto-asset service providers shall be considered to be interconnected with the financial system including the provision of crypto-asset services on a Union scale.:

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(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 94, paragraph 3 is deleted;

(***17***) Article 102 is amended as follows:

(c) 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.

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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.**’**;’

(d) 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 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.**’**; **.;’**

(e) 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.;’

▌

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(***18***) In Article 111(1), points (e) and (f) are deleted;

(***19***) 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 ***classified as significant*** pursuant to Article ***85***.

1A. National surveillance authorities shall be responsible for the ongoing supervision and carrying out the supervisory functions and duties provided in Title VI of this Regulation.

Without prejudice to applicable cooperation arrangements under Article 8a or Article 8b, ESMA, competent authorities and national surveillance authorities shall conclude cooperation agreements.

On the basis of the cooperation agreement, those competent authorities, national surveillance authorities and ESMA shall cooperate to mitigate financial stability and market integrity risks arising from the provision of crypto-asset services by these entities.

2.

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Article 138b

Request for information from ESMA

For the purposes of this Article, "significant crypto-asset service provider" means a crypto-asset service provider identified as significant in accordance with Article 85. 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 significant*** crypto-asset service provider or a person controlling or being directly or indirectly controlled by a ***significant*** crypto-asset service provider;
- ***(b).*** legal representatives and employees of entities to which a ***significant*** crypto-asset service provider has an outsourcing arrangement referred to in Article 73;
- ***(c).*** persons ensuring custody of clients**'** assets ***for a significant crypto-asset service provider***;
- ***(d).*** any person directly involved in the crypto-asset activities of the ***significant*** 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

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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 ***the purposes of this Article, "significant crypto-asset service provider" means a crypto-asset service provider identified as significant in accordance with Article 85.***

2. For that purpose, the other competent authorities and ESMA shall exchange, as appropriate, information related to:

(a). a significant crypto-asset service provider or a person controlling or being directly or indirectly controlled by a ***significant*** crypto-asset service provider;

(b). legal representatives and employees of entities to which a ***significant*** crypto-asset service provider has an outsourcing arrangement referred to in Article 73;***;***

(c). persons ensuring custody of clients' assets ***for a significant crypto-asset service provider***;

(d). any person directly involved in the crypto-asset activities of the ***significant*** crypto-asset service provider;

(e). the management body of the persons referred to in points (a) to (d).

3. 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:

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(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.

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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 ***significant*** 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.

Article 138g

Supervisory measures by ESMA

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1. In order to perform its duties under ***Title V*** of this Regulation ***in relation to crypto-asset service providers classified as significant pursuant to Article 85***, 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 ***significant*** 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 ***significant*** 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 ***significant*** 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 ***significant*** crypto-asset service provider to

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suspend ▌ the provision of crypto-asset services where ESMA considers that the ***significant*** 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 ***significant*** 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

▌ ***(iii)*** order domain registries or registrars to delete a fully qualified domain name and allow the competent authority concerned to register it;

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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 ***classified as significant pursuant to Article 85,*** or a member of its management body, or any other person ***referred to in this Chapter*** 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 ***the significant*** 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;

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(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;

(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;

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(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

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1. ESMA shall charge crypto-asset service providers ***classified as significant pursuant to Article 85,*** 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 ***as*** referred to in Article 138a(2).

2. The amount of the fee charged to an individual ***significant*** 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.'

(***20***) Article 139 is amended as follows:

paragraph 2 is replaced by the following:

The power to adopt delegated acts referred to in Articles 3(2), 43(11)***, 85(8)***, 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.;'

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▌ paragraph 3 is replaced by the following:

▌ The delegation of powers referred to in Articles 3(2), 43(11)***, 85(8)***, 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.***'***;'

▌ paragraph 6 is replaced by the following:

'6. A delegated act adopted pursuant to Articles 3(2), 43(11)***, 85(8)***, 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.***';;'***

(***21***) The following Article 143a is inserted:

'Article 143a

Transitional measures related to ESMA

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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], 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] . The competences and duties conferred on ESMA pursuant to Article 138a shall be taken up by ESMA on that date.

As of [24 months after entry into force of this Regulation] ESMA shall act as the legal successor of thecompetent 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***.

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 other competences to ESMA.;***

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 ***other*** competences to ESMA.**'**;'

Annex V to this Regulation is added as Annex VII to Regulation (EU) 2023/1114.

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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:

‘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:

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(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:

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‘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 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.

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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.;'

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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:

‘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.;’

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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;

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(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;

(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.

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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;.'

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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:

‘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.

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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;

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(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:

‘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..’

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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).

Member States shall adopt and publish the laws, regulations, and administrative provisions necessary to comply with Article 28a and Article 28b 24 months after the entry into force of this Regulation. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and Article 28a and Article 28b of this Regulation

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].

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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].

Article 8 shall apply from [OP insert date of when this Regulation enters into force].

Articles 5 ***to 7, 9*** 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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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)

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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)
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

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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)
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)

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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)
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)

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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.

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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;

(b) 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;

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(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;

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(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;

(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;

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(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;

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(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;

(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;

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(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;

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(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 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;

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(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;

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(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;

(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);

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(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;

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(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;

(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;

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(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 ***significant*** 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);

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(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;

(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;

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(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;

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(i) 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;

(j) 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;

(k) 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);

(l) 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;

(m) 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;

(n) 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).

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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 ***10c TO 10e***

Infringements relating to settlement schemes:

(a) ▌

(b) ▌

(a) a DLT account keeper infringes Article 10c(1) by not settling transactions only within a settlement scheme authorised under Article 10d;

(b) 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;

(c) a DLT account keeper infringes Article 10c(2) by not ensuring that ***in the settlement scheme*** 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 ▌ the settlement scheme provides adequate settlement finality of transfers of cash and DLT financial instruments ***in accordance with point (i) and (ii) of that Article***, and that the settlement scheme effectively manages its legal, business and operational risks;

(d) a DLT account keeper infringes Article 10c(3) by not ensuring that the settlement scheme they are part of ▌ complies with the requirements under point (a) to (c) of that Article;

(e) 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;

(f) a DLT account keeper infringes Article 10c(5) by not establishing, implementing and

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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;

(g) 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;

(h) 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;

(i) 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;

(j) 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;

▌

(k) a DLT account keeper infringes Article 10c(9) by not activating the transition ***plan*** referred to in Article ***10e*** or by not notifying ESMA of the activation of its transition ***plan*** and of the timescale for the transition, where the aggregate market value has ***exceeded 125% of the threshold laid down in the first subparagraph of paragraph 9 of this*** Article ***10c***;

(l) a DLT account keeper infringes Article 10c(9) by ***admitting a*** DLT financial ***instrument to settlement that would result that would result in the aggregate*** market value ***exceeding EUR 50*** billion;

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(m) 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;

(n) a DLT account keeper infringes Article 10d ***(1)*** by not submitting to ESMA the information ***set*** out in points (a) to (g) of such Article;

(o) a DLT account keeper infringes Article 10d ***(1)*** by not notifying ESMA without undue delay of any material changes to the information previously notified about the settlement scheme;

(p) a DLT account keeper that joins the settlement scheme after the start of its operations infringes Article 10d ***(1)*** by not submitting to ESMA information about the new composition of the settlement scheme at least ***20 business days*** before they begin settling DLT financial instruments;

(q) a DLT account keeper infringes Article 10e***(1)*** by not establishing and making publicly available a clear and detailed transition ***plan*** for reducing the activity of a particular settlement scheme where required under points (a) to (c) or by not ensuring the transition ***plan*** fulfils the requirements listed in Article ***10e*** (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.

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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 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.

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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.

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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.

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.

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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.

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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 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.

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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.

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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 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.

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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.

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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.

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.

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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.

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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 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.

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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.

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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;

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(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).

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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;

(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;

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(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;

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(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 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;

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(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);

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(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;

(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;

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(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;

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(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;

(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.

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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;

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(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;

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(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.

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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;

(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;

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(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;

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(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 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;

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(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;

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(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;

(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;

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(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;

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(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;

(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;

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(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;

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(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 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);

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(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;

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(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;

(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;

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(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;

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(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;

(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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