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**NOTE**

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From: Presidency

To: Delegations

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Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL Amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority); Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority); Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority); Regulation (EU) No 345/2013 on European venture capital funds; Regulation (EU) No 346/2013 on European social entrepreneurship funds; Regulation (EU) No 600/2014 on markets in financial instruments; Regulation (EU) 2015/760 on European long-term investment funds; Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds; and Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market

- Presidency compromise proposal

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## Amended proposal for a

### REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority); Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority); Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority); Regulation (EU) No 600/2014 on markets in financial instruments; ; Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds;

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

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

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

Whereas:

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> Position of the European Parliament of ...(OJ...) and decision of the Council of ...

- (1) Following the financial crisis and the recommendations of a group of high level experts led by Jacques de Larosière, the Union has made important progress in creating not only stronger, but also more harmonised rules for the financial markets in the form of the Single Rule Book. The Union has also set up the European System of Financial Supervision ("ESFS"), built on a two-pillar system which combines micro-prudential supervision, coordinated by European Supervisory Authorities ("ESAs"), and macro-prudential supervision through the establishment of the European Systemic Risk Board ("ESRB"). The three ESAs namely the European Banking Authority ("EBA"), created by Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>4</sup>, the European Insurance and Occupational Pensions Authority ("EIOPA"), created by Regulation (EU) No 1094/2010 of the European Parliament and of the Council , and the European Securities and Markets Authority (ESMA), created by Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>5</sup> (collectively "the founding regulations") – became operational in January 2011. The overall objective of the ESAs is to sustainably reinforce the stability and effectiveness of the financial system throughout the Union and to enhance consumer and investor protection.
- (2) The ESAs have made a crucial contribution to the harmonisation of the rules of the financial markets in the Union by providing the Commission with input for its initiatives for regulations and directives adopted by Council and Parliament. The ESAs have also provided the Commission with drafts of detailed technical rules which have been adopted as delegated and implementing acts.

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<sup>4</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

<sup>5</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

- (3) The ESAs have also contributed to the convergence in financial supervision and supervisory practice in the Union by means of guidelines directed at competent authorities or financial institutions and by coordinating reviews of supervisory practices.
- (4) (...)
- (5) Any enhanced powers to be afforded to the ESAs, to enable them to meet those objectives, would also require both appropriate governance, an efficient use of resources and sufficient funding. Enhanced powers alone would not be sufficient to achieve the ESAs' objectives where they do not have sufficient funding or where they are not governed in an effective and efficient manner.
- (5a) When performing its tasks and exercising its powers the ESAs should act in accordance with the principles of proportionality and subsidiarity that are anchored in the Treaty, as well as better regulation policy. The content and form of the ESAs' actions and measures including instruments like guidelines, recommendations or Questions and Answers should always be based on and within the boundaries of the legislative acts within the scope of the ESAs. The ESAs should not exceed what is necessary to achieve the objectives of this Regulation and should be proportionate to the nature, scale and complexity of the risks inherent in the financial activity or business of the affected institution or undertaking.
- (5b) Questions and Answers are an important convergence tool that promotes common supervisory approaches and practices by giving guidance on the application of the European legislation within the scope of the ESAs. In the respective process the aspects of flexibility and transparency should be taken into account. Public consultations would be advisable regarding Questions and Answers with a potential high impact on the single market.

- (6) In the Commission's Communication of 8 June 2017 on the mid-term review of the Capital Markets Union Action Plan, it was emphasised that a more effective and consistent supervision of financial markets and services is pivotal for the elimination of regulatory arbitrage between Member States, when exercising their supervisory tasks, for the acceleration of market integration and for the creation of single market opportunities for financial entities and investors.
- (7) It is therefore particularly urgent to complete the Capital Markets Union. Ten years after the onset of the financial crisis and seven years after the establishment of the new supervisory system, financial services and the Capital Markets Union will be increasingly driven by two major developments: sustainable finance and technological innovation. Both have the potential to transform financial services and our system of financial supervision should be equipped for them.
- (8) It is therefore crucial that the financial system plays its full part in meeting critical sustainability challenges. This will require a deep re-engineering of the financial system to which the ESAs can make an active contribution to creating the right regulatory and supervisory framework for sustainable investments.
- (9) The ESAs should play an important role in identifying and reporting risks that environmental, social and governance factors pose to financial stability, and in rendering financial markets activity more consistent with sustainability objectives. The ESAs should provide guidance on how sustainability considerations can be effectively embodied in relevant EU financial legislation, and promote coherent implementation of these provisions upon adoption.

- (10) Technological innovation has had an increasing impact on the financial sector and competent authorities have therefore taken various initiatives to deal with those technological developments. In order to continue promoting better supervisory convergence and to exchange best practices between relevant authorities on the one hand, and between relevant authorities and financial institutions or financial market participants on the other hand, the role of the ESAs with regard to their oversight function and supervisory coordination should be strengthened.
- (11) Technological advancements in financial markets can improve financial inclusion, provide access to finance, enhance market integrity and operational efficiency and also lower barriers to entry in those markets. To the extent relevant for the applicable substantive rules, training of competent authorities should also extend to technological innovation. This should contribute to avoiding that Member States develop divergent approaches in these matters.
- (12) (...)
- (13) (...)
- (14) In addition, for the purpose of the procedure provided for in Article 17 of the founding regulations and in the interest of proper application of Union law, it is appropriate to ease and speed up the ESAs' access to information. They should therefore be enabled to request information directly, via a duly justified and reasoned request, from other competent authorities whenever requesting information from the competent authority concerned has proven, or is deemed, insufficient to obtain the information that is deemed necessary for the purpose of investigating an alleged breach or non-application of Union law.

- (15) A harmonised supervision of the financial sector requires a consistent approach among competent authorities. To that end, the activities of the competent authorities are subject to peer reviews, which should be supported by peer review committees. The ESAs should also ensure that the methodology is applied in the same manner. The peer reviews should not only focus on the convergence of supervisory practices, but also on the capacity of competent authorities to achieve high quality supervisory outcomes, as well as on the independence of those competent authorities. The main findings of those peer reviews should be published to encourage compliance and increase transparency, unless such publication would involve risks to financial stability.
- (16) A harmonised supervision of the financial sector also requires that disagreements between the competent authorities of different Member States in cross-border situations are settled efficiently. The existing rules for settling such disagreements are not fully satisfactory. They should therefore be adapted so as to be more easily applicable.
- (17) Integral to the ESAs work on convergence of supervisory practices is the promotion of a Union supervisory culture. Therefore, the Board of Supervisors may identify up to two priorities of union wide relevance and forward looking character each year. These priorities should be taken into account by competent authorities when drawing up their work programmes. The Board of Supervisors should discuss the relevant activities by the Authorities in the next year and draw conclusions.
- (18) (...)

- (19) Orderly and well-functioning international financial markets require that third-country equivalence decisions that have been adopted by the Commission are monitored. Each ESA should monitor the regulatory and supervisory developments and the enforcement practices in those third countries. It shall do so in order to verify whether the criteria, on the basis of which those decisions have been taken and any conditions set out therein, are still fulfilled. The Authority should submit a confidential report on its monitoring activities to the Commission on an annual basis. In that context, each ESA should also, where possible, develop administrative arrangements with third-country competent authorities to obtain information for monitoring purposes and for coordinating supervisory activities. This enhanced supervisory regime will ensure that third countries' equivalence is more transparent, more predictable for the third countries concerned and more consistent across all sectors.
- (20) The collection and gathering of accurate and complete information by the ESAs is essential to the carrying out of their tasks and functions and to achieving their objectives. In order to avoid duplication of reporting obligations for financial institutions and financial market participants, that information should be provided by the relevant competent authorities or national supervisory authorities which are closest to the financial markets and institutions.
- (21) Within the founding regulations of the ESAs it was provided that competent authorities would play a key role within their governance structure to ensure that expertise and practical know-how flow into decision making. ESAs should continue to operate as members-based organisations that arrive at decisions through reflections among their members and no decision should be taken against the will of a majority of their members. The ultimate decision-making body of the Authority is the Board of Supervisors. It was also specified in those regulations that in order to prevent conflicts of interest, the members of the Board of Supervisors and of the Management Board would act independently and in the sole interest of the Union. In order to enhance work on convergence, the Management Board shall be strengthened by fulltime members.

- (22) (...)
- (23) In order to provide for an appropriate level of expertise and accountability, the Chairperson and the fulltime members of the Management Board should be appointed on the basis of merit, skills, knowledge of clearing, post-trading and financial matters, as well as experience relevant to the financial supervision. To ensure transparency and democratic control, as well as to safeguard the rights of the Union institutions, the Chairperson and the fulltime members of the Management Board should be chosen on the basis of an open selection procedure. The Board of Supervisors should establish a shortlist and submit that shortlist to the European Parliament for approval. Following that approval, the Council should adopt a decision to appoint the members of the Management Board. The Chairperson and the fulltime members of the Management Board should be accountable to the European Parliament and to the Council for any decisions taken on the basis of the founding Regulations.
- (24) (...)
- (25) (...)
- (26) (...)
- (27) (...)
- (28) To preserve the confidentiality of the work of the ESAs, the requirements of professional secrecy should also apply to any person who provides any service, directly or indirectly, permanently or occasionally, related to the tasks of the ESA concerned.

- (29) Regulations (EU) No 1093/2010, 1094/2010 and 1095/2010 as well as sectoral financial services legislation require the ESAs to seek effective administrative arrangements, involving the exchange of information with third-country supervisors. The need for effective cooperation and information exchange should become all the more important when, pursuant to this amending Regulation, some of the ESAs assume additional, broader responsibilities in relation to the supervision of non-EU entities and activities. Where, in this context, the ESAs process personal data, including by transferring such data outside the Union, they are bound by the requirements of Regulation (EU) No 2018/XXX (Data Protection Regulation for EU institutions and Bodies). In the absence of an adequacy decision or of appropriate safeguards, for example provided for in administrative arrangements within the meaning of Article 49(3) of the Data Protection Regulation for EU institutions and Bodies, the ESAs may exchange personal data with third-country authorities in accordance with and under the conditions of the public interest derogation as set out in Article 51(1)(d) thereof, which notably applies to cases of international data exchange between financial supervisory authorities.
- (30) It is essential that the EBA decision making procedures provide appropriate safeguards for Member States not participating in the banking union, whilst at the same time enabling the EBA to continue to take decisions in an effective manner when the number of non-participating Member States reduces. The current voting rules requiring that a majority of participating member States and a majority of non-participating Member States for EBA take a decision should be maintained.

- (31) The founding regulations of the ESAs provide that the ESAs, in cooperation with the ESRB, should initiate and coordinate Union-wide stress tests in order to assess the resilience of financial institutions or financial market participants to adverse market developments. It should also ensure that a consistent methodology is applied, in as much as possible, at national level to such tests. It should also be clarified, in respect of all of the ESAs, that the professional secrecy obligations of competent authorities shall not prevent competent authorities from transmitting the results of stress test to the ESAs for the purpose of publication.
- (32) (...)
- (33) With the ever increasing cross-border dimension of trading activities and, in particular, of the activities of certain investment firms which, by their systemic nature, may have cross-border effects impacting financial stability, ESMA should have an enhanced coordination role in recommending competent authorities to initiate corresponding investigations. Furthermore, it should be able to facilitate the exchange of information relevant for those investigations, where ESMA has reasonable grounds to suspect that activity with significant cross-border effects is taking place that threatens the orderly functioning and integrity of financial markets or the financial stability in the Union.
- (34) (...)
- (35) (...)
- (36) (...)
- (37) (...)
- (38) (...)
- (39) (...)

- (40) (...) (41) The quality of trading data and of the processing and provisioning those data, including cross-border data procession and provisioning, is of paramount importance to achieve the main objective of Regulation (EU) No 600/2014 of strengthening the transparency of financial markets. The provision of a consolidated tape is therefore pivotal for users to be able to obtain the desired overview of trading activity across Union financial markets and for competent authorities to receive accurate and comprehensive information on relevant transactions.
- (42) (...)
- (43) (...)
- (44) It is important to ensure effective and efficient functioning of the consolidated tape. ESMA should therefore be conferred competences to the authorisation and oversight of consolidated tape providers.
- (45) (...)
- (46) The conferral of authorisation and oversight of consolidated tape providers to ESMA is also instrumental to other tasks ESMA is performing under Regulation (EU) No 600/2014, as well as ensuring high quality of post-trade data.
- (47) For ESMA to exercise its supervisory powers effectively within the area of supervising consolidated tape providers, ESMA should be able to conduct investigations and on-site inspections. ESMA should be able to impose penalties or periodic penalty payments to compel consolidated tape providers to put an end to an infringement, to supply complete and correct information required by ESMA or to submit them to an investigation or an on-site inspection and to impose administrative sanctions or other administrative measures where it finds that a person has committed, intentionally or negligently, an infringement of Regulation (EU) No 600/2014.

- (48) Financial products using critical benchmarks are available in all Member States. Those benchmarks are therefore of crucial importance for the functioning of financial markets and financial stability in the Union. The supervision of a critical benchmark should therefore take a holistic view of potential impacts, not only in the Member State where the administrator is located and the Member States where its contributors are located, but across the entire Union. It is hence appropriate that certain critical benchmarks are supervised at Union level by ESMA in accordance with Regulation (EU) 2016/1011.
- (48a) Regulation (EU) 2016/1011 introduces a common framework to ensure the accuracy and integrity of indices used as benchmarks in financial instruments and financial contracts, or to measure the performance of investment funds in the Union.
- (48b) Article 51(1) of Regulation (EU) 2016/1011 introduced a transitional period whereby an index provider providing a benchmark on 30 June 2016 shall apply for authorisation by 1 January 2020.
- (48c) The discontinuation of a critical benchmarks can impact market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in Member States. Commission Implementing Regulation (EU) 2016/1368 established a list of critical benchmarks used in financial markets pursuant to Regulation (EU) 2016/1011. Critical benchmarks are defined under Article 4(1), point 25 of Regulation (EU) 2016/1011.
- (48d) The discontinuation of a critical benchmark by an administrator could affect the validity of financial contracts or financial instruments. The discontinuation of a such a critical benchmark could cause disruption to both investors and consumers, with potentially severe repercussions on financial stability. In addition, should input data to critical benchmarks cease, this could undermine the representative nature of such benchmarks and negatively impact the benchmarks' ability to reflect its underlying market or economic reality.
- (48e) The possibility to mandate the administration of critical benchmarks, as well as the possibility to mandate contributions to such benchmarks, should therefore be ensured for an overall period of 5 years in total.

(48f) Critical benchmarks are in a process of reform. Switching from an existing critical benchmark to an appropriate successor rate requires a period of transition so that all legal and technical arrangements necessary for such a switch can be completed without disruption. During this transitional period the existing critical benchmark will need to be published alongside its ultimate successor rate. It is therefore necessary to extend the period during which an existing critical benchmark can be published and used without their administrator having obtained the necessary regulatory authorisations.

(49) (...)

(50) (...)

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(63) (...)

(64) (...)

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

(66) Regulation (EU) No 1093/2010; Regulation (EU) No 1094/2010; Regulation (EU) No 1095/2010; Regulation (EU) No 600/2014; Regulation (EU) 2016/2011; should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

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

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

- (1) Article 1 is amended as follows:
- (a) paragraph 2 is replaced by the following:

"2. The Authority shall act within the powers conferred by this Regulation and within the scope of Directive 2002/87/EC, Directive 2008/48/EC of the European Parliament and of the Council\*, Directive of 2009/110 EC of the European Parliament and of the Council \*(\*) Regulation (EU) No 575/2013 of the European Parliament and of the Council, Directive 2013/36/EU of the European Parliament and of the Council, Directive 2014/49/EU of the European Parliament and of the Council\*\*, Directive 2014/92/EU of the European Parliament and of the Council\*\*\*, Directive (EU) 2015/2366 of the European Parliament and of the Council\*\*\*\* and, to the extent that those acts apply to credit and financial institutions and the competent authorities that supervise them, within the relevant parts of Directive 2002/65/EC , including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority. The Authority shall also act in accordance with Council Regulation (EU) No 1024/2013\*\*\*\*\*.

\* Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council

\*(\*) Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66). Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC

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

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

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

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

(c) in paragraph 5, the following subparagraph is added:

The content and form of the Authority's actions and measures, in particular guidelines, recommendations, opinions, questions and answers and draft regulatory standards shall be based on and within the limits of the legislative framework and shall not exceed what is necessary to achieve the objectives of this Regulation or the acts referred to in paragraph 2 and shall be proportionate to the nature, scale and complexity of the risks inherent in the business of an institution, undertaking, other subject or a financial activity, that is affected by the Authority's action.

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

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

(3) Article 4 is amended as follows:

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

“(1) ‘financial institutions’ means any undertaking subject to regulation and supervision pursuant to the Union acts referred to in Article 1(2);”;

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

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

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

"(ii) with regard to Directive 2002/65/EC the authorities and bodies competent for ensuring compliance with the requirements of that Directive by financial institutions;

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

"(iii) with regard to deposit guarantee schemes, bodies which administer deposit guarantee schemes pursuant to Directive 2014/49/EU of the European Parliament and of the Council or, where the operation of the deposit guarantee scheme is administered by a private company, the public authority supervising those schemes pursuant to that Directive, and relevant administrative authorities as referred to in that Directive; and";

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

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

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

(4) Article 6 is amended as follows:

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

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

(b) point (4) is deleted;

(5) Article 8 is amended as follows:

(a) paragraph 1 is amended as follows:

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

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

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

(2) "(ab) to develop and maintain an up to date Union resolution handbook on the resolution of financial institutions in the Union, building upon existing work by the Single Resolution Board and national resolution authorities ";

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

(3) "(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 outcomes;

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

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

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

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

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

(c)(...)

(d) paragraph 2a is amended as follows:

When carrying out the tasks referred to in paragraph 1 and exercising the powers referred to in paragraph 2, the Authority shall act based on and within the limits of the legislative framework and shall have due regard to the principles of proportionality, subsidiarity and better regulation, including the results of cost-benefit analyses produced in accordance with this Regulation.

(6) Article 9 is amended as follows:

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

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

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

paragraph 2 is replaced by the following:

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

paragraph 4 is replaced by the following:

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

(7) Article 16 is amended as follows:

paragraph 1 (...)

(b) (...)

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

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

(7a) Article 16a is inserted:

*“Art 16a*

*Questions and Answers*

1. Questions relating to the practical application or implementation of provisions of legislative acts referred to in Article 1(2), associated delegated and implementing acts, as well as guidelines and recommendations adopted under these legislative acts, may be submitted by any natural or legal person, including competent authorities and EU institutions, to the Authority in any official language of the Union.

Before submitting a question to the Authority, financial institutions shall assess whether to firstly address the question to their competent authority.

2. Answers by the Authority to questions referred to in paragraph 1 are non-binding.
  
3. The Authority shall establish and maintain a web based tool available on its website for the submission of questions and the timely publication of all questions as well as all answers to all admissible questions pursuant to paragraph 1, unless such publication is in conflict with the legitimate interest of those persons or would involve risks to the stability of the financial system. Rejected questions shall be published by the Authority on its website for a period of two months.
  
4. Three voting members of the Board of Supervisors may request the Board of Supervisors to decide pursuant to Article 44 whether to address the issue of the admissible question referred to in paragraph 1 in guidelines pursuant to in Article 16, to request opinions or advice from the Stakeholder Group referred to in Article 37, to review questions and answers at appropriate intervals, to conduct open public consultations or to analyse potential related costs and benefits. Such consultations and analyses shall be proportionate in relation to the scope, nature and impact of the draft questions and answers concerned or in relation to the particular urgency of the matter. When involving the Stakeholder Group referred to in Article 37, due care of confidentiality shall be guaranteed.
  
5. For the purpose of clarity and completeness the Authority shall publish the answers to questions regarding the legal explanation of provisions of the regulatory framework on behalf of the European Commission.

(8) Article 17 is amended as follows:

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

"Without prejudice to the powers laid down in Article 35, the Authority may after having informed the competent authority concerned address a duly justified and reasoned request for information directly to other competent authorities whenever requesting information from the competent authority concerned has proven, or is deemed, insufficient to obtain the information that is deemed necessary for the purpose of investigating an alleged breach or non-application of Union law.

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

(9) Article 19 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

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

(b) in cases where the acts referred to in Art 1(2) provide that the Authority may assist on its own initiative where on the basis of objective criteria, disagreement can be determined between competent authorities.

In cases where the acts referred to in Article 1(2) require a joint decision to be taken by competent authorities and where in accordance with those acts the Authority may assist on its own initiative in reaching an agreement in accordance with the procedure set out in paragraph 2 to 4, the competent authorities concerned, a disagreement shall be presumed in the absence of a joint decision being taken by those authorities within the time limits set out in those acts".;

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

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

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

(i) the time limit has expired

(ii) at least two competent authorities concerned conclude that a disagreement exists, on the basis of objective factors;

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

(i) at least two competent authorities concerned conclude that a disagreement exists on the basis of objective factors; or

(ii) two months have elapsed from the date of receipt by a competent authority of a request from another competent authority to take certain action in order to comply with those Union acts and the requested authority has not yet adopted a decision that satisfies the request.

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

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

(c) paragraph 3 is replaced by the following:

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

(d) the following paragraph 3a is inserted:

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

(10) Article 22 is amended as follows

(a) paragraph 1a is deleted;

(b) (...)

(11) Article 29 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the following points (aa) and (ab) are inserted:

"(aa) establishing coordination groups in accordance with Art 45c to promote supervisory convergence and identify best practices. "

(ab) "establishing common supervisory priorities in accordance with Article 29a"

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

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

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

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

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

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

(12) the following Article 29a is inserted:

*"Article 29a*

Common Supervisory Priorities

Each year the Board of Supervisors may identify up to two priorities of union wide relevance which shall be based on suggestions by competent authorities and shall reflect future developments and trends. Competent authorities shall take the priorities highlighted by the Board of Supervisors into account when drawing up their work programmes. The Board of Supervisors shall discuss the relevant activities by the competent authorities in the following year and draw conclusions. The Authority shall discuss possible follow up which may include inter alia guidelines, recommendations and peer reviews in the respective area.”

(13) Article 30 is amended as follows:

(a) (...)

(b) paragraph 1 is replaced by the following:

"1. The Authority shall periodically conduct peer reviews of some or all of the activities of competent authorities, to further strengthen consistency and effectiveness in supervisory outcomes. To that end, the Authority shall develop methods to allow for objective assessment and comparison between the competent authorities reviewed. When conducting peer reviews, existing information and evaluations already made with regard to the competent authority concerned, including all information provided to the Authority in accordance with Article 35, and any information from stakeholders shall be taken into account.";

(c) the following paragraph ~~is~~ inserted:

1a. For the purposes of this Article, the Authority shall establish peer review committees, which shall be composed of members of competent authorities with the participation of staff from the Authority.

(d) paragraph 2 is amended as follows:

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

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

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

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

(b) the effectiveness and degree of convergence reached in the application of Union law and in supervisory practice, including regulatory technical standards and implementing technical standards, guidelines and recommendations adopted pursuant to Articles 10 to 16, and the extent to which the supervisory practice achieves the objectives set out in Union law;

(c) the application of best practices developed by some competent authorities which might be of benefit for other competent authorities to adopt;”

(e) paragraph 3 is replaced by the following:

"3. The Authority shall produce a report setting out the results of the peer review which shall be prepared by the peer review committee and adopted by the Board of Supervisors in accordance with Article 44(4). When drafting that report, the peer review committee shall consult the Management Board in order to maintain consistency with other peer review reports and to ensure a level playing field. The Management Board shall assess in particular whether the methodology has been applied in the same manner. The report shall explain and indicate the follow-up measures that are deemed appropriate, proportionate and necessary as a result of the peer review. Those follow-up measures may be adopted in the form of guidelines and recommendations pursuant to Article 16 and opinions pursuant to Article 29(1)(a).

In accordance with Article 16(3), the competent authorities shall make every effort to comply with any guidelines and recommendations issued.

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

(f) the following paragraphs 3a and 3b are inserted:

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

3b. The Authority shall undertake a follow up report after two years of the publication of the peer review report. The follow up report shall be prepared by the peer review committee and adopted by the Board of Supervisors in accordance with Article 44(4). When drafting that report, the peer review committee shall consult the Management Board in order to maintain consistency with other follow up reports. The follow up report shall include an assessment of, but shall not be limited to, the adequacy and effectiveness of the actions undertaken by the competent authorities that are subject to the peer review in response to the follow up measures of the peer review report."

(3c) (...)

(g) paragraph 4 is replaced by the following:

“4. The Authority shall publish the main findings of the report referred to in paragraph 3 and of the follow-up report referred to in paragraph 3b, unless it is considered that publication would involve risks to the stability of the financial system. Where the competent authority that is subject to the review is concerned that the publication of the main findings of the reports would pose risks to the stability of the financial system, it shall have the possibility to refer the matter to the Board of Supervisors. The Board of Supervisors may decide by simple majority not to publish these extracts. ”;

(h) paragraph 5 is inserted:

“5. For the purposes of this Article the Management Board shall make a proposal for a peer review work plan for the coming two years, which shall inter alia reflect the lessons learnt from the past peer review processes and the discussions of the coordination group referred to in Art 29(1)aa. 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.”

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

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

(16) Article 32 is amended as follows:

(a) a new paragraph 2a is inserted:

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

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

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

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

(16) Article 33 is amended as follows:

~~(a)~~ paragraph 2 is replaced by the following:

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

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

"2a. The Authority shall monitor with a particular focus on their implications for financial stability, market integrity, investor protection or the functioning of the internal market, relevant regulatory and supervisory developments and enforcement practices and market developments to the extent they are relevant to risk-based equivalence assessments in third countries for which equivalence decisions have been adopted by the Commission pursuant to the acts referred to in Article 1(2).

Furthermore it shall verify whether the criteria, on the basis of which those equivalence decisions have been taken and any conditions set out therein, are still fulfilled.

The Authority may liaise with relevant authorities in the third countries. The Authority shall submit a confidential report to the Commission summarising its findings of its monitoring activities of all equivalent third countries on an annual basis. It shall take into account the market relevance of the third countries concerned.

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

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

- (a) the mechanisms which allow the Authority to obtain relevant information, including information on the regulatory regime, the supervisory approach, relevant market developments and any changes that may affect the decision on equivalence;
- (b) to the extent necessary for the follow up of such decisions on equivalence, the procedures concerning the coordination of supervisory activities including, where necessary, participation in on-site inspections.

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

(2c) The Authority may develop model administrative arrangements, with a view to establishing consistent, efficient and effective supervisory practices within the Union and to strengthening international supervisory coordination. In accordance with Article 16(3), the competent authorities shall endeavour to follow such model arrangements.

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

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

"2. With regard to assessments under Article 22 of Directive 2013/36/EC, and which according to that Directive require consultation between competent authorities from two or more Member States, the Authority may, on application of one of the competent authorities concerned, issue and publish an opinion on such an assessment, except in relation to the criteria in Article 23(1)(e) of that Directive. The opinion shall be issued promptly and in any event before the end of the assessment period referred to in that Directive. Articles 35 shall apply to the areas in respect of which the Authority may issue an opinion.";

(18) Article 35 is amended as follows:

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

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

The information provided shall be accurate, complete and submitted without undue delay.

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

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

(b) paragraph 5 is replaced by the following:

"5. Where information requested in accordance with paragraph 1 is not available or is not made available by the competent authorities without undue delay, the Authority may address a duly justified and reasoned request to any of the following:

- (a) other authorities with supervisory functions;
- (b) to the ministry responsible for finance in the Member State concerned where it has at its disposal prudential information;
- (c) to the national central bank of the Member State concerned;
- (d) to the statistical office of the Member State concerned.

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

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

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

(20) Article 37 is amended as follows:

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

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

in paragraph 5, the following subparagraphs are added:

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

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

(21) Article 39 is replaced by the following:

*"Article 39*

*Decision-making procedures*

1. The Authority shall act in accordance with paragraphs 2 to 6 when adopting decisions provided for in this Regulation
2. The Authority shall inform any addressee of a decision of its intention to adopt the decision, setting a time limit within which the addressee may express its views on the subject-matter of the decision, taking full account of the urgency, complexity and potential consequences of the matter. The provision laid down in the first sentence shall apply *mutatis mutandis* to recommendations as referred to in Article 17(3).
3. The decisions of the Authority shall state the reasons on which they are based.
4. The addressees of decisions of the Authority shall be informed of the legal remedies available under this Regulation.

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

6. The adoption of the decisions which the Authority takes pursuant to Articles 17, 18 or 19 shall be made public. The publication shall disclose the identity of the competent authority or financial institution concerned and the main content of the decision, unless such publication is in conflict with the legitimate interest of those financial institutions or with the protection of their business secrets or could seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system of the Union.";

(22) Article 40 is amended as follows:

(a) paragraph 1 is amended as follows:

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

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

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

(c) the following paragraph 8 is added:

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

(23) Article 41 is replaced by the following:

*"Article 41*

*Internal committees*

"The Board of Supervisors may establish internal committees for specific tasks attributed to it. The Board of Supervisors may provide for the delegation of certain clearly defined tasks and decisions to internal committees, or to the Management Board. In relation to Art. 17 and Art. 19, Board of Supervisors shall establish internal committees, at the proposal of the Management Board.

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

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

- (25) Article 43 is amended as follows:

paragraph 1 is replaced by the following:

"1. The Board of Supervisors shall give guidance to the work of the Authority and shall be in charge of taking the decisions referred to in chapter II. 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 preparations by the relevant internal committees or the Management Board.";

paragraphs 2 and 3 are deleted;

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

"The Board of Supervisors shall adopt, before 30 September of each year, on the basis of a proposal by the Management Board, the work programme of the Authority for the coming year, and shall transmit it for information to the European Parliament, the Council and the Commission.";

paragraph 5 is replaced by the following:

"5. The Board of Supervisors shall adopt, on the basis of a proposal by the Management 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, the Council, the Commission, the Court of Auditors and the European Economic and Social Committee by 15 June each year. The report shall be made public.";

paragraph 8 is deleted;

(26) Article 44 is amended as follows:

the second to fourth subparagraphs of paragraph 1 are replaced by the following:

"With regard to the acts specified in Articles 10 to 16 and measures and decisions adopted under the third subparagraph of Article 9(5) and Chapter VI and by way of derogation from the first subparagraph of this paragraph, the Board of Supervisors shall take decisions on the basis of a qualified majority of its members, as defined in Article 16(4) of the Treaty on European Union, which shall include at least a simple majority of the members, present at the vote, from competent authorities of Member States that are participating Member States as defined in point 1 of Article 2 of Regulation (EU) No 1024/2013 (participating Member States) and a simple majority of the members, present at the vote, from competent authorities of Member States that are not participating Member States as defined in point 1 of Article 2 of Regulation (EU) No 1024/2013 (non-participating Member States).

paragraph 4 is replaced by the following:

“4. With regard to the decisions in accordance with Article 30 the Board of Supervisors shall vote on the proposed decisions in a written procedure. The voting members of the Board of Supervisors shall have fifteen (15) working days to vote. Each voting member shall have one vote. The proposed decision will be considered adopted unless a simple majority of voting members of the Board of Supervisors objects. Abstentions will not be counted as approvals or as objections, and will not be considered when calculating the number of votes cast. If two voting members of the Board of Supervisors object to the written procedure, the draft decision will be discussed and decided on by the Board of Supervisors in accordance with the procedure set out in paragraph 1 .

"5. With regard to the decisions in accordance with Article 17 and 19 the Board of Supervisors shall vote on the proposed decisions in a written procedure. The voting members of the Board of Supervisors shall have fifteen (15) working days to vote. Each voting member shall have one vote. The proposed decision will be considered adopted unless a simple majority of its members from competent authorities of participating Member States or a simple majority of its members from competent authorities of non-participating Member States objects to it. Each voting member shall have one vote. Abstentions will not be counted as approvals or as objections, and will not be considered when calculating the number of votes cast. If two voting members of the Board of Supervisors object to the written procedure, the draft decision proposed by the Management Board shall be discussed by the Board of Supervisors and can be adopted by a simple majority of the voting members of the Board of Supervisors, which shall include a simple majority of its members from competent authorities of participating Member States and a simple majority of its members from competent authorities of non-participating Member States. Each voting member shall have one vote..

By way of derogation from the previous subparagraph, from the date when four or fewer voting members are from competent authorities of non- participating Member States, the decision proposed by the Management Board shall be adopted by a simple majority of the voting members of the Board of Supervisors, which shall include at least one vote from members from competent authorities of non-participating Member States.

(6) The non-voting members and the observers shall not participate in any discussions within the Board of Supervisors relating to individual financial institutions, unless otherwise provided for in Article 75(3) or in the acts referred to in Article 1(2).

This paragraph shall not apply to the Chairperson, the full time members of the Management Board and the European Central Bank representative nominated by its Supervisory Board.";

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

"SECTION 2

MANAGEMENT BOARD"

(28) Article 45 is replaced by the following:

*"Article 45*

*Composition*

1. The Management Board shall be composed of the Chairperson and six members of the Board of Supervisors, elected by and from the voting members of the Board of Supervisors, and two fulltime members.
2. The Chairperson shall assign clearly defined policy and managerial tasks to each of the full time members. One of the full time members shall be assigned responsibilities for budgetary matters and for matters relating to the work programme of the Authority ("Member in charge ") also acting as a Vice Chairperson and carrying out the tasks of the Chairperson in his or her absence or reasonable impediment, in accordance with this Regulation.
3. The full time members shall be selected on the basis of merit, skills, knowledge of financial institutions and markets, and experience relevant to financial supervision and regulation. The full time members shall have extensive management experience. The selection shall be based on an open call for candidates, to be published in the Official Journal of the European Union, following which the Board of Supervisors shall draw up a shortlist of qualified candidates.

4. The shortlist shall be submitted to the European Parliament for approval. Following the approval of that shortlist, the Council shall adopt a decision to appoint the full time members of the Management Board.
5. Where a full time member of the Management Board no longer fulfils the conditions set out in Article 46 or has been found guilty of serious misconduct, the Council may, on a proposal from the Commission which has been approved by the European Parliament, adopt a decision to remove him or her from office.
6. The term of office of the full time members shall be 5 years and shall be renewable once. In the course of the 9 months preceding the end of the 5-year term of office of the full time member, the Board of Supervisors shall evaluate:
  - (a) the results achieved in the first term of office and the way in which they were achieved;
  - (b) the Authority's duties and requirements in the coming years.

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

7. Other than the Chairperson and the full-time members, each member of the Management Board elected by the Board of Supervisors shall have an alternate, who may replace him or her if he or she is prevented from attending. In a specific situation where a conflict of interest may arise in relation to Article 17, Article 19 and Article 30, the Board of Supervisors shall nominate a replacement without any delay.

8. The term of office of the members elected by the Board of Supervisors shall be two-and-a-half years. The term may be extended once. The composition of the Management Board shall be gender balanced and proportionate and shall reflect the Union as a whole. Mandates shall be overlapping and an appropriate rotating arrangement shall apply.”

(29) the following Article 45a is inserted:

*"Article 45a*

*Decision-making*

1. Decisions by the Management Board shall be adopted by simple majority of its members whilst striving for consensus. Each member shall have one vote. The Chairperson shall be a non voting member, except in the event of a tie, when he or she shall have a casting vote.

2. Except for matters in relation to the Art 17 and 19 the representative of the Commission shall participate in meetings of the Management Board. The Commission shall participate without a right to vote, save for matters referred to in Article 63, where , he or she shall have a voting right.

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

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

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

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

(30) (...)

(30a) the following Article 45c is inserted:

*“Art 45c*

*Coordination Groups*

The Management Board may set up coordination groups on its own initiative or on the request by a competent authority. All competent authorities shall be participants of the coordination groups. The meetings shall be based on submissions from the competent authorities and any issues identified by the Authority. In relation to Article 29(1)aa, the groups shall be chaired by a member of the Management Board. Each year the respective member of the Management Board in charge of the coordination group shall report to the Board of Supervisors on the main elements of the discussions and findings and - if deemed relevant- make a suggestion for a regulatory follow up or a peer review in the respective area.”

(31) Article 46 is replaced by the following:

*"Article 46*

*Independence*

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

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

- (34) Article 47 is replaced by the following:

*"Article 47*

*Tasks*

1. The Management Board shall ensure that the Authority carries out its mission and performs the tasks assigned to it in accordance with this Regulation. It shall take all necessary measures, notably the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Authority, in accordance with this Regulation.

2. The Management Board shall propose, for adoption by the Board of Supervisors, an annual and multi-annual work programme.
3. The Management Board shall exercise its budgetary powers in accordance with Articles 63 and 64.
  - 3a. The Management Board may examine, give an opinion and make proposals on all matters save for tasks according to Article 9a, 9b, 30 as well as Articles 17 and 19 on matters concerning the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.
4. The Management Board shall adopt the Authority's staff policy plan and, pursuant to Article 68(2), the necessary implementing measures of the Staff Regulations of Officials of the European Communities ('the Staff Regulations').
5. The Management Board shall adopt the special provisions on right of access to the documents of the Authority, in accordance with Article 72.
6. The Management Board shall propose an annual report on the activities of the Authority, including on the Chairperson's duties, to the Board of Supervisors for approval.
7. The Management Board shall appoint and remove the members of the Board of Appeal in accordance with Article 58(3) and (5).
8. The members of the Management Board shall make public all meetings held and any hospitality received. Expenses shall be recorded publicly in accordance with the Staff Regulations

9. The Member in charge assigned according to Art 45(2) shall have the following specific tasks:

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

(b) to take all necessary measures, notably the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Authority, in accordance with this Regulation;

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

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

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

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

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

(35) Article 48 is amended as follows:

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

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

paragraph 2 is replaced by the following:

"2. The Chairperson shall be selected on the basis of merit, skills, knowledge of financial institutions and markets, and of experience relevant to financial supervision and regulation, following an open call for candidates to be published in the Official Journal of the European Union. The Board of Supervisors shall draw up a shortlist of qualified candidates for the position of the Chairperson .

The shortlist of candidates for the position of the Chairperson shall be submitted to the European Parliament for approval. Following the approval of the shortlist, the Council shall adopt a decision to appoint the Chairperson.

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

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

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

paragraph 5 is deleted;

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

*"Article 49a*

*Expenses*

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

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

(38) Article 54 is amended as follows:

(a) in paragraph 2 , the following indent is added:

" — depositor, consumer and investor protection issues";

(b) in paragraph 2 the fifth indent is deleted:

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

"2. One member of the Management Board, the representative of the Commission and the ESRB shall be invited to the meetings of the Joint Committee, as well as of any Sub-Committees referred to in Article 57, as observers.";

(40) Article 58 is amended as follows:

paragraph 3 is replaced by the following:

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

paragraph 5 is replaced by the following:

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

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

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

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

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

(43) In Article 62 paragraph 1(d) and (e) are inserted:

(d) any voluntary contribution from Member States or observers shall not be accepted if such acceptance would cast doubt on the independence and impartiality of the Authority. Voluntary contributions that constitute compensation for the cost of tasks delegated by a competent authority to the Authority shall not be considered to cast doubt on the independence of the latter.

- (e) Agreed charges for publications, training and for any other services provided by the Authority where they have been specifically requested by one or more competent authorities.

(44) Article 63 is replaced by the following:

*"Article 63*

*Establishment of the budget*

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

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

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

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

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

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

5. The Management Board shall, without delay, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of its budget, in particular any project relating to property, such as the rental or purchase of buildings.";

(45) Article 64 is replaced by the following:

*"Article 64*

*Implementation and control of the budget*

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

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

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

4. The Authority's accounting officer shall also send the report on budgetary and financial management to the members of the Board of Supervisors, the European Parliament, the Council and the Court of Auditors by 31 March of the following year.

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

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

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

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

8. The Member in charge shall send the Court of Auditors a reply to the latter's observations by 30 September. He shall also send a copy of that reply to the Management Board and the Commission.

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

10. The European Parliament, following a recommendation from the Council acting by qualified majority, shall, before 15 May of the year N + 2, grant a discharge to the Authority for the implementation of the budget for the financial year N.";

(46) Article 65 is replaced by the following:

*"Article 65*

*Financial rules*

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

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

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

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

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

(48) Article 68 is amended as follows:

paragraphs 1 and 2 are replaced by the following:

"1. The Staff Regulations, the Conditions of Employment of Other Servants and the rules adopted jointly by the Union institutions for the purpose of applying them shall apply to the staff of the Authority, including the full time members of the Management Board and its Chairperson.

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

paragraph 4 is replaced by the following:

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

(49) Article 70 is amended as follows:

paragraph 1 is replaced by the following:

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

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

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

the following paragraph 2a is inserted:

"2a. The Management 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 Management Board and the Board of Supervisors or appointed by the competent authorities for that purpose, are subject to the requirements of professional secrecy equivalent to those in the previous paragraphs.

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

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

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

(50) Article 71 is replaced by the following:

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

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

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

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

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

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

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

(55) Article 76 is replaced by the following:

*"Article 76*

*Relationship with the CEBS*

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

(56) new Article 77a is inserted:

*Article 77a*

*Transitional provisions*

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

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

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

(57) (...)

## Article 2

### *Amendments to Regulation (EU) No 1094/2010*

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

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

"2. The Authority shall act within the powers conferred by this Regulation and within the scope of Directive 2009/138/EC with the exception of Title IV thereof, 2003/41/EC, 2002/87/EC, and, to the extent that those acts apply to insurance undertakings, reinsurance undertakings, institutions for occupational retirement provision and insurance intermediaries, within the relevant parts of Directive 2002/65/EC and of Directive (EU) 2016/97\* including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority.

\*Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast)

in paragraph 5, the following subparagraph is added:

The content and form of the Authority's actions and measures, in particular guidelines, recommendations, opinions questions and answers and draft regulatory standards, shall be based on and within the limits of the legislative framework and shall not exceed what is necessary to achieve the objectives of this Regulation or the acts referred to in paragraph 2 and shall be proportionate to the nature, scale and complexity of the risks inherent in the business of an institution, undertaking, other subject or a financial activity, that is affected by the Authority's action.

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

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

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

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

(59) Article 6 is amended as follows:

point (2) is replaced by the following:

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

point (4) is deleted;

(60) Article 8 is amended as follows:

(a) paragraph 1 is amended as follows:

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

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

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

"(e) to organise and conduct 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 outcomes;

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

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

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

(iv) point (l) is deleted;

(b) a new paragraph 1a is inserted:

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

(c)(...)

(d) the following paragraph 3 is added:

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

(61) Article 9 is amended as follows:

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

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

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

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

"(d) developing common disclosure rules.";

paragraph 2 is replaced by the following:

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

paragraphs 4 is replaced by the following:

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

(62) Article 16 is amended as follows::

(63)(...)

(64)(...)

in paragraph 4 the following sentence is added at the end:

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

Article 16a is inserted:

*“Art 16a*

*Questions and Answers*

1. Questions relating to the practical application or implementation of provisions of legislative acts referred to in Article 1(2), associated delegated and implementing acts, as well as guidelines and recommendations adopted under these legislative acts, may be submitted by any natural or legal person, including competent authorities and EU institutions, to the Authority in any official language of the Union.

Before submitting a question to the Authority, financial institutions shall assess whether to firstly address the question to their competent authority.

2. Answers by the Authority to questions referred to in paragraph 1 are non-binding.

3. The Authority shall establish and maintain a web based tool available on its website for the submission of questions and the timely publication of all questions as well as all answers to all admissible questions pursuant to paragraph 1, unless such publication is in conflict with the legitimate interest of those persons or would involve risks to the stability of the financial system. Rejected questions shall be published by the Authority on its website for a period of two months.

4. Three voting members of the Board of Supervisors may request the Board of Supervisors to decide pursuant to Article 44 whether to address the issue of the admissible question referred to in paragraph 1 in guidelines pursuant to in Article 16, to request opinions or advice from the Stakeholder Group referred to in Article 37, to review questions and answers at appropriate intervals, to conduct open public consultations or to analyse potential related costs and benefits. Such consultations and analyses shall be proportionate in relation to the scope, nature and impact of the draft questions and answers concerned or in relation to the particular urgency of the matter. When involving the Stakeholder Group referred to in Article 37, due care of confidentiality shall be guaranteed.

5. For the purpose of clarity and completeness the Authority shall publish the answers to questions regarding the legal explanation of provisions of the regulatory framework on behalf of the European Commission.

(65) Article 17 is amended as follows:

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

"Without prejudice to the powers laid down in Article 35, the Authority may after having informed the competent authority concerned address a duly justified and reasoned request for information directly to other competent authorities whenever requesting information from the competent authority concerned has proven, or is deemed, insufficient to obtain the information that it is deemed necessary for the purpose of investigating an alleged breach or non-application of Union law.

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

(66) Article 19 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

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

(b) in cases where the acts referred to in Art 1(2) provide that the Authority may assist on its own initiative where on the basis of objective criteria, disagreement can be determined between competent authorities.

In cases where the acts referred to in Article 1(2) require a joint decision to be taken by competent authorities and where in accordance with those acts the Authority may assist on its own initiative in reaching an agreement in accordance with the procedure set out in paragraph 2 to 4, the competent authorities concerned, a disagreement shall be presumed in the absence of a joint decision being taken by those authorities within the time limits set out in those acts."

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

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

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

- (i) the time limit has expired;
- (ii) at least two competent authorities concerned conclude that a disagreement exists, on the basis of objective factors;

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

- i. at least two competent authorities concerned conclude that a disagreement exists on the basis of objective factors; or
- ii. two months have elapsed from the date of receipt by a competent authority of a request from another competent authority to take certain action in order to comply with Union law and the requested authority has not yet adopted a decision that satisfies the request.;

(c)(...)

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

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

(d) paragraph 3 is replaced by the following:

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

(e) the following paragraph 3a is inserted:

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

(f) paragraph 4 is replaced by the following:

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

(67...)

(68) Article 29 is amended as follows:

paragraph 1 is amended as follows::

(i) the following points (aa) and (ab) are inserted:

aa) establishing coordination groups in accordance with Art 45c to promote supervisory convergence and identify best practices. “

(ab) “establishing common supervisory priorities in accordance with Article 29a”

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

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

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

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

in paragraph 2, the following subparagraph 2 is added:

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

(69) The following Article 29a is inserted:

*"Article 29a*

Common Supervisory Priorities

Each year the Board of Supervisors may identify up to two priorities of union wide relevance which shall be based on suggestions by competent authorities and shall reflect future developments and trends. Competent authorities shall take the priorities highlighted by the Board of Supervisors into account when drawing up their work programmes. The Board of Supervisors shall discuss the relevant activities by the competent authorities in the following year and draw conclusions. The Authority shall discuss possible follow up which may include inter alia guidelines, recommendations and peer reviews in the respective area.”

(70) Article 30 is amended as follows:

(a)(...)

(b) paragraph 1 is replaced by the following:

"1. The Authority shall periodically conduct peer reviews of some or all of the activities of competent authorities, to further strengthen consistency and effectiveness in supervisory outcomes. To that end, the Authority shall develop methods to allow for objective assessment and comparison between the competent authorities reviewed. When conducting peer reviews, existing information and evaluations already made with regard to the competent authority concerned, including all information provided to the Authority in accordance with Article 35, and any information from stakeholders shall be taken into account.";

(c) the following paragraphs 1a is inserted:

"For the purposes of this Article, the Authority shall establish peer review committees, which shall be composed of members of competent authorities with the participation of staff from the Authority .";

(d) paragraph 2 is amended as follows:

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

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

(ii) point (a) to (c) are is replaced by the following:

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

(b) the effectiveness and degree of convergence reached in the application of Union law and in supervisory practice, including regulatory technical standards and implementing technical standards, guidelines and recommendations adopted pursuant to Articles 10 to 16, and the extent to which the supervisory practice achieves the objectives set out in Union law;

(c) the application of best practices developed by some competent authorities which might be of benefit for other competent authorities to adopt;"

(e) paragraph 3 is replaced by the following:

"3. The Authority shall produce a report setting out the results of the peer review which shall be prepared by the peer review committee and adopted by the Board of Supervisors in accordance with Article 44(4). When drafting that report, the peer review committee shall consult the Management Board in order to maintain consistency with other peer review reports and to ensure a level playing field. The Management Board shall assess in particular whether the methodology has been applied in the same manner. The report shall explain and indicate the follow-up measures that are deemed appropriate, proportionate and necessary as a result of the peer review. Those follow-up measures may be adopted in the form of guidelines and recommendations pursuant to Article 16 and opinions pursuant to Article 29(1)(a).

In accordance with Article 16(3), the competent authorities shall make every effort to comply with any guidelines and recommendations issued.

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

the following paragraph 3a is inserted:

"3a. the following paragraph 3a to 3b are inserted:

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

3b. The Authority shall undertake a follow up report after two years of the publication of the peer review report. The follow up report shall be prepared by the Peer Review Committee and adopted by the Board of Supervisors in accordance with Article 44(4). When drafting that report, the peer review committee shall consult the Management Board in order to maintain consistency with other follow up reports. The follow up report shall include an assessment of, but shall not be limited to, the adequacy and effectiveness of the actions undertaken by the competent authorities that are subject to the peer review in response to the follow up measures of the peer review report."

(3c)(...)

(f) paragraph 4 is replaced by the following:

4. The Authority shall publish the main findings of the report referred to in paragraph 3 and of the follow-up report referred to in paragraph 3b, unless it is considered that publication would involve risks to the stability of the financial system. If the competent authority that is subject to the peer review is concerned that the publication of the main findings of the reports would pose risks to the stability of the financial system, it shall have the possibility to refer the matter to the Board of Supervisors. The Board of Supervisors may decide by simple majority not to publish these extracts. ";

(g) paragraph 5 is inserted:

“5. For the purposes of this Article the Management Board shall make a proposal for a peer review work plan for the coming two years, which shall inter alia reflect the lessons learnt from the past peer review processes and the discussions of the coordination group referred to in Art 29(1)aa. 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.”

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

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

(71) Article 32 is amended as follows:

(72) a new paragraph 2a is inserted:

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

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

(73) Article 33 is amended as follows

(a) paragraph 2 is replaced by the following:

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

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

"2a. The Authority shall monitor with a particular focus on their implications for financial stability, market integrity, investor protection or the functioning of the internal market, relevant regulatory and supervisory developments and enforcement practices and market developments to the extent they are relevant to risk-based equivalence assessments in third countries for which equivalence decisions have been adopted by the Commission pursuant to the acts referred to in Article 1(2).

Furthermore it shall verify whether the criteria, on the basis of which those equivalence decisions have been taken and any conditions set out therein, are still fulfilled. The Authority may liaise with relevant authorities in the third countries.

The Authority shall submit a confidential report to the Commission summarising its findings of its monitoring activities of all equivalent third countries on an annual basis. It shall take into account the market relevance of the third countries concerned .

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

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

- (a) the mechanisms which allow the Authority to obtain relevant information, including information on the regulatory regime, the supervisory approach, relevant market developments and any changes that may affect the decision on equivalence;
- b) to the extent necessary for the follow up of such decisions on equivalence, the procedures concerning the coordination of supervisory activities including participation in on-site inspections.

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

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

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

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

"2. With regard to prudential assessment of mergers and acquisitions falling within the scope of Directive 2009/138/EC and which, according to that Directive, require consultation between competent authorities from two or more Member States, the Authority may, on application of one of the competent authorities concerned, issue and publish an opinion on a prudential assessment, except in relation to the criteria in Article 59(1)(e) of Directive 2009/138/EC. The opinion shall be issued promptly and in any event before the end of the assessment period in accordance with Directive 2009/138/EC. Article 35 shall apply to the areas in respect of which the Authority may issue an opinion."

(75) Article 35 is amended as follows:

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

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

The information provided shall be accurate, complete and submitted without undue delay

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

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

paragraph 5 is replaced by the following:

"5. Where information requested in accordance with paragraph 1 is not available or is not made available by the competent authorities without undue delay the Authority may address a duly justified and reasoned request to any of the following:

- (a) other authorities with supervisory functions;
- (b) to the relevant ministry in the Member State concerned where it has at its disposal prudential information;
- (c) to the national central bank of the Member State concerned;
- (d) to the statistical office of the Member State concerned.

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

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

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

(77) Article 37 is amended as follows:

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

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

in paragraph 6, the following subparagraphs are added:

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

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

(78) Article 39 is replaced by the following:

*"Article 39*

*Decision-making procedures*

1. The Authority shall act in accordance with paragraphs 2 to 6 when adopting decisions provided for in this Regulation
2. The Authority shall inform any addressee of a decision of its intention to adopt the decision, setting a time limit within which the addressee may express its views on the subject-matter of the decision, taking full account of the urgency, complexity and potential consequences of the matter. The provision laid down in the first sentence shall apply *mutatis mutandis* to recommendations as referred to in Article 17(3).
3. The decisions of the Authority shall state the reasons on which they are based.
4. The addressees of decisions of the Authority shall be informed of the legal remedies available under this Regulation.
5. Where the Authority has taken a decision pursuant to Article 18(3) or Article 18(4), it shall review that decision at appropriate intervals.
6. The adoption of the decisions which the Authority takes pursuant to Articles 17, 18 or 19 shall be made public. The publication shall disclose the identity of the competent authority or financial institution concerned and the main content of the decision, unless such publication is in conflict with the legitimate interest of those financial institutions or with the protection of their business secrets or could seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system of the Union.";

(79) Article 40 is amended as follows:

paragraph 1 is amended as follows:

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

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

in paragraph\_5 , the second subparagraph is deleted;

the following paragraph 6 is added;

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

(80) Article 41 is replaced by the following"

*"Article 41*

*Internal committees*

" The Board of Supervisors may establish internal committees for specific tasks attributed to it. The Board of Supervisors may provide for the delegation of certain clearly defined tasks and decisions to internal committees, or to the Management Board. In relation to Art. 17 and Art. 19, Board of Supervisors shall establish internal committees , at the proposal of the Management Board.";

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

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

(82) Article 43 is amended as follows:

paragraph 1 is replaced by the following:

"1. The Board of Supervisors shall give guidance to the work of the Authority and shall be in charge of taking the decisions referred to in chapter II. 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 preparations by the relevant internal committees or the Management Board

paragraphs 2 and 3 are deleted;

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

"The Board of Supervisors shall adopt, before 30 September of each year, on the basis of a proposal by the Management Board, the work programme of the Authority for the coming year, and shall transmit it for information to the European Parliament, the Council and the Commission.";

paragraph 5 is replaced by the following:

"5. The Board of Supervisors shall adopt, on the basis of a proposal by the Management 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, the Council, the Commission, the Court of Auditors and the European Economic and Social Committee by 15 June each year. The report shall be made public.";

(e) paragraph 8 is deleted;

(83) Article 44 is amended as follows:

the third subparagraph of paragraph 1 is replaced, the following

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

in paragraph 1, the fourth\_ subparagraphs is deleted;

paragraph 4 is replaced by the following:

"4. With regard to the decisions in accordance with Article 17, Article 19 and Article 30 the Board of Supervisors shall vote on the proposed decisions in a written procedure. The voting members of the Board of Supervisors shall have fifteen (15) working days to vote. Each voting member shall have one vote. The proposed decision will be considered adopted unless a simple majority of voting members of the Board of Supervisors objects. Abstentions will not be counted as approvals or as objections, and will not be considered when calculating the number of votes cast. If two voting members of the Board of Supervisors object to the written procedure, the draft decision will be discussed and decided on by the Board of Supervisors in accordance with the procedure set out in paragraph 1 .

(5) The non-voting members and the observers shall not participate in any discussions within the Board of Supervisors relating to individual financial institutions, unless otherwise provided for in Article 75(3) or in the acts referred to in Article 1(2).

This paragraph shall not apply to the Chairperson and the fulltime members of the Management Board.

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

"SECTION 2

MANAGEMENT BOARD"

(85) Article 45 is replaced by the following:

*"Article 45*

*Composition*

1. The Management Board shall be composed of the Chairperson and six members of the Board of Supervisors, elected by and from the voting members of the Board of Supervisors, and two fulltime members .
2. The Chairperson shall assign clearly defined policy and managerial tasks to each of the fulltime members. One of the full time members shall be assigned responsibilities for budgetary matters and for matters relating to the work programme of the Authority ("Member in charge") also acting as a Vice Chairperson and carrying out the tasks of the Chairperson in his or her absence or reasonable impediment, in accordance with this Regulation.

3. The fulltime members shall be selected on the basis of merit, skills, knowledge of financial institutions and markets, and experience relevant to financial supervision and regulation. The fulltime members shall have extensive management experience. The selection shall be based on an open call for candidates, to be published in the Official Journal of the European Union, following which the Board of Supervisors shall draw up a shortlist of qualified candidates.
4. The shortlist shall be submitted to the European Parliament for approval. Following the approval of that shortlist, the Council shall adopt a decision to appoint the fulltime members of the Management Board.
5. Where a fulltime member of the Management Board no longer fulfil the conditions set out in Article 46 or has been found guilty of serious misconduct, the Council may, on a proposal from the Commission which has been approved by the European Parliament, adopt a decision to remove him or her from office.
6. The term of office of the fulltime members shall be 5 years and shall be renewable once. In the course of the 9 months preceding the end of the 5-year term of office of the fulltime member, the Board of Supervisors shall evaluate:
  - (a) the results achieved in the first term of office and the way in which they were achieved;
  - (b) the Authority's duties and requirements in the coming years.

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

7. Other than the Chairperson and the fulltime members, each member of the Management Board elected by the Board of Supervisors shall have an alternate, who may replace him or her if he or she is prevented from attending. In a specific situation where a conflict of interest may arise in relation to Article 17, Article 19 and Article 30, the Board of Supervisors shall nominate a replacement without any delay.
8. The term of office of the members elected by the Board of Supervisors shall be two-and-a-half years. The term may be extended once .The composition of the Management Board shall be gender balanced and proportionate and shall reflect the Union as a whole. Mandates shall be overlapping and an appropriate rotating arrangement shall apply.”

(86) the following Article 45a is inserted:

*"Article 45a*

*Decision-making*

1. Decisions by the Management Board shall be adopted by simple majority of its members whilst striving for consensus. Each member shall have one vote. The Chairperson shall be a non voting member , except in the event of a tie, when he or she shall have a casting vote.
2. Except for matters in relation to the Art 17 and 19 the representative of the Commission shall participate in meetings of the Management Board. The Commission shall participate without the right to vote, save for matters referred to in Article 63, where he or she shall have a voting right.
3. The Management Board shall adopt and make public its rules of procedure.

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

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

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

(85)(Article 45b)(...)

(90a) the following Article 45c is inserted:

*“Art 45c*

*Coordination Groups*

The Management Board may set up coordination groups on its own initiative or on the request by a competent authority. All competent authorities shall be participants of the coordination groups. The meetings shall be based on submissions from the competent authorities and any issues identified by the Authority. In relation to Article 29(1)aa, the group shall be chaired by a member of the Management Board. Each year the respective member of the Management Board in charge of the coordination group shall report to the Board of Supervisors on the main elements of the discussions and findings and - if deemed relevant- make a suggestion for a regulatory follow up or a peer review in the respective area.”

(88) Article 46 is replaced by the following:

*"Article 46*

*Independence*

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

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

(89) Article 47 is replaced by the following:

*"Article 47*

*Tasks*

1. The Management Board shall ensure that the Authority carries out its mission and performs the tasks assigned to it in accordance with this Regulation. It shall take all necessary measures, notably the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Authority, in accordance with this Regulation.

2. The Management Board shall propose, for adoption by the Board of Supervisors, an annual and multi-annual work programme.
3. The Management Board shall exercise its budgetary powers in accordance with Articles 63 and 64.
  - 3a. The Management Board shall examine, give an opinion and make proposal on all matters to be decided by the Board of Supervisors after discussion at the relevant internal committee, save peer reviews according to Article 30.
  - (3b...)
4. The Management Board shall adopt the Authority's staff policy plan and, pursuant to Article 68(2), the necessary implementing measures of the Staff Regulations of Officials of the European Communities ('the Staff Regulations') after discussion at the relevant internal committee, save for peer reviews according to Article 30.
5. The Management shall adopt the special provisions on right of access to the documents of the Authority, in accordance with Article 72.
6. The Management Board shall propose an annual report on the activities of the Authority, including on the Chairperson's duties to the Board of Supervisors for approval.
7. The Management Board shall appoint and remove the members of the Board of Appeal in accordance with Article 58(3) and (5).
- 8 The members of the Management Board shall make public all meetings held and any hospitality received. Expenses shall be recorded publicly in accordance with the Staff Regulations.

9. The Member in charge assigned according to Art 45(2) shall have the following specific tasks:

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

(b) to take all necessary measures, notably the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Authority, in accordance with this Regulation;

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

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

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

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

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

(90) Article 48 is amended as follows:

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

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

paragraph 2 is replaced by the following:

"2. The Chairperson shall be selected on the basis of merit, skills, knowledge of financial institutions and markets, and of experience relevant to financial supervision and regulation, following an open call for candidates to be published in the Official Journal of the European Union. The Board of Supervisors shall draw up a shortlist of qualified candidates for the position of the Chairperson to the Board of Supervisors for selection.

The shortlist of candidates for the position of the Chairperson to the European Parliament for approval. Following the approval of the shortlist, the Council shall adopt a decision to appoint the Chairperson.

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

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

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

paragraph 5 is deleted;

(91) the following Article 49a is inserted:

*"Article 49a*

*Expenses*

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

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

(93) Article 54 is amended as follows:

(a) in paragraph 2, the following indent is added:

" — consumer and investor protection issues;" ;

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

(c...)

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

"2. One member of the Management Board, the representative of the Commission and the ESRB shall be invited to the meetings of the Joint Committee, as well as of any Sub-Committees referred to in Article 57, as observers.";

(95) Article 58 is amended as follows:

paragraph 3 is replaced by the following:

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

paragraph 5 is replaced by the following:

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

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

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

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

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

(98) Article 62 is amended as follows:

paragraph 1 (d) and (e) are inserted:

- (d) any voluntary contribution from Member States or observers from Members States and observers shall not be accepted if such acceptance would cast doubt on the independence and impartiality of the Authority. Voluntary contributions that constitute compensation for the cost of tasks delegated by a competent authority to the Authority shall not be considered to cast doubt on the independence of the latter.
- (e) Agreed charges for publications, training and for any other services provided by the Authority where they have been specifically requested by one or more competent authorities.

(99) Article 63 is replaced by the following:

*"Article 63*

*Establishment of the budget*

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

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

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

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

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

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

5. The Management Board shall, without delay, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of its budget, in particular any project relating to property, such as the rental or purchase of buildings.";

(100) Article 64 is replaced by the following:

*Article 64*

*Implementation and control of the budget*

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

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

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

4. The Authority's accounting officer shall send the report on budgetary and financial management to the members of the Board of Supervisors, the European Parliament, the Council and the Court of Auditors by 31 March of the following year.

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

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

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

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

8. The Member in charge shall send the Court of Auditors a reply to the latter's observations by 30 September. He shall also send a copy of that reply to the Management Board and the Commission.

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

10. The European Parliament, following a recommendation from the Council acting by qualified majority, shall, before 15 May of the year N + 2, grant a discharge to the Authority for the implementation of the budget for the financial year N.";

(101) Article 65 is replaced by the following:

*"Article 65*

*Financial rules*

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

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

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

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

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

(103) Article 68 is amended as follows:

paragraphs 1 and 2 are replaced by the following:

"1. The Staff Regulations, the Conditions of Employment of Other Servants and the rules adopted jointly by the Union institutions for the purpose of applying them shall apply to the staff of the Authority, including the full time members of the Management Board and its Chairperson.

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

paragraph 4 is replaced by the following:

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

(104) Article 70 is amended as follows:

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

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

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

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

the following paragraph 2a is inserted:

"2a. The Management 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 Management Board and the Board of Supervisors or appointed by the competent authorities for that purpose, are subject to the requirements of professional secrecy equivalent to those in the previous paragraphs.

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

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

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

(105) In Article 71 is replaced by the following:

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

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

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

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

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

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

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

(109) Article 76 is replaced by the following:

*"Article 76*

*Relationship with CEIOPS*

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

(110) new Article 77a is inserted:

## *Article 77a*

### *Transitional provisions*

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

The tasks and position of the Chairperson appointed in accordance with Regulation No 1094/2010 as last amended by Directive 2014/51/EU and in office on [PO: please insert date 3 months after the entry into force of this Regulation] shall continue until its expiry.

The tasks and position of the members of the Management Board appointed in accordance with Regulation No 1094/2010 as last amended by Directive 2014/51/EU and in office on [PO: please insert date 3 months after the entry into force of this Regulation] shall cease on that date."

## *Article 3*

### *Amendments to Regulation (EU) No 1095/2010*

Regulation (EU) 1095/2010 is amended as follows:

(111) Article 1 is amended as follows:

paragraph 2 is replaced by the following:

"2. The Authority shall act within the powers conferred by this Regulation and within the scope of Directive 97/9/EC, Directive 98/26/EC, Directive 2001/34/EC, Directive 2002/47/EC, Directive 2003/71/EC, Directive 2004/39/EC, Directive 2004/109/EC, Directive 2009/65/EC, Directive 2011/61/EU of the European Parliament and of the Council \*, and Regulation (EC) No 1060/2009, and, to the extent that these acts apply to firms providing investment services or to collective investment undertakings marketing their units or shares and the competent authorities that supervise them, within the relevant parts of, Directive 2002/87/EC, Directive 2002/65/EC, including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority.

\* Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

in paragraph 5, the following subparagraph is added:

The content and form of the Authority's actions and measures, in particular guidelines, recommendations, opinions, questions and answers and draft regulatory standards, shall be based on and within the limits of the legislative framework and shall not exceed what is necessary to achieve the objectives of this Regulation or the acts referred to in paragraph 2 and shall be proportionate to the nature, scale and complexity of the risks inherent in the business of an institution, undertaking, other subject or a financial activity, that is affected by the Authority's action.

the following paragraph 3a is inserted:

"3a. This Regulation shall apply without prejudice to other Union acts conferring the functions of authorisation or supervision and corresponding powers upon the Authority.";

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

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

(113) in point (3) of Article 4, point (ii) is replaced by the following:

"(ii) with regard to Directives 2002/65/EC and (EU) 2015/849, the authorities competent for ensuring compliance with the requirements of those Directives by firms providing investment services and by collective investment undertakings marketing their units or shares;"

(114) Article 6 is amended as follows:

point (2) is replaced by the following:

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

point (4) is deleted;

(115) Article 8 is amended as follows:

(a) paragraph 1 is amended as follows:

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

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

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

"(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 outcomes;

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

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

"(h) to foster consumer and investor protection;"

(iv) point (l) is deleted;

(b) a new paragraph 1a is inserted:

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

(c....)

(d) the following paragraph 3 is added:

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

(e...)

(116) Article 9 is amended as follows:

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

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

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

(b) paragraph 2 is replaced by the following:

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

(c) paragraph 4 is replaced by the following:

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

(117) Article 16 is amended as follows:

(a...)

(b...)

(b1...)

(b2...)

in paragraph 4, the following sentence is added:

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

(117a) Article 16a is inserted:

*“Art 16a*

*Questions and Answers*

1. Questions relating to the practical application or implementation of provisions of legislative acts referred to in Article 1(2), associated delegated and implementing acts, as well as guidelines and recommendations adopted under these legislative acts, may be submitted by any natural or legal person, including competent authorities and EU institutions, to the Authority in any official language of the Union.

Before submitting a question to the Authority, financial institutions shall assess whether to firstly address the question to their competent authority.

2. Answers by the Authority to questions referred to in paragraph 1 are non-binding.

3. The Authority shall establish and maintain a web based tool available on its website for the submission of questions and the timely publication of all questions as well as all answers to all admissible questions pursuant to paragraph 1, unless such publication is in conflict with the legitimate interest of those persons or would involve risks to the stability of the financial system. Rejected questions shall be published by the Authority on its website for a period of two months.

4. Three voting members of the Board of Supervisors may request the Board of Supervisors to decide pursuant to Article 44 whether to address the issue of the admissible question referred to in paragraph 1 in guidelines pursuant to in Article 16, to request opinions or advice from the Stakeholder Group referred to in Article 37, to review questions and answers at appropriate intervals, to conduct open public consultations or to analyse potential related costs and benefits. Such consultations and analyses shall be proportionate in relation to the scope, nature and impact of the draft questions and answers concerned or in relation to the particular urgency of the matter. When involving the Stakeholder Group referred to in Article 37, due care of confidentiality shall be guaranteed.

5. For the purpose of clarity and completeness the Authority shall publish the answers to questions regarding the legal explanation of provisions of the regulatory framework on behalf of the European Commission.

(118) Article 17 is amended as follows:

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

"Without prejudice to the powers laid down in Article 35, the Authority may after having informed the competent authority concerned address a duly justified and reasoned request for information directly to other competent authorities whenever requesting information from the competent authority concerned has proven, or is deemed, insufficient to obtain the information that it is deemed necessary for the purpose of investigating an alleged breach or non-application of Union law.

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

Article 19 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

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

(b) in cases where the acts referred to in Art 1(2) provide that the Authority may assist on its own initiative where on the basis of objective criteria, disagreement can be determined between competent authorities.

In cases where the acts referred to in Article 1(2) require a joint decision to be taken by competent authorities and where in accordance with those acts the Authority may assist on its own initiative in reaching an agreement in accordance with the procedure set out in paragraph 2 to 4 the competent authorities concerned, a disagreement shall be presumed in the absence of a joint decision being taken by those authorities within the time limits set out in those acts".;

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

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

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

- (i) the time limit has expired;
- (ii) at least two competent authorities conclude that a disagreement exists, on the basis of objective factors;

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

- (i) at least two competent authorities concerned conclude that a disagreement exists on the basis of objective factors; or
- (ii) two months have elapsed from the date of receipt by a competent authority of a request from another competent authority to take certain action in order to comply with Union law and the requested authority has not yet adopted a decision that satisfies the request.

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

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

(d) paragraph 3 is replaced by the following:

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

(e) the following paragraph 3a is inserted:

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

(f) paragraph 4 is replaced by the following:

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

(119...)

(120) Article 29 is amended as follows:

paragraph 1 is amended as follows:

(i) the following points (aa) and (ab) are inserted:

"(aa) establishing coordination groups in accordance with Art 45c to promote supervisory convergence and identify best practices."

(ab) "establishing common supervisory priorities in accordance with Article 29a"

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

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

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

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

in paragraph 2, the following subparagraph is added:

"For the purpose of establishing a common supervisory culture, the Authority shall develop and maintain an up to date Union supervisory handbook on the supervision of financial market participants in the Union, taking into account, inter alia, changing business practices and business models, including due to technological innovation, of financial market participants. The Union supervisory handbook shall set out best practices and high quality methodologies and processes.";

(121) the following Article 29a is inserted:

*"Article 29a*

Common Supervisory Priorities

Each year the Board of Supervisors may identify up to two priorities of union wide relevance which shall be based on suggestions by competent authorities and shall reflect future developments and trends. Competent authorities shall take the priorities highlighted by the Board of Supervisors into account when drawing up their work programmes. The Board of Supervisors shall discuss the relevant activities by the competent authorities in the following year and draw conclusions. The Authority shall discuss possible follow up which may include inter alia guidelines, recommendations and peer reviews in the respective area.”

(122) Article 30 is amended as follows:

(a...)

(b) paragraph 1 is replaced by the following:

"1. The Authority shall periodically conduct peer reviews of some or all of the activities of competent authorities, to further strengthen consistency and effectiveness in supervisory outcomes. To that end, the Authority shall develop methods to allow for objective assessment and comparison between the competent authorities reviewed. When conducting peer reviews, existing information and evaluations already made with regard to the competent authority concerned, including all information provided to the Authority in accordance with Article 35, and any information from stakeholders shall be taken into account.";

(c) the following paragraph ~~is~~ inserted:

1a. For the purposes of this Article, the Authority shall establish peer review committees, which shall be composed of members of competent authorities with the participation of staff from the Authority .

(d) paragraph 2 is amended as follows:

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

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

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

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

(b) the *effectiveness* and degree of convergence reached in the application of Union law and in supervisory practice, including regulatory technical standards and implementing technical standards, guidelines and recommendations adopted pursuant to Articles 10 to 16, and the extent to which the supervisory practice achieves the objectives set out in Union law;

(c) the *application* of best practices developed by some competent authorities which might be of benefit for other competent authorities to adopt;”

(e) paragraph 3 is replaced by the following:

"3. The Authority shall produce a report setting out the results of the peer review which shall be prepared by the peer review committee and adopted by the Board of Supervisors in accordance with Article 44(4). When drafting that report, the peer review committee shall consult the Management Board in order to maintain consistency with other peer review reports and to ensure a level playing field. The Management Board shall assess in particular whether the methodology has been applied in the same manner. The report shall explain and indicate the follow-up measures that are deemed appropriate proportionate and necessary as a result of the peer review. Those follow-up measures may be adopted in the form of guidelines and recommendations pursuant to Article 16 and opinions pursuant to Article 29(1)(a).

In accordance with Article 16(3), the competent authorities shall make every effort to comply with any guidelines and recommendations issued.

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

(f) the following paragraph 3a and 3b are inserted:

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

3b. The Authority shall undertake a follow up report after two years of the publication of the peer review report. The follow up report shall be prepared by the peer review committee and adopted by the Board of Supervisors in accordance with Article 44(4). When drafting that report, the peer review committee shall consult the Management Board in order to maintain consistency with other follow up reports. The follow up report shall include an assessment of, but shall not be limited to, the adequacy and effectiveness of the actions undertaken by the competent authorities that are subject to the peer review in response to the follow up measures of the peer review report."

(3c...)

(g) paragraph 4 is replaced by the following:

"4. The Authority shall publish the main findings of the report referred to in paragraph 3 and of the follow-up report referred to in paragraph 3b, unless it is considered that publication would involve risks to the stability of the financial system. If the competent authority that is subject to the peer review is concerned that the publication of the main findings of the reports would pose risks to the stability of the financial system, it shall have the possibility to refer the matter to the Board of Supervisors. The Board of Supervisors may decide by simple majority not to publish these extracts. ";

(h) paragraph 5 is inserted:

5. For the purposes of this Article the Management Board shall make a proposal for a peer review work plan for the coming two years, which shall inter alia reflect the lessons learnt from the past peer review processes and the discussions of the coordination group referred to in Art 29(1)aa. 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.

(123) in Article 31a new paragraph is added:

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

(124...)

(31b...)

(125) in Article 32 a new paragraph 2a is inserted:

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

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

(126) Article 33 is amended as follows:

paragraph 2 is replaced by the following:

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

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

"2a. The Authority shall monitor with a particular focus on their implications for financial stability, market integrity, investor protection or the functioning of the internal market, relevant regulatory and supervisory developments and enforcement practices and market developments to the extent they are relevant to risk-based equivalence assessments in third countries for which equivalence decisions have been adopted by the Commission pursuant to the acts referred to in Article 1(2).

Furthermore, it shall verify whether the criteria, on the basis of which those equivalence decisions have been taken and any conditions set out therein, are still fulfilled.

The Authority may liaise with relevant authorities in the third countries. The Authority shall submit a confidential report to the Commission summarising such monitoring activities on an annual basis. It shall take into account the market relevance of the third countries concerned

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

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

- a) the mechanisms which would allow the Authority to obtain relevant information, including information on the regulatory regime, as well as the supervisory approach, relevant market developments and any changes that may affect the decision on equivalence;
- b) to the extent necessary for the follow up of such decisions, the procedures concerning the coordination of supervisory activities including, where necessary, participation in on-site inspections.

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

(2c) The Authority may develop model administrative arrangements, with a view to establishing consistent, efficient and effective supervisory practices within the Union and to strengthening international supervisory coordination. In accordance with Article 16(3), the competent authorities shall endeavour to follow such model arrangements.

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

(127...)

(128) Article 35 is amended as follows:

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

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

The information provided shall be accurate, complete and submitted without undue delay.

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

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

paragraph 5 is replaced by the following:

"5. Where information requested in accordance with paragraph 1 is not available or is not made available by the competent authorities without undue delay, the Authority may address a duly justified and reasoned request to any of the following:

- (a) other supervisory authorities with supervisory functions,;
- (b) to the ministry responsible for finance in the Member State concerned where it has at its disposal prudential information,;
- (c) to the national central bank or to the statistical office of the Member State concerned;
- (d) to the statistical office of the Member State concerned..

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

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

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

(130) Article 37 is amended as follows:

- (a) in paragraph 4 the last sentence of the first subparagraph is replaced by the following:

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

(b) in paragraph 5, the following subparagraphs are added:

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

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

(131) Article 39 is replaced by the following:

*"Article 39*

*Decision making procedure*

"1. The Authority shall act in accordance with paragraphs 2 to 6 when adopting decisions provided for in this Regulation

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

3. The decisions of the Authority shall state the reasons on which they are based.
4. The addressees of decisions of the Authority shall be informed of the legal remedies available under this Regulation.
5. Where the Authority has taken a decision pursuant to Article 18(3) or Article 18(4), it shall review that decision at appropriate intervals.
6. The adoption of the decisions which the Authority takes pursuant to Articles 17, 18 or 19 shall be made public. The publication shall disclose the identity of the competent authority or financial market participant concerned and the main content of the decision, unless such publication is in conflict with the legitimate interest of financial market participants or with the protection of their business secrets or could seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system of the Union.";

(132) Article 40 is amended as follows:

paragraph 1 is amended as follows:

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

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

in paragraph 6, the second subparagraph is deleted;

the following paragraph 7 is added:

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

(133) Article 41 is replaced by the following:

*"Article 41*

*Internal committees*

(134) The Board of Supervisors may establish internal committees for specific tasks attributed to it. The Board of Supervisors may provide for the delegation of certain clearly defined tasks and decisions to internal committees, or to the Management Board. In relation to Art. 17 and Art. 19, Board of Supervisors shall establish internal committees, at the proposal of the Management Board.”

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

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

(136) Article 43 is amended as follows:

paragraph 1 is replaced by the following:

"The Board of Supervisors shall give guidance to the work of the Authority and shall be in charge of taking the decisions referred to in chapter II. 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 preparations by the relevant internal committees or the Management Board."

paragraphs 2 and 3 are deleted;

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

"The Board of Supervisors shall adopt, before 30 September of each year, on the basis of a proposal by the Management Board, the work programme of the Authority for the coming year, and shall transmit it for information to the European Parliament, the Council and the Commission.";

Paragraph 5 is replaced by the following:

"5. The Board of Supervisors shall adopt, on the basis of a proposal by the Management 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, the Council, the Commission, the Court of Auditors and the European Economic and Social Committee by 15 June each year. The report shall be made public.";

paragraph 8 is deleted.

(137) Article 44 is amended as follows:

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

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

in paragraph 1, the fourth subparagraph is deleted;

paragraph 4 is replaced by the following:

"4. With regard to the decisions in accordance with Article 17, Article 19 and Article 30 the Board of Supervisors shall vote on the proposed decisions in a written procedure. The voting members of the Board of Supervisors shall have fifteen (15) working days to vote. Each voting member shall have one vote. The proposed decision will be considered adopted unless a simple majority of voting members of the Board of Supervisors objects. Abstentions will be counted as approvals or as objections, and will not be considered when calculating the number of votes cast. If two voting members of the Board of Supervisors object to the written procedure, the draft decision will be discussed and decided on by the Board of Supervisors in accordance with the procedure set out in paragraph 1 .

(6) The non-voting members and the observers shall not participate in any discussions within the Board of Supervisors relating to individual financial institutions, unless otherwise provided for in Article 75(3) or in the acts referred to in Article 1(2).

This paragraph shall not apply to the Chairperson, the fulltime members of the Management Board

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

"SECTION 2

MANAGEMENT BOARD"

(139) Article 45 is replaced by the following:

*"Article 45*

*Composition*

1. The Management Board shall be composed of the Chairperson and six members of the Board of Supervisors, elected by and from the voting members of the Board of Supervisors, and two fulltime members.
2. The Chairperson shall assign clearly defined policy and managerial tasks to each of the full time members. One of the fulltime members shall be assigned responsibilities for budgetary matters and for matters relating to the work programme of the Authority ("Member in charge ") also acting as a Vice Chairperson and carrying out the tasks of the Chairperson in his or her absence or reasonable impediment, in accordance with this Regulation. One of the fulltime members shall be assigned responsibilities for matters relating to the tasks of direct supervision .
3. The fulltime members shall be selected on the basis of merit, skills, knowledge of financial institutions and markets, and experience relevant to financial supervision and regulation. The full time members shall have extensive management experience. The selection shall be based on an open call for candidates, to be published in the Official Journal of the European Union, following which the Board of Supervisors shall draw up a shortlist of qualified candidates.

4. The shortlist shall be submitted to the European Parliament for approval. Following the approval of that shortlist, the Council shall adopt a decision to appoint the fulltime e members of the Management Board.
5. Where a fulltime member of the Management Board no longer fulfils the conditions set out in Article 46 or has been found guilty of serious misconduct, the Council may, on a proposal from the Commission which has been approved by the European Parliament, adopt a decision to remove him or her from office.
6. The term of office of the fulltime members shall be 5 years and shall be renewable once. In the course of the 9 months preceding the end of the 5-year term of office of the fulltime member, the Board of Supervisors shall evaluate:
  - (a) the results achieved in the first term of office and the way in which they were achieved;
  - (b) the Authority's duties and requirements in the coming years.

Taking into account the evaluation, the Board of Supervisors shall submit the list of the fulltime members to be renewed to the Council. Based on this list and taking into account the evaluation, the Council may extend the term of office of the fulltime members."

7. Other than the Chairperson and the fulltime members, each member of the Management Board elected by the Board of Supervisors shall have an alternate, who may replace him or her if he or she is prevented from attending. In a specific situation where a conflict of interest may arise in relation to Article 17, Article 19 and Article 30, the Board of Supervisors shall nominate a replacement without any delay.

8. The term of office of the members elected by the Board of Supervisors shall be two-and-a-half years. The term may be extended once. The composition of the Management Board shall be gender balanced and proportionate and shall reflect the Union as a whole. Mandates shall be overlapping and an appropriate rotating arrangement shall apply.”

(140) the following Article 45a is inserted:

"Article 45a

Decision-making

1. Decisions by the Management Board shall be adopted by simple majority of its members whilst striving for consensus. Each member shall have one vote. The Chairperson shall be a non voting member, except in the event of a tie, when he or she shall have a casting vote.
2. Except for matters in relation to the Art 17 and 19 the representative of the Commission shall participate in meetings of the Management Board. The Commission shall participate without a right to vote, save for matters referred to in Article 63, where he or she shall have a voting right.
3. The Management Board shall adopt and make public its rules of procedure.
4. Meetings of the Management Board shall be convened by the Chairperson at his own initiative or at the request of one of its members, and shall be chaired by the Chairperson.

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

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

(141 article 45b...)

(149a) the following Article 45c is inserted:

*"Art 45c*

*Coordination Groups*

The Management Board may set up coordination groups on its own initiative or on the request by a competent authority. All competent authorities shall be participants of the coordination groups. The meetings shall be based on submissions from the competent authorities and any issues identified by the Authority. In relation to Article 29(1)aa, the groups shall be chaired by a member of the Management Board. Each year the respective member of the Management Board in charge of the coordination group shall report to the Board of Supervisors on the main elements of the discussions and findings and - if deemed relevant- make a suggestion for a regulatory follow up or a peer review in the respective area."

(142) Article 46 is replaced by the following:

*"Article 46*

*Independence*

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

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

(143) Article 47 is replaced by the following:

*"Article 47*

*Tasks*

"1. The Management Board shall ensure that the Authority carries out its mission and performs the tasks assigned to it in accordance with this Regulation. It shall take all necessary measures, notably the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Authority, in accordance with this Regulation.

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

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

3a. The Management Board may examine, give an opinion and make proposals on all matters to be decided by the Board of Supervisors after discussion at the relevant internal committee, save for peer reviews according to Article 30.

(3b...)

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

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

6. The Management Board shall propose an annual report on the activities of the Authority, including on the Chairperson's duties to the Board of Supervisors for approval.

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

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

9. The Member in charges shall have the following tasks:

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

(b) to take all necessary measures, notably the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Authority, in accordance with this Regulation;

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

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

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

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

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

(144...)

(145) Article 48 is amended as follows:

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

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

paragraph 2 is replaced by the following:

"2. The Chairperson shall be selected on the basis of merit, skills, knowledge of financial institutions and markets, and of experience relevant to financial supervision and regulation, following an open call for candidates to be published in the Official Journal of the European Union. The Board of Supervisors shall draw up a shortlist of qualified candidates for the position of the Chairperson .

The shortlist of candidates for the position of the Chairperson shall be submitted to the European Parliament for approval. Following the approval of the shortlist, the Council shall adopt a decision to appoint the Chairperson.

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

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

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

paragraph 5 is deleted;

(146) the following Article 49a is inserted:

*"Article 49a*

*Expenses*

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

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

(148) Article 54 is amended as follows:

(a) in paragraph 2 , the following indent is added:

" — consumer and investor protection issues;" ;

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

(c....)

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

"2. One member of the Management Board, the representative of the Commission and the ESRB shall be invited to the meetings of the Joint Committee, as well as of any Sub-Committees referred to in Article 57, as observers.";

(150) Article 58 is amended as follows:

paragraph 3 is replaced by the following:

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

paragraph 5 is replaced by the following:

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

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

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

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

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

(153) : In Article 62 paragraph 1(d) and (e) are inserted :

- (d) any voluntary contribution from Member States or observers Voluntary contributions from Members States and observers shall not be accepted if such acceptance would cast doubt on the independence and impartiality of the Authority. Voluntary contributions that constitute compensation for the cost of tasks delegated by a competent authority to the Authority shall not be considered to cast doubt on the independence of the latter.
- ) Agreed charges for publications, training and for any other services provided by the Authority where they have been specifically requested by one or more competent authorities.

(154) Article 63 is replaced by the following:

*"Article 63*

*Establishment of the Budget*

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

ESMA's expenditure and fees relating to the tasks and powers referred to in Article 44b (1) shall be separately identifiable within the statement of estimates referred to in the first subparagraph

The annual accounts of ESMA drawn up and published in accordance with Article 64(6) shall include the income and expenses related to the tasks referred to in Article 44b(1).

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

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

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

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

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

5. The Management Board shall, without delay, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of its budget, in particular any project relating to property, such as the rental or purchase of buildings.";

(155) Article 64 is replaced by the following:

*"Article 64*

*Implementation and control of the budget*

1. The Member in charge shall act as authorising officer and shall implement the Authority's budget.
2. The Authority's accounting officer shall send the provisional accounts to the Commission's accounting officer and to the Court of Auditors by 1 March of the following year.
3. The Authority's accounting officer shall send by 1 March of the following year the required accounting information for consolidation purposes to the accounting officer of the Commission, in the manner and format laid down by that accounting officer.
4. The Authority's accounting officer shall send the report on budgetary and financial management to the members of the Board of Supervisors, the European Parliament, the Council and the Court of Auditors by 31 March of the following year.
5. After receiving the observations of the Court of Auditors on the provisional accounts of the Authority in accordance with Article 148 of the Financial Regulation, the Authority's accounting officer shall draw up the Authority's final accounts. The Member in charge shall send them to the Board of Supervisors, which shall deliver an opinion on these accounts.

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

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

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

8. The Member in charge shall send the Court of Auditors a reply to the latter's observations by 30 September. He shall also send a copy of that reply to the Management Board and the Commission.

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

10. The European Parliament, following a recommendation from the Council acting by qualified majority, shall, before 15 May of the year N + 2, grant a discharge to the Authority for the implementation of the budget for the financial year N.";

(156) Article 65 is replaced by the following:

*"Article 65*

*Financial Rules*

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

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

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

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

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

(158) Article 68 is amended as follows:

paragraphs 1 and 2 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 the full time members of the Management Board, the Chairperson,

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

paragraph 4 is replaced by the following:

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

(159) Article 70 is amended as follows:

paragraph 1 is replaced by the following:

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

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

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

the following paragraph 2a is inserted:

"2a. The Management 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 Management Board and the Board of Supervisors or appointed by the competent authorities for that purpose, are subject to the requirements of professional secrecy equivalent to those in the previous paragraphs.

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

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

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

(160) Article 71 is replaced by the following:

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

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

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

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

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

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

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

(164) the following Article 75a is inserted:

*"Article 75a*

*Exercise of the delegation*

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

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

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

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

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

6. A delegated act adopted pursuant to Article 35c or Article 62(2a) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.";

(165) Article 76 is replaced by the following:

*"Article 76*

*Relationship with the CESR*

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

(166) new Article 77a is inserted:

## *Article 77a*

### *Transitional provisions*

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

The tasks and position of the Chairperson appointed in accordance with Regulation No 1095/2010 as last amended by Directive 2014/51/EU and in office on [PO: please insert date 3 months after the entry into force of this Regulation] shall continue until its expiry.

The tasks and position of the members of the Management Board appointed in accordance with Regulation No 1095/2010 as last amended by Directive 2014/51/EU and in office on [PO: please insert date 3 months after the entry into force of this Regulation] shall cease on that date."

*Technical issues still need to be checked in relation to CTP [Article 6]*

### *Amendments to Regulation (EU) No 600/2014 on markets in financial instruments*

Regulation (EU) No 600/2104 is amended as follows:

Article 1 is amended as follows:

in paragraph 1, the following point (g) is added:

'(g) the authorisation and supervision of CTP ;

Article 2(1) is amended as follows:

(35) ‘consolidated tape provider’ or ‘CTP’ means a person authorised under this Regulation to provide the service of collecting trade reports for financial instruments listed in Articles 6, 7, 10, 12 and 13, 20 and 21 from regulated markets, MTFs, OTFs and APAs and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument;

the following Title IVa is inserted:

‘TITLE IVa

*CONSOLIDATED TAPE PROVIDER*

CHAPTER 1

Authorisation of data reporting service providers

*Article 27a*

*Requirement for authorisation*

1. The operation of a CTP as a regular occupation or business shall be subject to prior authorisation by ESMA in accordance with this Title.
2. An investment firm or a market operator operating a trading venue may also provide the services of a CTP, subject to the prior verification by ESMA that the investment firm or the market operator comply with this Title. The provision of those services shall be included in their authorisation.

3. ESMA shall establish a register of all CTPs in the Union. The register shall be publicly available and shall contain information on the services for which the CTP is authorised and it shall be updated on a regular basis.

4. Where ESMA has withdrawn an authorisation in accordance with Article 27d, that withdrawal shall be published in the register for a period of 5 years.

5. CTPs shall provide their services under the supervision of ESMA. ESMA shall regularly review the compliance of CTP providers with this Title. ESMA shall monitor that CTPs comply at all times with the conditions for initial authorisation established under this Title.

Article 27b is replaced by the following:

*Article 27b*

*Authorisation of CTPs*

1. CTPs shall be authorised by ESMA for the purposes of Title IVa where:

- (a) the CTP is a legal person established in the Union; and
- (b) the CTP meets the requirements laid down in Title IVa.

2. The authorisation referred to in paragraph 1 shall specify the services which the CTP is authorised to provide.

3. An authorised CTP shall comply at all times with the conditions for authorisation referred to in Title IVa. An authorised CTP shall, without undue delay, notify ESMA of any material changes to the conditions for authorisation.

4. The authorisation referred to in paragraph 1 shall be effective and valid for the entire territory of the Union and shall allow the CTP to provide the services for which it has been authorised, throughout the Union.”

*Article 27c*

*Procedures for granting and refusing applications for authorisation*

1. The applicant consolidated tape provider shall submit an application providing all information necessary to enable ESMA to confirm that the consolidated tape provider has established, at the time of initial authorisation, all the necessary arrangements to meet its obligations under the provisions of this Title, including a programme of operations setting out, inter alia, the types of services envisaged and the organisational structure..

2. ESMA shall assess whether the application for authorisation is complete within 20 working days of receipt of the application.

Where the application is not complete, ESMA shall set a deadline by which the consolidated tape provider is to provide additional information.

After assessing an application as complete, ESMA shall notify the consolidated tape provider accordingly.

3. ESMA shall, within six months from the receipt of a complete application, assess the compliance of the consolidated tape provider ovider with this Title and shall adopt a fully reasoned decision granting or refusing authorisation and shall notify the applicant consolidated tape provider accordingly within five working days.

4. ESMA shall develop draft regulatory technical standards to determine:

(a) the information to be provided to it under paragraph 6, including the programme of operations;

(b) the information included in the notifications under Article 27b(3).

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

8. ESMA shall develop draft implementing technical standards to determine standard forms, templates and procedures for the notification or provision of information provided for in paragraph 2 of this Article and in Article 27e(3)..

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

#### *Article 27d*

#### *Withdrawal of authorisation*

1. ESMA may withdraw the authorisation of a consolidated tape provider where the latter:

(a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has provided no services for the preceding six months;

(b) obtained the authorisation by making false statements or by any other irregular means;

(c) no longer meets the conditions under which it was authorised;

(d) has seriously and systematically infringed the provisions of this Regulation.

2. ESMA shall, without undue delay, notify the competent authority in the Member State where the consolidated tape provider is established of a decision to withdraw the authorisation of a consolidated tape provider ';

### *Article 27e*

#### *Requirements for the management body of a consolidated tape provider*

1. The management body of a consolidated tape provider data reporting services provider shall at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties.

The management body shall possess adequate collective knowledge, skills and experience to be able to understand the activities of the consolidated tape provider . Each member of the management body shall act with honesty, integrity and independence of mind to effectively challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making where necessary.

Where a market operator seeks authorisation to operate a CTP pursuant to Article 27c and the members of the management body of the CTP are the same as the members of the management body of the regulated market, those persons are deemed to comply with the requirement laid down in the first subparagraph.

2. Consolidated tape provider shall notify to ESMA all members of its management body and of any changes to its membership, along with all information needed to assess whether the entity complies with paragraph 1.

3. The management body of a consolidated tape provider shall define and oversee the implementation of the governance arrangements that ensure effective and prudent management of an organisation including the segregation of duties in the organisation and the prevention of conflicts of interest, and in a manner that promotes the integrity of the market and the interest of its clients.

4. ESMA shall refuse authorisation if it is not satisfied that the person or the persons who shall effectively direct the business of the consolidated tape provider are of sufficiently good repute, or if there are objective and demonstrable grounds for believing that proposed changes to the management of the provider pose a threat to its sound and prudent management and to the adequate consideration of the interest of its clients and the integrity of the market.

5. ESMA shall develop draft regulatory technical standards [PO: Please insert date 24 months after entry into force] for the assessment of the suitability of the members of the management body described in paragraph 1, taking into account different roles and functions carried out by them and the need to avoid conflicts of interest between members of the management body and users of the CTP .

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

## Chapter 2

### CONDITIONS FOR CTPS

#### *Article 27g*

##### *Organisational requirements for CTPs*

1. A CTP shall have adequate policies and arrangements in place to collect the information made public in accordance with Articles 6 and 20, consolidate it into a continuous electronic data stream and make the information available to the public as close to real time as is technically possible, on a reasonable commercial basis.

That information shall include, at least, the following details:

- (a) the identifier of the financial instrument;
- (b) the price at which the transaction was concluded;
- (c) the volume of the transaction;
- (d) the time of the transaction;
- (e) the time the transaction was reported;
- (f) the price notation of the transaction;
- (g) the code for the trading venue the transaction was executed on, or where the transaction was executed via a systematic internaliser the code 'SI' or otherwise the code 'OTC';

- (h) where applicable, the fact that a computer algorithm within the investment firm was responsible for the investment decision and the execution of the transaction;
- (i) if applicable, an indicator that the transaction was subject to specific conditions;
- (j) if the obligation to make public the information referred to in Article 3(1) was waived in accordance with point (a) or (b) of Article 4(1), a flag to indicate which of those waivers the transaction was subject to.

The information shall be made available free of charge 15 minutes after the CTP has published it. The CTP shall be able to efficiently and consistently disseminate such information in a way that ensures fast access to the information, on a non-discriminatory basis and in formats that are easily accessible and utilisable for market participants.

2. A CTP shall have adequate policies and arrangements in place to collect the information made public in accordance with Article 10 and Article 21, consolidate it into a continuous electronic data stream and make following information available to the public as close to real time as is technically possible, on a reasonable commercial basis including, at least, the following details:

- (a) the identifier or identifying features of the financial instrument;
- (b) the price at which the transaction was concluded;
- (c) the volume of the transaction;
- (d) the time of the transaction;
- (e) the time the transaction was reported;

(f) the price notation of the transaction;

(g) the code for the trading venue the transaction was executed on, or where the transaction was executed via a systematic internaliser the code 'SI' or otherwise the code 'OTC';

(h) if applicable, an indicator that the transaction was subject to specific conditions.

The information shall be made available free of charge 15 minutes after the CTP has published it. The CTP shall be able to efficiently and consistently disseminate such information in a way that ensures fast access to the information, on a non-discriminatory basis and in generally accepted formats that are interoperable and easily accessible and utilisable for market participants.

3. The CTP shall ensure that the data provided is consolidated from all the regulated markets, MTFs, OTFs and APAs and for the financial instruments specified by regulatory technical standards under point (c) of paragraph 8.

4. The CTP shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest. In particular, a market operator or an APA, who also operate a consolidated tape, shall treat all information collected in a non-discriminatory fashion and shall operate and maintain appropriate arrangements to separate different business functions.

5. The CTP shall have sound security mechanisms in place designed to guarantee the security of the means of transfer of information and to minimise the risk of data corruption and unauthorised access. The CTP shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

ESMA shall develop draft regulatory technical standards to determine data standards and formats for the information to be published in accordance with Articles 6, 10, 20 and 21 , including financial instrument identifier, price, quantity, time, price notation, venue identifier and indicators for specific conditions the transactions was subject to as well as technical arrangements promoting an efficient and consistent dissemination of information in a way ensuring for it to be easily accessible and utilisable for market participants as referred to in paragraphs 1 and 2, including identifying additional services the CTP could perform which increase the efficiency of the market.

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

6. The Commission shall adopt delegated acts in accordance with Article 89 clarifying what constitutes a reasonable commercial basis to provide access to data streams as referred to in paragraphs 1 and 2 of this Article.

7. ESMA shall develop draft regulatory technical standards specifying:

- (a) the means by which the CTP may comply with the information obligation referred to in paragraphs 1 and 2;
- (b) the content of the information published under paragraphs 1 and 2;
- (c) the financial instruments data of which must be provided in the data stream and for non-equity instruments the trading venues and APAs which need to be included;

(d) other means to ensure that the data published by different CTPs is consistent and allows for comprehensive mapping and cross-referencing against similar data from other sources, and is capable of being aggregated at Union level;

(e) the concrete organisational requirements laid down in paragraphs 4 and 5.

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

the following Title VIa is inserted:

*TITLE VIa*

*ESMA powers and competences*

*CHAPTER 1*

COMPETENCES AND PROCEDURES

*Article 38a*

*Exercise of ESMA's powers*

The powers conferred on ESMA or any official of or other person authorised by ESMA by Articles 38b to 38e shall not be used to require the disclosure of information or documents which are subject to legal privilege.

*Article 38b*

*Request for information*

1. ESMA may by simple request or by decision require the following persons to provide all information to enable ESMA to carry out its duties under this Regulation:

- (a) a CTP, and an investment firm or a market operator operating a trading venue to operate the data reporting services of a CTP or and the persons that control them or are controlled by them;
- (b) the managers of the persons referred to in point (a);
- (c) the auditors and advisors of the persons referred to in point (a);

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

- (a) refer to this Article as the legal basis of that request;
- (b) state the purpose of the request;
- (c) specify the information required;
- (d) include a time limit within which the information is to be provided;
- (e) include a statement that there is no obligation on the person from whom the information is requested to provide that information but that in case of a voluntary reply to the request, the information provided must not be incorrect or misleading;
- (f) indicate the amount of the fine to be issued in accordance with Article 38e where the information provided is incorrect or misleading.

3. When requiring to supply information under paragraph 1 by decision, ESMA shall:

- (a) refer to this Article as the legal basis of that request;
- (b) state the purpose of the request;
- (c) specify the information required;
- (d) set a time limit within which the information is to be provided;
- (e) indicate the periodic penalty payments provided for in Article 38g where the production of the required information is incomplete;
- (f) indicate the fine provided for in Article 38f, where the answers to questions asked are incorrect or misleading;
- (g) indicate the right to appeal the decision before ESMA's Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union ('Court of Justice') in accordance with Articles 60 and 61 of Regulation (EU) No 1095/2010.

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

5. ESMA shall, without delay, send a copy of the simple request or of its decision to the competent authority of the Member State where the persons referred to in paragraph 1 concerned by the request for information are domiciled or established.

## *Article 38c*

### *General investigations*

1. In order to carry out its duties under this Regulation, ESMA may conduct necessary investigations of persons referred to in Article 38b(1). To that end, the officials and other persons authorised by ESMA shall be empowered to:

- (a) examine any records, data, procedures and any other material relevant to the execution of its tasks irrespective of the medium on which they are stored;
- (b) take or obtain certified copies of or extracts from such records, data, procedures and other material;
- (c) summon and ask any person referred to in Article 38b(1) or their representatives or staff for oral or written explanations on facts or documents relating to the subject matter and purpose of the inspection and to record the answers;
- (d) interview any other natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;
- (e) request records of telephone and data traffic.

2. The officials and other persons authorised by ESMA for the purposes of the investigations referred to in paragraph 1 shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the investigation. That authorisation shall also indicate the periodic penalty payments provided for in Article 38i where the production of the required records, data, procedures or any other material, or the answers to questions asked to persons referred to in Article 38b(1) are not provided or are incomplete, and the fines provided for in Article 38h, where the answers to questions asked to persons referred to in Article 38b(1) are incorrect or misleading.

3. The persons referred to in Article 38b(1) are required to submit to investigations launched on the basis of a decision of ESMA. The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 38i, the legal remedies available under Regulation (EU) No 1095/2010 and the right to have the decision reviewed by the Court of Justice.

4. In good time before an investigation referred to in paragraph 1, ESMA shall inform the competent authority of the Member State where the investigation is to be carried out of the investigation and of the identity of the authorised persons. Officials of the competent authority concerned shall, upon the request of ESMA, assist those authorised persons in carrying out their duties. Officials of the competent authority concerned may also attend the investigations upon request.

5. If a request for records of telephone or data traffic referred to in point (e) of paragraph 1 requires authorisation from a judicial authority according to applicable national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

6. Where a national judicial authority receives an application for the authorisation of a request for records of telephone or data traffic referred to in point (e) of paragraph 1, that authority shall verify the following:

- (a) the decision adopted by ESMA referred to in paragraph 3 is authentic;
- (b) any measures to be taken are proportionate and not arbitrary or excessive.

For the purposes of point (b), the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice following the procedure set out in Regulation (EU) No 1095/2010.

#### *Article 38d*

##### *On-site inspections*

1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary on-site inspections at any business premises of the persons referred to in Article 38b(1).
2. The officials and other persons authorised by ESMA to conduct an on-site inspection may enter any business premises of the persons subject to an investigation decision adopted by ESMA and shall have all the powers stipulated in Article 38b(1). They shall also have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.
3. In sufficient time before the inspection, ESMA shall give notice of the inspection to the competent authority of the Member State where the inspection is to be conducted. Where the proper conduct and efficiency of the inspection so require, ESMA, after informing the relevant competent authority, may carry out the on-site inspection without prior notice. Inspections in accordance with this Article shall be conducted provided that the relevant authority has confirmed that it does not object to those inspections.

4. The officials and other persons authorised by ESMA to conduct an on-site inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection and the periodic penalty payments provided for in Article 38g where the persons concerned do not submit to the inspection.

5. The persons referred to in Article 38b(1) shall submit to on-site inspections ordered by decision of ESMA. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the periodic penalty payments provided for in Article 38i, the legal remedies available under Regulation (EU) No 1095/2010 as well as the right to have the decision reviewed by the Court of Justice

6. Officials of, as well as those authorised or appointed by, the competent authority of the Member State where the inspection is to be conducted shall, at the request of ESMA, actively assist the officials and other persons authorised by ESMA. Officials of the competent authority of the Member State concerned may also attend the on-site inspections.

7. ESMA may also require competent authorities to carry out specific investigatory tasks and on-site inspections as provided for in this Article and in Article 38b(1) on its behalf.

8. Where the officials and other accompanying persons authorised by ESMA find that a person opposes an inspection ordered pursuant to this Article, the competent authority of the Member State concerned shall afford them the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, so as to enable them to conduct their on-site inspection.

9. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7 requires authorisation by a judicial authority according to national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

10. Where a national judicial authority receives an application for the authorisation of an on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7, that authority shall verify the following:

- (a) the decision adopted by ESMA referred to in paragraph 4 is authentic;
- (b) any measures to be taken are proportionate and not arbitrary or excessive.

For the purposes of point (b), the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice following the procedure set out in Regulation (EU) No 1095/2010.

#### *Article 38e*

##### *Exchange of information*

ESMA and the competent authorities shall, without undue delay, provide each other with the information required for the purposes of carrying out their duties under this Regulation.

*Article 38f*

*Professional secrecy*

The obligation of professional secrecy referred to in Article 76 of Directive 2014/65/EU shall apply to ESMA and all persons who work or who have worked for ESMA or for any other person to whom ESMA has delegated tasks, including auditors and experts contracted by ESMA.

*Article 38g*

*Supervisory measures by ESMA*

1. Where ESMA finds that a person listed in point (a) of Article 38a(1) has committed one of the infringements listed in Title IVa, it shall take one or more of the following actions:

- (a) adopt a decision requiring the person to bring the infringement to an end;
- (b) adopt a decision imposing fines pursuant to Articles 38h and 38i;
- (c) issue public notices.

2. When taking the actions referred to in paragraph 1, ESMA shall take into account the nature and seriousness of the infringement, having regard to the following criteria:

- (a) the duration and frequency of the infringement;
- (b) whether financial crime has been occasioned, facilitated or otherwise attributable to the infringement;

- (c) whether the infringement has been committed intentionally or negligently.
- (d) the degree of responsibility of the person responsible for the infringement;
- (e) the financial strength of the person responsible for the infringement, as indicated by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;
- (f) the impact of the infringement on investors' interests;
- (g) the importance of the profits gained, losses avoided by the person responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;
- (h) the level of cooperation of the person responsible for the infringement with ESMA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;
- (i) previous infringements by the person responsible for the infringement;
- (j) measures taken after the infringement by the person responsible for the infringement to prevent its repetition.

3. Without undue delay, ESMA shall notify any action taken pursuant to paragraph 1 to the person responsible for the infringement, and shall communicate it to the competent authorities of the Member States and to the Commission. It shall publicly disclose any such decision on its website within 10 working days from the date when it was adopted.

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

- (a) a statement affirming the right of the person responsible for the infringement to appeal the decision;
- (b) where relevant, a statement affirming that an appeal has been lodged and specifying that such an appeal does not have suspensive effect;
- (c) a statement asserting that it is possible for ESMA's Board of Appeal to suspend the application of the contested decision in accordance with Article 60(3) of Regulation (EU) No 1095/2010.

## *CHAPTER 2*

### ADMINISTRATIVE SANCTIONS AND OTHER MEASURES

#### *Article 38h*

##### *Fines*

1. Where in accordance with Article 38k(5), ESMA finds that any person has, intentionally or negligently, committed one of the infringements listed in Title IVa, it shall adopt a decision imposing a fine in accordance with paragraph 2 of this Article..

An infringement shall be considered to have been committed intentionally if ESMA finds objective factors which demonstrate that a person acted deliberately to commit the infringement.

2. The maximum amount of the fine referred to in paragraph 1 shall be EUR 200 000 or, in the Member States whose currency is not the euro, the corresponding value in the national currency. .

3. When determining the level of a fine pursuant to paragraph 1, ESMA shall take into account the criteria set out in Article 38g(2).

### *Article 38i*

#### *Periodic penalty payments*

1. ESMA shall, by decision, impose periodic penalty payments in order to compel:

(a) a person to put an end to an infringement in accordance with a decision taken pursuant to Article 38b(1)(a);

(b) a person referred to in Article 38b(1):

to supply complete information which has been requested by a decision pursuant to Article 38b;

to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by a decision pursuant to Article 38c;

to submit to an on-site inspection ordered by a decision taken pursuant to Article 38d.

2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed for each day of delay.

3. Notwithstanding paragraph 2, the amount of the periodic penalty payments shall be 3 % of the average daily turnover in the preceding business year, or, in the case of natural persons, 2 % of the average daily income in the preceding calendar year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.

4. A periodic penalty payment shall be imposed for a maximum period of six months following the notification of ESMA's decision. Following the end of the period, ESMA shall review the measure.

#### *Article 38j*

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

1. ESMA shall disclose to the public every fine and periodic penalty payment that has been imposed pursuant to Articles 38h and 38i unless such disclosure to the public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved. Such disclosure shall not contain personal data within the meaning of Regulation (EC) No 45/2001.

2. Fines and periodic penalty payments imposed pursuant to Articles 38h and 38i shall be of an administrative nature.

3. Where ESMA decides to impose no fines or penalty payments, it shall inform the European Parliament, the Council, the Commission, and the competent authorities of the Member State concerned accordingly and shall set out the reasons for its decision.

4. Fines and periodic penalty payments imposed pursuant to Articles 38h and 38i shall be enforceable.
5. Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out.
6. The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the European Union.

*Article 38k*

*Procedural rules for taking supervisory measures and imposing fines*

1. Where, in carrying out its duties under this Regulation, ESMA finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in Title IVa, ESMA shall appoint an independent investigation officer within ESMA to investigate the matter. The appointed officer shall not be involved or have been directly or indirectly involved in the supervision or the authorisation process of the consolidated tape provider concerned and shall perform its functions independently from ESMA.
2. The investigation officer referred to in paragraph 1 shall investigate the alleged infringements, taking into account any comments submitted by the persons who are subject to the investigations, and shall submit a complete file with his findings to ESMA.

3. In order to carry out its tasks, the investigation officer may exercise the power to request information in accordance with Article 38b and to conduct investigations and on-site inspections in accordance with Articles 38c and 38d.

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

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

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

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

8. On the basis of the file containing the investigation officer's findings and, when requested by the persons subject to the investigations, after having heard the those persons in accordance with Article 38l, ESMA shall decide if one or more of the infringements listed in Title IVa have been committed by the persons subject to the investigations and, in such a case, shall take a supervisory measure in accordance with Article 38m.

9. The investigation officer shall not participate in ESMA's deliberations or in any other way intervene in ESMA's decision-making process.

10. The Commission shall adopt delegated acts in accordance with Article 50 [PO: Please insert date 24 months after entry into force] by to specifying further the rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on the rights of the defence, temporal provisions, and the collection of fines or periodic penalty payments, and the limitation periods for the imposition and enforcement of fines and periodic penalty payments.

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

#### *Article 38l*

##### *Hearing of the persons concerned*

1. Before taking any decision pursuant to Articles 38g, 38h and 38i, ESMA shall give the persons subject to the proceedings the opportunity to be heard on its findings. ESMA shall base its decisions only on findings on which the persons subject to the proceedings have had an opportunity to comment.

The first subparagraph shall not apply if urgent action is needed in order to prevent significant and imminent damage to the financial system. In such a case ESMA may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.

2. The rights of the defence of the persons subject to investigations shall be fully respected in the proceedings. They shall be entitled to have access to ESMA's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or ESMA's internal preparatory documents.

#### *Article 38m*

#### *Review by the Court of Justice*

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

#### *Article 38n*

#### *Authorisation and supervisory fees*

1. ESMA shall charge fees to the consolidated tape providers in accordance with this Regulation and in accordance with the delegated acts adopted pursuant to paragraph 3. Those fees shall fully cover ESMA's necessary expenditure relating to the authorisation and supervision of consolidated tape providers and the reimbursement of any costs that the competent authorities may incur carrying out work pursuant to this Regulation, in particular as a result of any delegation of tasks in accordance with Article 38o.
2. The amount of an individual fee charged to a particular consolidated tape provider shall cover all administrative costs incurred by ESMA for its activities. It shall be proportionate to the turnover generated by the CTP.

3. The Commission shall adopt a delegated act in accordance with Article 50 by [PO: Please insert date 24 months after entry into force] by to specifying further the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid.'

### *Article 38o*

#### *Delegation of tasks by ESMA to competent authorities*

1. Where necessary for the proper performance of a supervisory task, ESMA may delegate specific supervisory tasks to the competent authority of a Member State in accordance with the guidelines issued by ESMA pursuant to Article 16 of Regulation (EU) No 1095/2010. Such specific supervisory tasks may, in particular, include the power to carry out requests for information in accordance with Article 38b and to conduct investigations and on-site inspections in accordance with Article 38c and Article 38d.
2. Prior to delegation of a task, ESMA shall consult the relevant competent authority about:
  - (a) the scope of the task to be delegated;
  - (b) the timetable for the performance of the task; and
  - (c) the transmission of necessary information by and to ESMA.
3. In accordance with the regulation on fees adopted by the Commission pursuant to Article 38n(3), ESMA shall reimburse a competent authority for costs incurred as a result of carrying out delegated tasks.
4. ESMA shall review the decision referred to in paragraph 1 at appropriate intervals. A delegation may be revoked at any time.

5. A delegation of tasks shall not affect the responsibility of ESMA and shall not limit ESMA's ability to conduct and oversee the delegated activity."; Article 50 is amended as follows:

paragraph 2 is replaced by the following:

'2. The power to adopt delegated acts referred to in Article 1(9), Article 2(2), Article 13(2), Article 15(5), Article 17(3), Article 19(2) and (3), Article 27c, Article 31(4), Article 40(8), Article 41(8), Article 42(7), Article 45(10) and Article 52(10) and (12) shall be conferred for an indeterminate period of time from 2 July 2014.';

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

'The delegation of power referred to in Article 1(9), Article 2(2), Article 13(2), Article 15(5), Article 17(3), Article 19(2) and (3), Article 27c, Article 31(4), Article 40(8), Article 41(8), Article 42(7), Article 45(10) and Article 52(10) and (12) may be revoked at any time by the European Parliament or by the Council.';

in paragraph 5, the first sentence is replaced by the following:

'A delegated act adopted pursuant to Article 1(9), Article 2(2), Article 13(2), Article 15(5), Article 17(3), Article 19(2) and (3), Article 27c, Article 31(4), Article 40(8), Article 41(8), Article 42(7), Article 45(10) and Article 52(10) or (12) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object.';

in Article 52, the following paragraphs 13 and 14 are added:

'13. The Commission shall, after consulting ESMA, present reports to the European Parliament and the Council on the functioning of the consolidated tape established in accordance with Title IVa. The report relating to Article 27d(1) shall be presented by 3 September 2019. The report relating to Article 27d(2) shall be presented by 3 September 2021.

The reports referred to in the first subparagraph shall assess the functioning of the consolidated tape against the following criteria:

- (a) the availability and timeliness of post trade information in a consolidated format capturing all transactions irrespective of whether they are carried out on trading venues or not;
- (b) the availability and timeliness of full and partial post trade information that is of a high quality, in formats that are easily accessible and usable for market participants and available on a reasonable commercial basis.

Where the Commission concludes that the CTPs have failed to provide information in a way that meets the criteria set out in the second subparagraph, the Commission shall attach a request to its report for ESMA to launch a negotiated procedure for the appointment through a public procurement process run by ESMA of a commercial entity operating a consolidated tape. ESMA shall launch the procedure after receiving the request from the Commission on the conditions specified in the Commission's request and in accordance with Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (\*\*).

14. The Commission shall, where the procedure outlined in paragraph 13 is initiated, adopt delegated acts in accordance with Article 50, by specifying measures in order to:

- (a) provide for the contract duration of the commercial entity operating a consolidated tape and the process and conditions for renewing the contract and the launching of new public procurement;
- (b) provide that the commercial entity operating a consolidated tape shall do so on an exclusive basis and that no other entity shall be authorised as a CTP in accordance with Article 27a;
- (c) empower ESMA to ensure adherence with tender conditions by the commercial entity operating a consolidated tape appointed through a public procurement;
- (d) ensure that the post-trade information provided by the commercial entity operating a consolidated tape is of a high quality, in formats that are easily accessible and usable for market participants and in a consolidated format capturing the entire market;
- (e) ensure that the post trade information is provided on a reasonable commercial basis, on both a consolidated and unconsolidated basis, and meets the needs of the users of that information across the Union;
- (f) ensure that trading venues and APAs shall make their trade data available to the commercial entity operating a consolidated tape appointed through a public procurement process run by ESMA at a reasonable cost;
- (g) specify arrangements applicable where the commercial entity operating a consolidated tape appointed through a public procurement fails to fulfil the tender conditions;

(h) specify arrangements under which CTPs authorised under Article 27a may continue to operate a consolidated tape where the empowerment provided for in point (b) of this paragraph is not used or, where no entity is appointed through the public procurement, until such time as a new public procurement is completed and a commercial entity is appointed to operate a consolidated tape.

\* Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

\*\* Regulation (EU, Euroatom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euroatom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).';

the following Articles 54a and 54b are inserted:

*'Article 54a*

*Transitional measures related to ESMA*

1. All competences and duties related to the supervisory and enforcement activity in the field of consolidated tape provider that are conferred on competent authorities pursuant to Article 67 of Directive 2014/65/EU shall be terminated on [PO: Please insert date 36 months after entry into force]. Those competences and duties shall be taken-up by ESMA on the same date.

2. Any files and working documents related to the supervisory and enforcement activity in the field of consolidated tape provider , including any ongoing examinations and enforcement actions, or certified copies thereof, shall be taken over by ESMA on the date referred to in paragraph 1.

However, an application for authorisation that has been received by competent authorities before [PO: Please insert date 30 months after entry into force] shall not be transferred to ESMA, and the decision to register or refuse registration shall be taken by the relevant authority.

3. The competent authorities referred to in paragraph 1 shall ensure that any existing records and working papers, or certified copies thereof, shall be transferred to ESMA as soon as possible and in any event by consolidated tape provider . Those competent authorities shall also render all necessary assistance and advice to ESMA to facilitate effective and efficient transfer and taking-up of supervisory and enforcement activity in the field of data reporting services providers.

4. ESMA shall act as the legal successor to the competent authorities referred to in paragraph 1 in any administrative or judicial proceedings that result from supervisory and enforcement activity pursued by those competent authorities in relation to matters that fall under this Regulation.

5. Any authorisation of a consolidated tape provider granted by a competent authority referred to in paragraph 1 shall remain valid after the transfer of competences to ESMA

*Article 54b*

*Relations with auditors*

1. Any person authorised within the meaning of Directive 2006/43/EC of the European Parliament and of the Council (\*), performing in a data reporting services provider the task described in Article 34 of Directive 2013/34/EU or Article 73 of Directive 2009/65/EC or any other task prescribed by law, shall have a duty to report promptly to ESMA any fact or decision concerning that undertaking of which that person has become aware while carrying out that task and which is liable to:

- (a) constitute a material infringement of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of data reporting services provider;
- (b) affect the continuous functioning of the data reporting services provider;
- (c) lead to refusal to certify the accounts or to the expression of reservations.

That person shall also have a duty to report any facts and decisions of which the person becomes aware in the course of carrying out one of the tasks referred to in the first subparagraph in an undertaking having close links with the consolidated tape provider within which he is carrying out that task.

2. The disclosure in good faith to the competent authorities, by persons authorised within the meaning of Directive 2006/43/EC, of any fact or decision referred to in paragraph 1 shall not constitute a breach of any contractual or legal restriction on disclosure of information and shall not involve such persons in liability of any kind.

\* Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).!

#### *Article 8*

*Amendments to Regulation (EU) No 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds*

Regulation (EU) 2016/1011 is amended as follows:

(1) In Article 21, paragraph 3 is replaced by the following:

“3. Following completion of the assessment referred to in point (b) of paragraph 2, the competent authority shall have the power to compel the administrator to continue publishing the benchmark until such time as:

- (a) the provision of the benchmark has been transitioned to a new administrator;
- (b) the benchmark can be ceased to be provided in an orderly fashion; or
- (c) the benchmark is no longer critical.

For the purposes of the first subparagraph, the period for which the competent authority may compel the administrator to continue to publish the benchmark shall not exceed 12 months.

By the end of that period, the competent authority shall review its decision to compel the administrator to continue to publish the benchmark and may, where necessary, extend the time period by an appropriate period not exceeding a further 12 months. The maximum period of mandatory administration shall not exceed 5 years in total.”

in Article 23, paragraphs 3 and 4 are replaced by the following :

“3. A supervised contributor to a critical benchmark that intends to cease contributing input data shall promptly notify the administrator thereof in writing. The administrator shall thereupon inform without delay its competent authority .

The competent authority of the critical benchmark where it is not the supervisor of the supervised contributors shall inform the competent authority of that supervised contributor, and where applicable ESMA thereof without delay. The administrator shall submit to its competent authority an assessment of the implications on the capability of the critical benchmark to measure the underlying market or economic reality, as soon as possible but no later than 14 days after the notification made by the supervised contributor.

4. Upon receipt of the assessment referred to in paragraphs 2 and 3, the competent authority of the administrator shall where applicable, promptly inform ESMA or the college established under Article 46 and shall, on the basis of that assessment make its own assessment on the capability of the benchmark to measure the underlying market and economic reality, taking into account the administrator's procedure for cessation of the benchmark established in accordance with Article 28(1).”;

paragraph 6 is amended as follows:

6. In the event that the competent authority, after the period specified in paragraph 5 and on the basis of its own assessment referred to in paragraph 4, considers that the representativeness of a critical benchmark is put at risk, it shall have the power to:

- (a) require supervised entities selected in accordance with paragraph 7 of this Article, including entities that are not yet contributors to the relevant critical benchmark, to contribute input data to the administrator in accordance with the administrator's methodology, the code of conduct referred to in Article 15 and other rules. Such requirement shall be in place for an appropriate period of time not exceeding 12 months from the date on which the initial decision requiring mandatory contribution was taken pursuant to paragraph 5 or, for those entities that are not yet contributors, from the date on which the decision requiring mandatory contribution is taken under this point;
- (b) extend the period of mandatory contribution by an appropriate period of time not exceeding 12 months, following a review under paragraph 9 of any measures adopted pursuant to point (a) of this paragraph;
- (c) determine the form in which, and the time by which, any input data is to be contributed without imposing an obligation on supervised entities to either trade or commit to trade;
- (d) require the administrator to change the methodology, the code of conduct referred to in Article 15 or other rules of the critical benchmark.

The maximum period of mandatory contribution under points (a) and (b) of the first subparagraph shall not exceed 5 years in total.

Paragraph 10 is amended as follows:

(10) In the event that a critical benchmark is to be ceased to be provided, each supervised contributor to that benchmark shall continue to contribute input data for a period of time determined by the competent authority, but not exceeding the maximum 5 year period laid down in the second subparagraph of paragraph 6

in Article 34, the following paragraph 1a is inserted:

“1a. Where one or more of the indices provided by the person referred to in paragraph 1 would qualify as critical benchmarks as defined in Article 20, paragraph 1(a) and (c), the application shall be addressed to ESMA.”;

Article 40 is replaced by the following:

- “1. For the purposes of this Regulation, ESMA shall be the competent authority for:  
  
administrators of critical benchmarks as referred to in Article 20, paragraph 1(a) and (c);
2. Each Member State shall designate the relevant competent authority responsible for carrying out the duties under this Regulation and shall inform the Commission and ESMA thereof.
3. A Member State that designates more than one competent authority in accordance with paragraph 2 shall clearly determine the respective roles of those competent authorities and shall designate a single authority to be responsible for coordinating the cooperation and the exchange of information with the Commission, ESMA and other Member States’ competent authorities.
4. ESMA shall publish on its website a list of the competent authorities designated in accordance with paragraphs 1 to 3.”;

in Title VI, the following Chapter 4 is inserted:

## CHAPTER 4

### *ESMA powers and competences*

#### *Section 1*

#### *Competences and procedures*

##### *Article 48a*

##### *Exercise of the powers by ESMA*

The powers conferred on ESMA, on any official of ESMA or on any other person authorised by ESMA by Articles 48b to 48d shall not be used to require the disclosure of information or documents that are subject to legal privilege.

##### *Article 48b*

##### *Request for information*

1. ESMA may by simple request or by decision require the following persons to provide all necessary information to enable ESMA to carry out its duties under this Regulation:

(a) persons involved in the provision of the critical referred benchmarks to in Article 20, paragraph 1(a) and (c)

(c) third parties to whom the persons referred to under (a) have outsourced functions or activities in accordance with Article 10;

(d) persons otherwise closely and substantially related or connected to the persons referred to under (a).

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

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

(b) state the purpose of that request;

(c) specify what information is required;

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

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

(f) indicate the amount of the fine to be issued in accordance with Article 48f where information provided is incorrect or misleading.

3. When requiring to supply information under paragraph 1 by decision, ESMA shall:

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

(b) state the purpose of that request;

(c) specify what information is required;

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

(e) indicate the periodic penalty payments provided for in Article 48g where the required information is incomplete;

(f) indicate the fine provided for in Article 48f, where the answers to the questions asked are incorrect or misleading;

(g) indicate the right to appeal the decision before ESMA's Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union ('Court of Justice') in accordance with Articles [ex60 Appeals] and [ex61 Action before the Court...] of Regulation (EU) No 1095/2010.

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

5. ESMA shall, without delay, send a copy of the simple request or of its decision to the competent authority of the Member State where the administrator or supervised contributor referred to in paragraph 1 concerned by the request for information is domiciled or established.

## *Article 48c*

### *General investigations*

1. In order to carry out its duties under this Regulation, ESMA may conduct necessary investigations of the persons referred to in Article 48b(1). To that end, the officials and other persons authorised by ESMA shall be empowered to:

- (a) examine any records, data, procedures and any other material relevant to the execution of its tasks, irrespective of the medium on which they are stored;
- (b) take or obtain certified copies of or extracts from such records, data, procedures and other material;
- (c) summon and ask any of those persons or their representatives or staff for oral or written explanations on facts or documents relating to the subject matter and purpose of the inspection and to record the answers;
- (d) interview any other natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;
- (e) request records of telephone and data traffic.

2. The officials and other persons authorised by ESMA for the purposes of the investigations referred to in paragraph 1 shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the investigation. That authorisation shall indicate the periodic penalty payments provided for in Article 48g where the production of the required records, data, procedures or any other material, or the answers to questions asked to the persons referred to in Article 48b(1) or are incomplete, and the fines provided for in Article 48f, where the answers to questions asked to those persons are incorrect or misleading.

3. The persons referred to in Article 48b(1) are required to submit to investigations launched on the basis of a decision of ESMA. The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 48g, the legal remedies available under Regulation (EU) No 1095/2010 and the right to have the decision reviewed by the Court of Justice.

4. In good time before an investigation referred to in paragraph 1, ESMA shall inform the competent authority of the Member State where the investigation is to be carried out of the investigation and of the identity of the authorised persons. Officials of the competent authority concerned shall, at the request of ESMA, assist those authorised persons in carrying out their duties. Officials of the competent authority concerned may attend the investigations upon request.

5. If a request for records of telephone or data traffic referred to in point (e) of paragraph 1 requires authorisation from a national judicial authority according to applicable national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

6. Where a national judicial authority receives an application for the authorisation of a request for records of telephone or data traffic referred to in point (e) of paragraph 5 that authority shall verify the following:

(a) the decision referred to in paragraph 3 is authentic;

(b) any measures to be taken are proportionate and not arbitrary or excessive.

For the purposes of point (b), the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice following the procedure set out in Article 61 of Regulation (EU) No 1095/2010.

#### Article 48d

##### *On-site inspections*

1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary on-site inspections at any business premises of the persons referred to in Article 48b(1).
2. The officials and other persons authorised by ESMA to conduct an on-site inspection may enter any business premises of the persons subject to an investigation decision adopted by ESMA and shall have all the powers stipulated in Article 48c(1). They shall have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.
3. In sufficient time before the inspection, ESMA shall give notice of the inspection to the competent authority of the Member State where the inspection is to be conducted. Where the proper conduct and efficiency of the inspection so require, ESMA, after informing the relevant competent authority, may carry out the on-site inspection without prior notice. Inspections in accordance with this Article shall be conducted provided that the relevant authority has confirmed that it does not object to those inspections.

4. The officials and other persons authorised by ESMA to conduct an on-site inspection shall exercise their powers upon production of a written authorisation, specifying the subject matter and purpose of the inspection and the periodic penalty payments provided for in Article 48g where the persons concerned do not submit to the inspection.
5. The persons referred to in Article 48b(1) shall submit to on-site inspections ordered by a decision of ESMA. That decision shall specify the subject matter and purpose of the inspection, the date on which it is to begin and indicate the periodic penalty payments provided for in Article 48g, the legal remedies available under Regulation (EU) No 1095/2010 as well as the right to have the decision reviewed by the Court of Justice.
6. Officials of, as well as those authorised or appointed by, the competent authority of the Member State where the inspection is to be conducted, shall, at the request of ESMA, actively assist the officials and other persons authorised by ESMA. Officials of that competent authority may also attend the on-site inspections upon request.
7. ESMA may also require competent authorities to carry out specific investigatory tasks and on-site inspections as provided for in this Article and in Article 48c(1) on its behalf. To that end, competent authorities shall enjoy the same powers as ESMA as set out in this Article and in Article 48c(1).
8. Where the officials and other accompanying persons authorised by ESMA find that a person opposes an inspection ordered pursuant to this Article, the competent authority of the Member State concerned shall afford them the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, to enable them to conduct their on-site inspection.
9. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7 requires authorisation by a national judicial authority according to the applicable national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

10. Where a national judicial authority receives an application for the authorisation of an on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7, that authority shall verify the following:

(a) the decision adopted by ESMA referred to in paragraph 4 is authentic;

(b) any measures to be taken are proportionate and not arbitrary or excessive.

For the purposes of point (b), the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity of the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice following the procedure set out in Article 61 Regulation (EU) No 1095/2010.

## SECTION 2

### ADMINISTRATIVE SANCTIONS AND OTHER MEASURES

#### *Article 48e*

##### *Supervisory measures by ESMA*

1. Where, in accordance with Article 48i(5), ESMA finds that a person has committed one of the infringements listed in Article 48f(2), it shall take one or more of the following actions:

- (a) adopt a decision requiring the person to bring the infringement to an end;
- (b) adopt a decision imposing fines pursuant to Article 48f;
- (c) issue public notices.

2. When taking the actions referred to in paragraph 1, ESMA shall take into account the nature and seriousness of the infringement, having regard to the following criteria:

- (a) the duration and frequency of the infringement;
- (b) whether financial crime has been occasioned, facilitated or otherwise attributable to the infringement;
- (c) whether the infringement has been committed intentionally or negligently.
- (d) the degree of responsibility of the person responsible for the infringement;
- (e) the financial strength of the person responsible for the infringement, as indicated by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;

- (f) the impact of the infringement on retail investors' interests;
- (g) the importance of the profits gained, losses avoided by the person responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;
- (h) the level of cooperation of the person responsible for the infringement with ESMA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;
- (i) previous infringements by the person responsible for the infringement;
- (j) measures taken after the infringement by the person responsible for the infringement to prevent its repetition.

3. Without undue delay, ESMA shall notify any action taken pursuant to paragraph 1 to the person responsible for the infringement, and shall communicate it to the competent authorities of the Member States and to the Commission. It shall publicly disclose any such action on its website within 10 working days from the date when it was adopted.

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

- (a) a statement affirming the right of the person responsible for the infringement to appeal the decision;
- (b) where relevant, a statement affirming that an appeal has been lodged and specifying that such an appeal does not have suspensive effect;
- (c) a statement asserting that it is possible for ESMA's Board of Appeal to suspend the application of the contested decision in accordance with Article 60(3) of Regulation (EU) No 1095/2010.

## *Article 48f*

### *Fines*

1. Where, in accordance with Article 48i(5), ESMA finds that any person has, intentionally or negligently, committed one or more of the infringements listed in paragraph 2, it shall adopt a decision imposing a fine in accordance with paragraph 3 of this Article.

An infringement shall be considered to have been committed intentionally if ESMA finds objective factors which demonstrate that a person acted deliberately to commit the infringement

2. The list of infringements referred to in paragraph 1 shall be the following:  
Infringements of Articles 4 - 16, 21, 23 - 29 and 34 of Regulation (EU) 2016/1011.

3. The maximum amount of the fine referred to in paragraph 1 shall be:

(67) (i) in the case of a legal person, EUR 1 000 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 30 June 2016, or 10 % of the total annual turnover of that legal person according to the last available financial statements approved by the management body, whichever is the higher;

(68) (ii) in the case of a natural person, EUR 500 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 30 June 2016.

Notwithstanding the first subparagraph, The maximum amount of the fine for infringements of point (d) of Article 11(1) or of Article 11(4) of Regulation (EU) 2016/1011 shall be EUR 250 000 or, in the Member States whose official currency is not the euro, the corresponding value in the national currency on 30 June 2016 or 2 % of the total annual turnover of that legal person according to the last available financial statements approved by the management body, whichever is the higher for legal persons, and EUR 100 000 or, in the Member States whose official currency is not the euro, the corresponding value in the national currency on 30 June 2016 for natural persons.

For the purposes of point (i), where the legal person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial accounts in accordance with Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

4. When determining the level of a fine pursuant to paragraph 1, ESMA shall take into account the criteria set out in Article 48e(2).

5. Notwithstanding paragraph 4, where the legal person has directly or indirectly benefited financially from the infringement, the amount of the fine shall be at least equal to that benefit.

6. Where an act or omission of an person constitutes more than one infringement listed in Article 48f(2), only the higher fine calculated in accordance with paragraph 3 and relating to one of those infringements shall apply.

*Article 48g*

*Periodic penalty payments*

1. ESMA shall, by decision, impose periodic penalty payments to compel:

(a) a person to put an end to an infringement in accordance with a decision taken pursuant to Article 48e(1)(a);

(b) persons referred to in Article 48b(1):

(i) to supply complete information which has been requested by a decision pursuant to Article 48b;

(ii) to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by a decision pursuant to Article 48c;

(iii) to submit to an on-site inspection ordered by a decision taken pursuant to Article 48d.

2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed for each day of delay.

3. Notwithstanding paragraph 2, the amount of the periodic penalty payments shall be 3 % of the average daily turnover in the preceding business year, or, in the case of natural persons, 2 % of the average daily income in the preceding calendar year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.

4. A periodic penalty payment shall be imposed for a maximum period of six months following the notification of ESMA's decision. Following the end of the period, ESMA shall review the measure.

#### *Article 48h*

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

1. ESMA shall disclose to the public every fine and every periodic penalty payment that has been imposed pursuant to Articles 48f and 48g, unless such disclosure to the public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved. Such disclosure shall not contain personal data within the meaning of Regulation (EC) No 45/2001.

2. Fines and periodic penalty payments imposed pursuant to Articles 48f and 48g shall be of an administrative nature.

3. Where ESMA decides not to impose any fines or penalty payments, it shall inform the European Parliament, the Council, the Commission and the competent authorities of the Member State concerned thereof and shall set out the reasons for its decision.

4. Fines and periodic penalty payments imposed pursuant to Articles 48f and 48g shall be enforceable.

Enforcement shall be governed by the rules of civil procedure in force in the Member State or third country in which it is carried out.

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

## SECTION 3

### PROCEDURES AND REVIEW

#### *Article 48i*

##### *Procedural rules for taking supervisory measures and imposing fines*

1. Where, in carrying out its duties under this Regulation, ESMA finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in Article 48f(2), ESMA shall appoint an independent investigation officer within ESMA to investigate the matter. The appointed officer shall not be involved or have been directly or indirectly involved in the supervision of the benchmarks to which the infringement relates and shall perform his functions independently from ESMA's Board of Supervisors.
2. The investigation officer referred to in paragraph 1 shall investigate the alleged infringements, take into account any comments submitted by the persons who are subject to the investigations, and shall submit a complete file with his findings to ESMA's Board of Supervisors.
3. In order to carry out his tasks, the investigation officer shall have the power to request information in accordance with Article 48b and to conduct investigations and on-site inspections in accordance with Articles 48c and 48d.
4. Where carrying out those tasks, the investigation officer shall have access to all documents and information that have been gathered by ESMA in its supervisory activities.

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

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

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

8. On the basis of the file containing the investigation officer's findings and, when requested by the persons concerned, after having heard those persons in accordance with Article 48j, ESMA shall decide if one or more of the infringements listed in Article 48f(1) has been committed by the persons subject to the investigations and, in such case, shall take a supervisory measure in accordance with Article 48e and impose a fine in accordance with Article 48f.

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

10. The Commission shall adopt delegated acts in accordance with Article 49 to specify the rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on rights of defence, temporal provisions, and the collection of fines or periodic penalty payments, and the limitation periods for the imposition and enforcement of fines and periodic penalty payments.

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

#### *Article 48j*

##### *Hearing of the persons subject to investigations*

1. Before taking any decision pursuant to Articles 48f, 48g and 48e, ESMA shall give the persons subject to the proceedings the opportunity to be heard on its findings. ESMA shall base its decisions only on findings on which the persons subject to the proceedings have had an opportunity to comment.
2. The first subparagraph shall not apply if urgent action pursuant to Article 48e is needed in order to prevent significant and imminent damage to the financial system. In such a case ESMA may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.
3. The rights of the defence of the persons subject to the proceedings shall be fully respected in the investigations. They shall be entitled to have access to ESMA's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or ESMA's internal preparatory documents.

*Article 48k*

*Review by the Court of Justice*

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

*SECTION 4*

FEES AND DELEGATION

*Article 48l*

*Supervisory fees*

1. ESMA shall charge fees to administrators in accordance with this Regulation and in accordance with the delegated acts adopted pursuant to paragraph 3. Those fees shall fully cover ESMA's necessary expenditure relating to the supervision of administrators and the reimbursement of any costs that the competent authorities may incur carrying out work pursuant to this Regulation in particular as a result of any delegation of tasks in accordance with Article 48m.
2. The amount of an individual fee charged to an administrator shall cover all administrative costs incurred by ESMA for its activities in relation to the supervision. It shall be proportionate to the turnover of the administrator.

3. The Commission shall adopt delegated acts in accordance with Article 49 to specify the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid.

#### *Article 48m*

##### *Delegation of tasks by ESMA to competent authorities*

1. Where necessary for the proper performance of a supervisory task, ESMA may delegate specific supervisory tasks to the competent authority of a Member State in accordance with the guidelines issued by ESMA pursuant to Article 16 of Regulation (EU) No 1095/2010. Such specific supervisory tasks may, in particular, include the power to carry out requests for information in accordance with Article 48b and to conduct investigations and on-site inspections in accordance with Article 48c and Article 48d.

By way of derogation from the first subparagraph, the authorisation of critical benchmarks shall not be delegated.

2. Prior to the delegation of a task in accordance with paragraph 1, ESMA shall consult the relevant competent authority about:

- (a) the scope of the task to be delegated;
- (b) the timetable for the performance of the task; and
- (c) the transmission of necessary information by and to ESMA.

3. ESMA shall reimburse a competent authority for costs incurred as a result of carrying out delegated tasks in accordance with the regulation on fees adopted by the Commission pursuant to Article 48l(3).

4. ESMA shall review any delegation made in accordance with paragraph 1 at appropriate intervals. A delegation may be revoked at any time.

5. A delegation of tasks shall not affect the responsibility of ESMA and shall not limit ESMA's ability to conduct and oversee the delegated activity."

#### *Article 48o*

##### *Transition measures related to ESMA*

1. All competences and duties related to the supervisory and enforcement activity regarding administrators referred to in Article 40(1) that are conferred on competent authorities shall be terminated on [PO: Please insert date 36 months after entry into force]. Those competences and duties shall be taken-up by ESMA on the same date.

2. Any files and working documents related to the supervisory and enforcement activity regarding administrators referred to in Article 40(1), including any ongoing examinations and enforcement actions, or certified copies thereof, shall be taken over by ESMA on the date referred to in paragraph 1.

3. Competent authorities shall ensure that any existing records and working papers, or certified copies thereof, shall be transferred to ESMA as soon as possible and in any event by [PO: Please insert date 36 months after entry into force]. Those competent authorities shall also render all necessary assistance and advice to ESMA to facilitate effective and efficient transfer and taking-up of supervisory and enforcement activity regarding administrators referred to in Article 40(1).

4. ESMA shall act as the legal successor to the competent authorities referred to in paragraph 1 in any administrative or judicial proceedings that result from supervisory and enforcement activity pursued by those competent authorities in relation to matters that fall under this Regulation.

5. Any authorisation of administrators of a critical benchmark, recognition in accordance with Article 32 and approval of endorsement in accordance with Article 33 granted by a competent authority referred to in paragraph 1 shall remain valid after the transfer of competences to ESMA.”;

In Art 51, a new paragraph 4a is inserted:

“4a. An existing benchmark designated as critical by an implementing act adopted by the Commission in accordance with Article 20 may be used in existing and new financial instruments, financial contracts, or measurement of the performance of an investment fund until 31 December 2021.

## *Article 10*

### *Transitional provisions*

4. Article 1. The procedure for the appointment of the members of the Management Board shall be published following the entry into force of Articles 1, 2 and 3. Until such time as all members of the Management Board take up their duties the Board of Supervisors and the Management Board shall continue carry out their tasks.
5. The Chairpersons appointed before the entry into force of Articles 1, 2 and 3 shall continue carrying out their tasks and duties until the end of their mandate. The Chairpersons to be appointed after entry into force of Articles 1, 2 and 3 shall be selected and appointed in accordance to the new appointment procedure.

## *Article 11*

### *Entry into force and entry into application*

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

It shall apply from [24 months after entry into force]

Articles 1, 2 and 3 shall apply as from [PO: please insert date 3 months after the date of entry into force], except for Article 62 of Article 1, Article 62 of Article 2 and Article 62 of Article 3 that shall apply from 1 January [PO: please insert date of 1 January of the year following the expiry of a one-year period after date of entry into force].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament  
The President

For the Council  
The President

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