

AMENDMENTS 001-381

by the Committee on Economic and Monetary Affairs

Report**Antolín Sánchez Presedo****A7-0163/2010**

Powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority

Proposal for a directive (COM(2009)0576 – C7-0251/2009 – 2009/0161(COD))

Amendment 1**Proposal for a directive – amending act****Recital 1***Text proposed by the Commission*

(1) The financial crisis in 2007/2008 exposed important shortcomings in financial supervision, both in particular cases and in relation to the financial system as a whole. **National** supervisory models have lagged behind the integrated and interconnected reality of European financial markets, in which many financial firms operate across borders **and offer financial services to businesses and consumers**. The crisis exposed shortcomings in the area of cooperation, coordination, consistent application of **Community** law and trust between national supervisors.

Amendment

(1) The financial crisis in 2007/2008 exposed important shortcomings in financial supervision, both in particular cases and in relation to the financial system as a whole. **Nationally based** supervisory models have lagged behind the integrated and interconnected reality of European financial markets, in which many financial firms operate across borders. The crisis exposed shortcomings in the area of cooperation, coordination, consistent application of **Union** law and trust between national supervisors.

Amendment 2

Proposal for a directive – amending act Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) Long before the financial crisis the European Parliament was already calling regularly for the reinforcement of a true level playing-field for all actors at the European level while pointing out important failures in the Union's supervision of ever more integrated financial markets (in its resolutions of 13 April 2000 on the Commission communication on implementing the framework for financial markets: Action Plan¹, of 25 November 2002 on prudential supervision rules in the European Union², of 11 July 2007 on financial services policy (2005-2010) – White Paper³, of 23 September 2008 with recommendations to the Commission on hedge funds and private equity⁴, of 9 October 2008 with recommendations to the Commission on Lamfalussy follow-up: future structure of supervision⁵, of 22 April 2009 on the amended proposal for a directive of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)⁶ and of 23 April 2009 on the proposal for a regulation of the European parliament and of the Council on Credit Rating Agencies⁷).

¹ OJ C 40, 7.2.2001, p. 453.

² OJ C 25 E, 29.1.2004, p. 394.

³ OJ C 175 E, 10.7.2008, p. xx.

⁴ OJ C 8 E, 14.1.2010, p. 26.

⁵ OJ C 9 E, 15.1.2010, p. 48.

⁶ Texts adopted, P6_TA(2009)0251.

⁷ Texts adopted, P6_TA(2009)0279.

Amendment 3

Proposal for a directive – amending act Recital 4

Text proposed by the Commission

(4) The European Council, in its conclusions of 19 June 2009, recommended that a European System of Financial Supervisors, comprising three new European Supervisory Authorities, be established. The system should be aimed at upgrading the quality and consistency of national supervision, strengthening oversight of cross border groups **and** establishing a European single rule book applicable to all financial institutions in the *Internal Market*. It emphasised that the European Supervisory Authorities should also have supervisory powers for credit rating agencies and invited the Commission to prepare concrete proposals on how the European System of Financial Supervisors could play a strong role in crisis situations.

Amendment

(4) The European Council, in its conclusions of 19 June 2009, recommended that a European System of Financial Supervisors, comprising three new European Supervisory Authorities, be established. The system should be aimed at upgrading the quality and consistency of national supervision, strengthening oversight of cross border groups, establishing a European single rule book applicable to all financial institutions in the *internal market and ensuring adequate harmonisation of criteria and methodology to be applicable by the competent authorities to assess the risk of credit institutions*. It emphasised that the European Supervisory Authorities (**ESA**) should also have supervisory powers for credit rating agencies and invited the Commission to prepare concrete proposals on how the European System of Financial Supervisors (**ESFS**) could play a strong role in crisis situations.

Justification

Technical standards should be proposed to ensuring a uniform application of the supervisors' review process and a common risk assessment through an adequate harmonisation of criteria and methodology to be applicable by the national supervisors to assess the risk of credit institutions.

Amendment 4

Proposal for a directive – amending act Recital 6

Text proposed by the Commission

(6) In order for the **European System of Financial Supervisors** to work effectively, changes to **Community** legislation in the field of operation of the three Authorities

Amendment

(6) In order for the **ESFS** to work effectively, changes to **Union** legislation in the field of operation of the three Authorities are necessary. These changes

are necessary. These changes concern the definition of the scope of certain powers of the **European Supervisory Authorities**, the integration of certain powers *in existing processes* established in *relevant Community* legislation and amendments to ensure a smooth and effective functioning in the context of the **European System of Financial Supervisors**.

concern the definition of the scope of certain powers of the **ESA**, the integration of certain powers established in **Union** legislation and amendments to ensure a smooth and effective functioning in the context of the **ESFS**.

Amendment 5

Proposal for a directive – amending act Recital 7

Text proposed by the Commission

(7) The establishment of the three **European Supervisory Authorities (ESA)** should be accompanied by the development of a single *set of harmonised rules so as* to ensure uniform application and thus contribute to a more effective functioning of the *Internal Market*. **The Regulations establishing the ESFS provide that the European Supervisory Authorities may develop draft technical standards in the areas specifically set out in the relevant legislation, to be submitted to the Commission for adoption by means of Regulations or Decisions. The relevant legislation should define those areas where the European Supervisory Authorities are empowered to develop draft technical standards.**

Amendment

(7) The establishment of the three **ESA** should be accompanied, *inter alia*, by the development of a single **rule book** to ensure **consistent harmonisation and** uniform application and thus contribute to a more effective functioning of the *internal market*.

Amendment 6

Proposal for a directive – amending act Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) The Regulations establishing the ESFS provide that, in the areas specifically set out in the relevant legislation, the ESA may develop draft technical standards, to be submitted to the

Commission for adoption in accordance with Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFEU) by means of delegated or implementing acts.

Amendment 7

Proposal for a directive – amending act Recital 7 b (new)

Text proposed by the Commission

Amendment

(7b) The relevant legislation should define those areas where the ESA are empowered to develop draft technical standards and how should they be adopted. While the relevant legislation should lay down the elements, conditions and specifications as detailed in Article 290 TFEU in the case of delegated acts, the rules and general principles concerning mechanisms for control should be defined in advance in accordance with Article 291 TFEU in the case of implementing acts.

Amendment 8

Proposal for a directive – amending act Recital 8

Text proposed by the Commission

Amendment

(8) The identification of areas for technical standards should strike an appropriate balance between building a single set of harmonised rules, without unduly complicating regulation. Only those areas should be selected where consistent technical rules will contribute significantly to *financial stability, depositor, policy holder and investor protection, market efficiency and integrity, and eliminate distortions of competition and risks of regulatory arbitrage.*

(8) The identification of areas for technical standards should strike an appropriate balance between building a single set of harmonised rules, without unduly complicating regulation **and enforcement**. Only those areas should be selected where consistent technical rules will contribute significantly **and effectively** to *the achievement of the objectives of the relevant legislation, while ensuring that policy decisions are taken by the European Parliament, the Council and the Commission in accordance with their*

usual procedures.

Amendment 9

Proposal for a directive – amending act Recital 9

Text proposed by the Commission

(9) Matters subject to technical standards should be genuinely technical, where their development requires the expertise of supervisory experts. The technical standards should determine the conditions of application of the rules included in basic instruments adopted by the European Parliament and the Council ***and, where applicable, in Commission implementing measures without amending non-essential elements of those acts, inter alia by deleting some of those elements or by supplementing the act by the addition of new non-essential elements.*** Technical standards should not *therefore* involve policy choices. ***In cases where the technical standards are designed to determine the conditions of application of a Commission implementing measure, they should only be developed once the Commission implementing measure has been adopted. In certain cases where at present the Commission is empowered to adopt implementing measures in accordance with committee procedures pursuant to Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, and the content of those implementing measures is limited to determining the conditions of application of rules included in the basic instruments, which do not require further supplementing, it is appropriate for the sake of consistency to introduce the procedure for adoption of technical standards provided for in Article 7 of Regulations (EC) No. .../...[EBA], No.***

Amendment

(9) Matters subject to technical standards should be genuinely technical, where their development requires the expertise of supervisory experts. The technical standards ***adopted as delegated acts (Level 2 measures)*** should ***further develop, specify and*** determine the conditions ***for consistent harmonisation and uniform*** application of the rules included in basic instruments adopted by the European Parliament and the Council, ***supplementing or amending certain non-essential elements of the legislative act. On the other hand, technical standards adopted as implementing acts should not amend any element of legally binding Union acts.*** Technical standards should not involve policy choices.

.../... [ESMA], and No. .../... [EIOPA].

Amendment 10

Proposal for a directive – amending act
Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) In the case of delegated acts it is appropriate, for the sake of consistency, to introduce the procedure for adoption of technical standards provided for in Article 7 of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [ESMA], and of Regulation (EU) No .../2010 [EIOPA]. In cases where the technical standards are designed to determine the conditions of application of a Level 2 measure, they should be developed only once the Level 2 measure has been adopted.

Amendment 11

Proposal for a directive – amending act
Recital 9 b (new)

Text proposed by the Commission

Amendment

(9b) In accordance with the precautionary principle on supervision, binding technical standards should not prevent Member States' competent authorities from requiring additional information or imposing additional or more stringent requirements than those specified in the relevant legislative acts which they develop, when they allow for such prudential discretion.

Amendment 12

Proposal for a directive – amending act
Recital 11

Text proposed by the Commission

(11) The Regulations establishing the ESFS provide for a mechanism to settle disagreements between competent national authorities. Where a competent authority disagrees *on* the procedure or content of an action or inaction by another competent authority in areas where the relevant legislation requires cooperation, coordination or joint decision making by competent national authorities from more than one Member State, the **European Supervisory Authorities**, at the request of one of the competent authorities concerned, *may* assist the authorities in reaching an agreement within the time limit set by the **European Supervisory Authority** which takes into account any relevant time limits in the relevant legislation, and the urgency and complexity of the disagreement. In the event that such disagreement persists, the **European Supervisory Authorities may** settle the matter.

Amendment

(11) The Regulations establishing the ESFS provide for a mechanism to settle disagreements between competent national authorities. Where a competent authority disagrees *with* the procedure or content of an action or inaction by another competent authority in areas ***specified in Union legislation in accordance with Regulation (EU) No .../ 2010 [EBA], Regulation (EU) No .../ 2010 [ESMA] and Regulation (EU) No .../ 2010 [EIOPA]***, where the relevant legislation requires cooperation, coordination or joint decision making by competent national authorities from more than one Member State, the **ESA**, at the request of one of the competent authorities concerned, ***should be able to*** assist the authorities in reaching an agreement within the time limit set by the **ESA** which takes into account any relevant time limits in the relevant legislation, and the urgency and complexity of the disagreement. In the event that such disagreement persists, the **ESA should be able to** settle the matter.

Amendment 13

Proposal for a directive – amending act
Recital 12

Text proposed by the Commission

(12) In general, ***the provision that provides*** the possibility for disputes to be resolved in the Regulations establishing the ESFS does not require consequential changes to the relevant legislation. However, in those areas where some form of non-binding mediation is already established in the relevant legislation, or where there are time limits for joint decisions to be taken by one or more competent national authorities, amendments are needed to ensure clarity and minimum disruption to the process for

Amendment

(12) In general, ***Article 11(1) of Regulation (EU) No .../ 2010 [EBA], of Regulation (EU) No .../ 2010 [ESMA] and of Regulation (EU) No .../ 2010 [EIOPA], which provide for*** the possibility for disputes to be resolved in the Regulations establishing the ESFS does not require consequential changes to the relevant legislation. However, in those areas where some form of non-binding mediation is already established in the relevant legislation, or where there are time limits

reaching a joint decision, but also that where necessary, the **European Supervisory Authorities** are able to resolve disagreements.

for joint decisions to be taken by one or more competent national authorities, amendments are needed to ensure clarity and minimum disruption to the process for reaching a joint decision, but also that where necessary, the **ESA** are able to resolve disagreements. ***The binding procedure for the settlement of disagreements is designed to solve situations where competent supervisors cannot resolve among themselves procedural or substantive issues relating to compliance with Union law.***

Amendment 14

Proposal for a directive – amending act Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) This Directive should therefore identify situations where a procedural or a substantive issue of compliance with Union law may need to be resolved and the supervisors may not be able to resolve the matter on their own. In such a situation, one of the supervisors involved should be able to raise the issue with the competent European Supervisory Authority. That European Supervisory Authority should act in accordance with the procedure set out in this Directive. It should be able to require the competent authorities concerned to take specific action or to refrain from action in order to settle the matter and to ensure compliance with Union law, with binding effects on the competent authorities concerned.

In cases where the relevant Union legislation confers discretion on Member States, decisions taken by the European Supervisory Authority should not replace the exercise of discretion by the competent authorities in compliance with Union law.

Justification

In order for there to be compliance with ECJ case-law (C -9/56 and 10/56, Meroni v High Authority, [1958] E.C.R. 133 and 157), it is important that decisions taken by ESAs do not replace the lawful exercise of judgement by national supervisors. Under Meroni, an institution may not delegate powers that it does not itself possess.

Amendment 15

Proposal for a directive – amending act

Recital 13

Text proposed by the Commission

(13) Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions provides for mediation or joint decisions as regards the determination of significant branches for the purposes of supervisory college membership, model validation and group risk assessment. In all of these areas, an amendment should clearly state that in the event of disagreement during the specified time period, the European Banking Authority may resolve the disagreement using the process outlined in Regulation .../... [EBA]. This approach makes it clear that disagreements can be resolved and cooperation strengthened before a final decision is made or issued to an institution.

Amendment

(13) Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions provides for mediation or joint decisions as regards the determination of significant branches for the purposes of supervisory college membership, model validation and group risk assessment. In all of these areas, an amendment should clearly state that in the event of disagreement during the specified time period, the European Banking Authority may resolve the disagreement using the process outlined in Regulation **(EU) No .../2010** [EBA]. This approach makes it clear that, ***while it should not be possible for the European Banking Authority to replace the discretionary judgment of the competent authorities***, disagreements can be resolved and cooperation strengthened before a final decision is made or issued to an institution.

Justification

In areas of disagreement between national financial supervisors, the ability of the ESAs to assist in reaching an agreement should not extend to being able to replace national supervisors' discretionary judgements, to ensure compliance with ECJ case-law.

Amendment 16

Proposal for a directive – amending act Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) The alignment of comitology procedures to the TFEU and, in particular, Articles 290 and 291 thereof, should be effected step by step. This Directive should adapt to Articles 290 and 291 TFEU only to those provisions of the amended directives referred to in Recital 20 in so far as the ESA are concerned and in so far as they are related to technical standards. That alignment, as well as further alignments of other comitology provisions contained in the amended directives, should not be limited to those measures previously dealt with under the regulatory procedure with scrutiny, but should cover all appropriate measures of general scope independently of the decision-making procedure of the comitology procedure applicable to them prior to the entry into force of the TFEU. In order to ensure consistency, further alignment of other comitology procedures to Articles 290 or 291 TFEU contained in the amended directives referred to in Recital 20 should be effected in accordance with the provisions of this Directive.

Amendment 17

Proposal for a directive – amending act Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) Confidential information transmitted to or exchanged between competent authorities and the European Securities and Markets Authority or the European Systemic Risk Board should be covered by the obligation of professional secrecy, to which the persons employed or

formerly employed by the competent authorities receiving the information are subject.

Amendment 18

Proposal for a directive – amending act Recital 18

Text proposed by the Commission

(18) In those areas where the **Authorities** are under an obligation to develop draft technical standards, those draft technical standards should be submitted to the Commission within three years of the creation of the **Authorities**.

Amendment

(18) In those areas where the **ESA** are under an obligation to develop draft technical standards, those draft technical standards should be submitted to the Commission within three years of the creation of the **ESA unless another deadline is established by the relevant regulation**.

Amendment 19

Proposal for a directive – amending act Recital 19

Text proposed by the Commission

(19) Since the objectives of this Directive, namely improving the functioning of the *Internal Market* by means of ensuring a high, effective and consistent level of prudential regulation and supervision, protecting depositors, investors and beneficiaries and thereby businesses and consumers, protecting the integrity, efficiency and orderly functioning of financial markets, maintaining the stability of the financial system, and strengthening international supervisory coordination, cannot be sufficiently achieved by the Member States and can, therefore, by reason of scale of the action, be better achieved at **Community** level, the **Community** may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article,

Amendment

(19) Since the objectives of this Directive, namely improving the functioning of the *internal market* by means of ensuring a high, effective and consistent level of prudential regulation and supervision, protecting depositors, investors and beneficiaries and thereby businesses and consumers, protecting the integrity, efficiency and orderly functioning of financial markets, maintaining the stability **and sustainability** of the financial system, **preserving the real economy, safeguarding public finances** and strengthening international supervisory coordination, cannot be sufficiently achieved by the Member States and can, therefore, by reason of scale of the action, be better achieved at **Union** level, the **Union** may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance

this Directive does not go beyond what is necessary in order to achieve those objectives.

with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

Amendment 20

Proposal for a directive – amending act

Article 1 – point 1

Directive 1998/26/EC

Article 6 – paragraph 3

Text proposed by the Commission

3. The Member State referred to in paragraph 2 shall immediately notify other Member States and the European Securities and Markets Authority established by Regulation .../...of the European Parliament and of the Council and shall communicate to the latter all information essential to achieve its tasks.

Amendment

3. The Member State referred to in paragraph 2 shall immediately notify ***the European Central Bank, the European Systemic Risk Board***, other Member States and the European Securities and Markets Authority established by Regulation (***EU***) ***No .../2010*** of the European Parliament and of the Council and shall communicate to the latter all information essential to achieve its tasks.

Amendment 21

Proposal for a directive – amending act

Article 1 – point 2 a (new)

Directive 1998/26/EC

Article 10 a (new)

Text proposed by the Commission

Amendment

(2a) The following article is inserted after Article 10:

"Article 10a

The competent authorities shall cooperate with the European Securities and Markets Authority where necessary for the purposes of this Directive."

Amendment 22

Proposal for a directive – amending act

Article 1 – point 2 b (new)

Directive 1998/26/EC

Article 10 b (new)

Text proposed by the Commission

Amendment

(2b) The following article is inserted after Article 10a:

"Article 10b

The competent authorities shall, without delay, provide the European Securities and Markets Authority and other competent authorities with all relevant and necessary information in order to fulfil their duties under this Directive."

Amendment 23

Proposal for a directive – amending act

Article 2 – point -1 (new)

Directive 2002/87/EC

Article 2 – point 17 – point a a (new)

Text proposed by the Commission

Amendment

(-1) In point 17 of Article 2, the following point is inserted:

"(aa) the Joint Committee of European Supervisory Authorities (JCESA);"

Amendment 24

Proposal for a directive – amending act

Article 2 – point 1 – point b

Directive 2002/87/EC

Article 4 – paragraph 3

Text proposed by the Commission

Amendment

3. The ***Joint Committee*** shall publish the list of identified financial conglomerates and keep the list up-to-date.

3. The ***JCESA*** shall publish ***on its website*** the list of identified financial conglomerates and keep the list up-to-date. ***That information shall be available by hyperlink on each of the European***

Amendment 25

Proposal for a directive – amending act

Article 2 – point 1 a (new)

Directive 2002/87/EC

Article 9 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(1a) In Article 9(2), the following point is added:

"(ca) the development of a detailed resolution regime, to be updated regularly and reviewed at least annually, comprising a structured early intervention mechanism, prompt corrective actions and a bankruptcy contingency plan."

Amendment 26

Proposal for a directive – amending act

Article 2 – point 1 b (new)

Directive 2002/87/EC

Section 3 – title

Text proposed by the Commission

Amendment

(1b) The title of Section III is replaced by the following:

***"MEASURES TO FACILITATE
SUPPLEMENTARY AND EUROPEAN
SUPERVISION"***

Amendment 27

Proposal for a directive – amending act

Article 2 – point 1 c (new)

Directive 2002/87/EC

Article -10

Text proposed by the Commission

Amendment

(1c) The following article is inserted in

Section 3 before Article 10:

"Article -10

1. Financial conglomerates shall be subject to supplementary and European supervision by the JCESA and the national competent authorities.

2. The JCESA shall exercise the European supervision of financial conglomerates, in order to ensure coherent cross-sectoral and cross-border compliance in accordance with European Union legislation.

The JCESA shall act through a coordinator appointed by the national competent authorities for the supplementary supervision, who shall also act on behalf of the JCESA.

3. The coordinators of EU financial conglomerates shall be subject to general and cross-border coordination by the JCESA."

Amendment 28

Proposal for a directive – amending act

Article 2 – point 1 d (new)

Directive 2002/87/EC

Article 10 – paragraph 1

Text proposed by the Commission

Amendment

(1d) Article 10 (1) is replaced by the following:

"1. In order to ensure proper supplementary supervision of the regulated entities in a financial conglomerate, a single coordinator, responsible for coordination and exercise of supplementary supervision, shall be appointed from among the competent authorities of the Member States concerned, including those of the Member State in which the mixed financial holding company has its head office. The appointment of the coordinator shall be published on the

Amendment 29

Proposal for a directive – amending act

Article 2 – point 1 e (new)

Directive 2002/87/EC

Article 11 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

(1e) In Article 11(1), the second subparagraph is replaced by the following:

"In order to facilitate and establish supplementary and European supervision on a broad legal basis, the coordinator, and the other relevant competent authorities, and where necessary other competent authorities concerned, shall have coordination arrangements in place. The coordination arrangements may entrust additional tasks to the coordinator and may specify the procedures for the decision-making process among the relevant competent authorities as referred to in Articles 3, 4, 5(4), 6, 12(2), 16 and 18, and for cooperation with other competent authorities. The JCESA shall develop guidelines for the coordination arrangements."

Amendment 30

Proposal for a directive – amending act

Article 2 – point 1 f (new)

Directive 2002/87/EC

Article 12 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

(1f) In Article 12(1), the first subparagraph is replaced by the following:

"1. The competent authorities responsible for the supervision of

regulated entities in a financial conglomerate, [...] the competent authority appointed as the coordinator for that financial conglomerate *and the JCESA* shall cooperate closely with each other. Without prejudice to their respective responsibilities as defined under *relevant* sectoral rules, these authorities, whether or not established in the same Member State, shall provide one another with any information which is essential or relevant for the exercise of the other authorities' supervisory tasks under the sectoral rules and this Directive. In this regard, the competent authorities, [...] the coordinator *and the JCESA* shall communicate on request all relevant information and shall communicate on their own initiative all essential information."

Amendment 31

Proposal for a directive – amending act

Article 2 – point 1 g (new)

Directive 2002/87/EC

Article 12 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Amendment

(1g) In Article 12(1), the third subparagraph is replaced by the following:

"The competent authorities may also exchange with the following authorities such information as may be needed for the performance of their respective tasks, regarding regulated entities in a financial conglomerate, in line with the provisions laid down in the sectoral rules: central banks, the European System of Central Banks, the European Central Bank *and the European Systemic Risk Board.*"

Amendment 32

Proposal for a directive – amending act

Article 2 – point 1 h (new)

Directive 2002/87/EC

Article 12 a (new)

Text proposed by the Commission

Amendment

(1h) The following article is inserted after Article 12:

"Article 12a

Competent authorities shall cooperate with the JCESA where necessary for the purposes of this Directive."

Amendment 33

Proposal for a directive – amending act

Article 2 – point 1 i (new)

Directive 2002/87/EC

Article 12 b (new)

Text proposed by the Commission

Amendment

(1i) The following article is inserted after Article 12a:

"Article 12b

Competent authorities shall, without any delay, provide the JCESA and other competent authorities with all relevant and necessary information in order to fulfil their duties under this Directive."

Amendment 34

Proposal for a directive – amending act

Article 2 – point 1 j (new)

Directive 2002/87/EC

Article 14 – paragraph 1

Text proposed by the Commission

Amendment

(1j) Article 14(1) is replaced by the following:

"1. Member States shall ensure that there are no legal impediments within their jurisdiction preventing the natural and legal persons included within the scope of supplementary and European supervision, whether or not a regulated entity, from exchanging amongst themselves *and with the JCESA* any information which would be relevant for the purposes of supplementary and European supervision."

Amendment 35

Proposal for a directive – amending act
Article 2 – point 1 k (new)
Directive 2002/87/EC
Article 16 – paragraph 2

Text proposed by the Commission

Amendment

(1k) The second paragraph of Article 16 is replaced by the following:

"Without prejudice to Article 17(2), *the JCESA and* Member States may determine what measures may be taken by *the* competent authorities with respect to mixed financial holding companies."

Amendment 36

Proposal for a directive – amending act
Article 2 – point 1 l (new)
Directive 2002/87/EC
Article 16 – paragraph 3

Text proposed by the Commission

Amendment

(1l) The third paragraph of Article 16 is replaced by the following:

"The competent authorities involved, including the coordinator *and the JCESA* shall where appropriate coordinate their supervisory actions."

Amendment 37

Proposal for a directive – amending act

Article 2 – point 2

Directive 2002/87/EC

Article 18 – paragraph 1

Text proposed by the Commission

Without prejudice to the sectoral rules, in the case referred to in Article 5(3), competent authorities shall verify whether the regulated entities, the parent undertaking of which has its head office outside the **Community**, are subject to supervision by a third-country competent authority, which is equivalent to that provided for by the provisions of this Directive on the supplementary supervision of regulated entities referred to in Article 5(2). The verification shall be carried out by the competent authority which would be the coordinator if the criteria set out in Article 10(2) were to apply, on the request of the parent undertaking or of any of the regulated entities authorised in the **Community** or on its own initiative. That competent authority shall consult the other relevant competent authorities, and shall **take into account** any applicable guidance prepared through the **Joint Committee** in accordance with Article 21a(2). For this purpose the competent authority shall consult the **Joint Committee** before taking a decision.

Amendment

Without prejudice to the sectoral rules, in the case referred to in Article 5(3), competent authorities shall verify whether the regulated entities, the parent undertaking of which has its head office outside the **Union**, are subject to supervision by a third-country competent authority, which is equivalent to that provided for by the provisions of this Directive on the supplementary supervision of regulated entities referred to in Article 5(2). The verification shall be carried out by the competent authority which would be the coordinator if the criteria set out in Article 10(2) were to apply, on the request of the parent undertaking or of any of the regulated entities authorised in the **Union** or on its own initiative. That competent authority shall consult the other relevant competent authorities, and shall **follow** any applicable guidance prepared through the **JCESA** in accordance with Article 21a(2). For this purpose the competent authority shall consult the **JCESA** before taking a decision.

Amendment 38

Proposal for a directive – amending act

Article 2 – point 2 a (new)

Directive 2002/87/EC

Article 18 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(2a) In Article 18, the following paragraph is inserted:

"1a. Where a competent authority decides that a third-country has equivalent

supervision contrary to the opinion of another relevant competent authority, the JCESA may revoke the decision where the decision of the competent authority responsible was based on false assumptions or the standard of supervision in the third country has decreased since the decision was made."

Amendment 39

Proposal for a directive – amending act

Article 2 – point 2 b (new)

Directive 2002/87/EC

Article 19 – paragraph 2

Text proposed by the Commission

Amendment

(2b) Article 19(2) is replaced by the following:

"2. Without prejudice to Article 218(1) and (2) of the Treaty on the Functioning of the European Union, the Commission shall, with the assistance of the JCESA, the European Banking Committee, the European Insurance and Occupational Pensions Committee and the Financial Conglomerates Committee, examine the outcome of the negotiations referred to in paragraph 1 and the resulting situation."

Amendment 40

Proposal for a directive – amending act

Article 2 – point 3

Directive 2002/87/EC

Chapter III – title

Text proposed by the Commission

Amendment

**CONFERRED POWERS AND
COMMITTEE PROCEDURES**

DELEGATED POWERS

Amendment 41

Proposal for a directive – amending act

Article 2 – point 3 a (new)

Directive 2002/87/EC

Article 20 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

(3a) The first subparagraph of Article 20(1) is replaced by the following:

"1. The Commission shall adopt by means of delegated acts the [...] adaptations to be made to this Directive in the following areas:

(a) a more precise formulation of the definitions referred to in Article 2 in order to take account of developments in financial markets in the application of this Directive;

(b) a more precise formulation of the definitions referred to in Article 2 in order to ensure consistent harmonisation and uniform application of this Directive in the Union;

(c) the alignment of terminology and the framing of definitions in the Directive in accordance with subsequent Union acts on regulated entities and related matters;

(d) a more precise definition of the calculation methods set out in Annex I in order to take account of developments on financial markets and prudential techniques;

(e) coordination of the provisions adopted pursuant to Articles 7 and 8 and Annex II with a view to encouraging consistent harmonisation and uniform application within the Union.

The draft delegated acts shall be drawn up by the JCESA."

Amendment 42

Proposal for a directive – amending act

Article 2 – point 4

Directive 2002/87/EC

Article 20 – paragraph 1

Text proposed by the Commission

Amendment

(4) In Article 20(1) the following sentence is added:

deleted

"Those measures shall not include the determination of the conditions of application of the provisions which are the subject matter of the items listed in Article 21a."

Amendment 43

Proposal for a directive – amending act

Article 2 – point 4 a (new)

Directive 2002/87/EC

Article 21 – paragraph 2

Text proposed by the Commission

Amendment

(4a) Article 21(2) is replaced by the following:

"2. The power to adopt delegated acts as referred to in Article 20(1) shall be conferred on the Commission for an indeterminate period of time."

Amendment 44

Proposal for a directive – amending act

Article 2 – point 4 b (new)

Directive 2002/87/EC

Article 21 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(4b) In Article 21, the following paragraph is inserted:

"2a. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European

Amendment 45

Proposal for a directive – amending act

Article 2 – point 4 c (new)

Directive 2002/87/EC

Article 21 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

(4c) In Article 21, the following paragraph is inserted:

"2b. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 21a and 21b."

Amendment 46

Proposal for a directive – amending act

Article 2 – point 4 d (new)

Directive 2002/87/EC

Article 21 – paragraph 3

Text proposed by the Commission

Amendment

(4d) Article 21(3) is deleted.

Amendment 47

Proposal for a directive – amending act

Article 2 – point 4 e (new)

Directive 2002/87/EC

Article 21 – paragraph 4

Text proposed by the Commission

Amendment

(4e) Article 21(4) is replaced by the following:

"4. The JCESA shall give general guidance as to whether the supplementary supervision arrangements of competent authorities in third countries are likely to achieve the objectives of the supplementary

supervision as defined in this Directive, in relation to the regulated entities in a financial conglomerate, the head of which has its head office outside the Union. The JCESA shall keep any such guidance under review and take into account any changes to the supplementary supervision carried out by such competent authorities."

Amendment 48

Proposal for a directive – amending act
Article 2 – point 5 a (new)
Directive 2002/87/EC
Article 21 a (new)

Text proposed by the Commission

Amendment

(5a) The following article is inserted after Article 21:

"Article 21a

Revocation of the delegation

1. The delegation of powers referred to in Article 20(1) may be revoked by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure with a view to deciding whether to revoke the delegation of powers shall endeavour to inform the other institution and the Commission.

3. The revocation decision shall put an end to the delegation of powers specified in that decision. It shall take effect immediately or at such later date as may be specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union."

Amendment 49

Proposal for a directive – amending act
Article 2 – point 5 b (new)
Directive 2002/87/EC
Article 21 b (new)

Text proposed by the Commission

Amendment

(5b) The following article is inserted after Article 21a:

"Article 21b

Objections to delegated acts

1. The European Parliament or the Council may object to a delegated act within a period of four months from the date of notification. At the initiative of the European Parliament or the Council this period shall be extended by two months.

2. If, on the expiry of that period neither the European Parliament nor the Council has objected to the delegated act, it shall enter into force on the date stated therein. If the European Parliament or the Council objects to a delegated act, it shall not enter into force.

3. In order to expedite the adoption of delegated acts where appropriate, the European Parliament and the Council, pursuant to a procedure of early non-objection and in duly justified cases, may decide to shorten the four-month period referred to in the first subparagraph, following a request of the Commission."

Amendment 50

Proposal for a directive – amending act
Article 2 – point 6
Directive 2002/87/EC
Article 21a – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. In order to ensure uniform application of this Directive, the European Supervisory Authorities, in accordance with Articles 42 of Regulation .../... [EBA], Regulation .../... [EIOPA], and Regulation .../...

1. In order to ensure ***consistent harmonisation and*** uniform application of this Directive, the European Supervisory Authorities, in accordance with Articles 42 of Regulation ***(EU) No .../2010*** [EBA], ***of***

[ESMA] **may** develop draft technical standards, with regard to:

Regulation **(EU) No .../2010** [EIOPA],
and **of** Regulation **(EU) No .../2010**
[ESMA] **shall** develop draft technical standards, with regard to:

Amendment 51

Proposal for a directive – amending act

Article 2 – point 6

Directive 2002/87/EC

Article 21a – paragraph 2 –subparagraph 1

Text proposed by the Commission

2. The **Joint Committee** **may** provide general guidance as to whether the supplementary supervision arrangements of competent authorities in third countries are likely to achieve the objectives of the supplementary supervision as provided for in this Directive, in relation to the regulated entities in a financial conglomerate, the head of which has its head office outside the **Community**.

Amendment

2. The **JCESA** **shall** provide general guidance as to whether the supplementary supervision arrangements of competent authorities in third countries are likely to achieve the objectives of the supplementary supervision as provided for in this Directive, in relation to the regulated entities in a financial conglomerate, the head of which has its head office outside the **Union**.

Amendment 52

Proposal for a directive – amending act

Article 3 – point -1 (new)

Directive 2003/6/EC

Article 1 – point 5

Text proposed by the Commission

Amendment

(-1) In Article 1, point 5 is replaced by the following:

"5. 'Accepted market practices' shall mean practices that are reasonably expected in one or more financial markets and are accepted by the competent authority in accordance with standards adopted by the Commission in accordance with the *delegated acts* procedure laid down in Articles 17, 17 a and 17b."

Amendment 53

Proposal for a directive – amending act

Article 3 – point -1 a (new)

Directive 2003/6/EC

Article 1 – paragraph 2

Text proposed by the Commission

Amendment

(-1a) In Article 1, the second paragraph, is replaced by the following:

"In order to take account of developments on financial markets and to ensure consistent harmonisation and uniform application of this Directive in the Union, the Commission shall lay down, by means of delegated acts, measures concerning points 1, 2 and 3 of this Article. Those measures [...] shall be adopted in accordance with the delegated acts procedure referred to in Articles 17, 17a and 17b.

The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 54

Proposal for a directive – amending act

Article 3 – point -1 b (new)

Directive 2003/6/EC

Article 6 – paragraph 10 – subparagraph 2

Text proposed by the Commission

Amendment

(-1b) In Article 6(10), the second subparagraph is replaced by the following:

"Those measures [...] shall be adopted in accordance with the delegated acts procedure referred to in Articles 17, 17a and 17b.

The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 55

Proposal for a directive – amending act

Article 3 – point -1 c (new)

Directive 2003/6/EC

Article 8

Text proposed by the Commission

Amendment

(-1c) Article 8 is replaced by the following:

"The prohibitions provided for in this Directive shall not apply to trading in own shares in 'buy-back' programmes or to the stabilisation of a financial instrument provided such trading is carried out in accordance with delegated acts. Those measures [...] shall be adopted in accordance with the delegated acts procedure referred to in Articles 17, 17a and 17b.

The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 56

Proposal for a directive – amending act

Article 3 – point -1 d (new)

Directive 2003/6/EC

Article 12 – paragraph 2 – points h a to h d (new)

Text proposed by the Commission

Amendment

(-1d) In Article 12(2) the following points are added:

"(ha) forbid the financial instrument concerned;

(hb) limit the size of a commitment to buy or sell a given amount of financial asset;

(hc) request the holding of underlying assets as a precondition for trading; and

(hd) set qualitative limits."

Amendment 57

Proposal for a directive – amending act

Article 3 – point -1 e (new)

Directive 2003/6/EC

Article 14 – paragraph 2

Text proposed by the Commission

Amendment

(-1e) Article 14(2) is replaced by the following:

"2. In accordance with the procedure laid down in Articles 17, 17a and 17b, the Commission shall, for information, draw up a list of the administrative measures and sanctions referred to in paragraph 1. The European Securities and Markets Authority shall produce guidelines to enable the Commission to draw up the list.

The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 58

Proposal for a directive – amending act

Article 3 – point -1 f (new)

Directive 2003/6/EC

Article 14 – paragraph 4

Text proposed by the Commission

Amendment

(-1f) Article 14(4) is replaced by the following:

"4. Member States shall provide that the competent authority disclose to the public every measure or sanction that will be imposed for infringement of the provisions adopted in the implementation of this Directive, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved. The competent authorities shall report all measures or sanctions to the European Securities and Market Authority at the same time. The

European Securities and Market Authority shall attach that information to the respective data records in the relevant European databases of registered market participants."

Amendment 59

Proposal for a directive – amending act

Article 3 – point -1 g (new)

Directive 2003/6/EC

Article 16 – paragraph 1

Text proposed by the Commission

Amendment

(-1g) Article 16(1) is replaced by the following:

"1. Competent authorities shall cooperate with each other *and with the European Securities and Markets Authority* whenever necessary for the purpose of carrying out their duties, making use of their powers whether set out in this Directive or in national law. Competent authorities shall render assistance to competent authorities of other Member States *and to the European Securities and Markets Authority*. In particular, they shall exchange information and cooperate in investigation activities."

Amendment 60

Proposal for a directive – amending act

Article 3 – point 1

Directive 2003/6/EC

Article 16 – paragraph 2 – subparagraph 4

Text proposed by the Commission

Amendment

Without prejudice to **Article 226** of the **Treaty**, a competent authority whose request for information is not acted upon within a reasonable time or whose request for information is rejected **may** bring that non-compliance to the attention of the

Without prejudice to **Article 258** of the **Treaty on the Functioning of the European Union**, a competent authority whose request for information is not acted upon within a reasonable time or whose request for information is rejected **shall**

European Securities and Markets Authority established by Regulation .../...of the European Parliament and of the Council, which *may* act in accordance with the powers conferred on it by that Regulation.

bring that non-compliance to the attention of the European Securities and Markets Authority established by Regulation (*EU*) *No .../2010* of the European Parliament and of the Council, which *shall* act in accordance with the powers conferred on it by that Regulation.

Amendment 61

Proposal for a directive – amending act

Article 3 – point 1 a (new)

Directive 2003/6/EC

Article 16 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(1a) In Article 16, the following paragraph is inserted:

"2a. The European Securities and Markets Authority established by Regulation (EU) No .../2010 of the European Parliament and the Council may request, on its own initiative, any information required for the purpose referred to in paragraph 1."

Amendment 62

Proposal for a directive – amending act

Article 3 – point 2

Directive 2003/6/EC

Article 16 – paragraph 4 – subparagraph 5

Text proposed by the Commission

Amendment

Without prejudice to the provisions of *Article 226* of the *Treaty*, a competent authority whose application to open an inquiry or whose request for authorisation for its officials to accompany those of the other Member State's competent authority is not acted upon within a reasonable time or is rejected *may* bring that non-compliance to the attention of the European Securities and Markets Authority, which *may* act in accordance

Without prejudice to the provisions of *Article 258* of the *Treaty on the Functioning of the European Union*, a competent authority whose application to open an inquiry or whose request for authorisation for its officials to accompany those of the other Member State's competent authority is not acted upon within a reasonable time or is rejected *shall* bring that non-compliance to the attention of the European Securities and Markets

with the powers conferred on it by
Regulation .../... [ESMA].

Authority, which **shall** act in accordance
with the powers conferred on it by
Regulation **(EU) No .../2010** [ESMA].

Amendment 63

Proposal for a directive – amending act

Article 3 – point 3 – subparagraph 1

Directive 2003/6/EC

Article 16 – paragraph 5

Text proposed by the Commission

5. In order to ensure uniform application of paragraphs 2 and 4, the European Securities and Markets Authority **may** develop draft technical standards to determine the conditions of application regarding the conduct of requests for exchange of information and cross border inspections.

Amendment

5. In order to ensure **consistent harmonisation and** uniform application of paragraphs 2 and 4, the European Securities and Markets Authority **shall** develop draft technical standards to determine the conditions of application regarding the conduct of requests for exchange of information and cross border inspections.

Amendment 64

Proposal for a directive – amending act

Article 3 – point 3 a (new)

Directive 2003/6/EC

Article 17 – paragraph 2a

Text proposed by the Commission

Amendment

(3a) Article 17(2a) is replaced by the following:

"2a. The power to adopt delegated acts referred to in Articles 1, Article 6(10), Article 8, Article 14(2) and Article 16(5) shall be conferred on the Commission for an indeterminate period of time."

Amendment 65

Proposal for a directive – amending act

Article 3 – point 3 b (new)

Directive 2003/6/EC

Article 17 – paragraph 2a a (new)

Text proposed by the Commission

Amendment

(3b) In Article 17, the following paragraph is inserted:

"2aa. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council."

Amendment 66

Proposal for a directive – amending act

Article 3 – point 3 c (new)

Directive 2003/6/EC

Article 17 – paragraph 2a b (new)

Text proposed by the Commission

Amendment

(3c) In Article 17, the following paragraph is inserted:

"2ab. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 17a and 17b."

Amendment 67

Proposal for a directive – amending act

Article 3 – point 3 d (new)

Directive 2003/6/EC

Article 17 – paragraph 3

Text proposed by the Commission

Amendment

(3d) Article 17(3) is deleted.

Amendment 68

Proposal for a directive – amending act

Article 3 – point 3 e (new)

Directive 2003/6/EC

Article 17 a (new)

Text proposed by the Commission

Amendment

(3e) The following article is inserted after Article 17:

"Article 17a

Revocation of the delegation

1. The delegation of powers referred to in Article 1, Article 6(10), Article 8, Article 14(2) and Article 16(5) may be revoked by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure with a view to deciding whether to revoke the delegation of powers shall endeavour to inform the other institution and the Commission.

3. The revocation decision shall put an end to the delegation of powers specified in that decision. It shall take effect immediately or at such later date as may be specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union."

Amendment 69

Proposal for a directive – amending act

Article 3 – point 3 f (new)

Directive 2003/6/EC

Article 17 b (new)

Text proposed by the Commission

Amendment

(3f) The following article is inserted after Article 17a:

"Article 17b

Objections to delegated acts

1. The European Parliament or the Council may object to a delegated act within a period of four months from the date of notification. On the initiative of the European Parliament or the Council this period shall be extended by two

months.

2. If, on expiry of that period neither the European Parliament nor the Council has objected to the delegated act, it shall enter into force on the date stated therein. If the European Parliament or the Council objects to a delegated act, it shall not enter into force.

3. In order to expedite the adoption of delegated acts where appropriate, the European Parliament and the Council, pursuant to a procedure of early non-objection and in duly justified cases, may decide to shorten the four-month period referred to in the first subparagraph, following a request of the Commission."

Amendment 70

Proposal for a directive – amending act

Article 4 – point -1 (new)

Directive 2003/41/EC

Article 9 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(-1) In Article 9(1), point (a) is replaced by the following:

"(a) the institution is registered in a national register by the competent supervisory authority or authorised; in the case of cross-border activities referred to in Article 20, the register shall also indicate the Member States in which the institution is operating; that information shall be communicated to the European Insurance and Occupational Pension Authority, which shall publish it on its website;"

Amendment 71

Proposal for a directive – amending act

Article 4 – point -1 a (new)

Directive 2003/41/EC

Article 9 – paragraph 5

Text proposed by the Commission

Amendment

(-1a) Article 9(5) is replaced by the following:

"5. In the case of cross-border activity as referred to in Article 20, the conditions of operation of the institution shall be subject to a prior authorisation by the competent authorities of the home Member State. When giving such authorisation, Member States shall immediately inform the European Insurance and Occupational Pension Authority."

Amendment 72

Proposal for a directive – amending act

Article 4 – point 1 – point b

Directive 2003/41/EC

Article 13 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. In order to ensure uniform application of the directive, the European Insurance and Occupational Pension Authority established by Regulation.../...of the European Parliament and of the Council shall develop draft technical standards concerning information provided to the competent authorities. The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

Amendment

2. In order to ensure ***consistent harmonisation and*** uniform application of the directive, the European Insurance and Occupational Pension Authority established by Regulation ***(EU) No.../2010*** of the European Parliament and of the Council shall develop draft technical standards concerning information provided to the competent authorities. The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

Amendment 73

Proposal for a directive – amending act

Article 4 – point 1 a (new)

Directive 2003/41/EC

Article 14 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Amendment

(1a) In Article 14(4), the second

subparagraph is replaced by the following:

"Any decision to prohibit the activities of an institution shall be supported by precise reasons and notified to the institution in question. *It shall also be notified to the European Insurance and Occupational Pensions Authority.*"

Amendment 74

Proposal for a directive – amending act

Article 4 – point 1 b (new)

Directive 2003/41/EC

Article 15 – paragraph 6 – subparagraph 1

Text proposed by the Commission

Amendment

(1b) In Article 15(6), the first subparagraph is replaced by the following:

"6. With a view to further harmonisation of the rules regarding the calculation of technical provisions which may be justified — in particular the interest rates and other assumptions influencing the level of technical provisions — the *European Insurance and Occupational Pensions Authority* shall, every two years or at the request of the *Commission* or a Member State, issue a report on the situation concerning the development in cross-border activities."

Amendment 75

Proposal for a directive – amending act

Article 4 – point 1 c (new)

Directive 2003/41/EC

Article 15 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

(1c) In Article 15, the following paragraph is added:

"6a. In order to ensure consistent harmonisation and uniform application of this Article, the European Insurance and Occupational Pensions Authority shall develop draft technical standards concerning the calculation of technical provisions. The Authority shall submit those draft technical standards and reports to the Commission by 1 June 2011.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation (EU) No .../2010 [EIOPA]."

Justification

According to Article 15 para. 6 IORP-Directive, there is already agreement on the objective of further harmonisation, particularly in the field of the calculation of technical provisions, in order to better protect the consumers. As the IORP-Directive harmonises the different national rules on a low degree only, binding technical standards will be of particular importance.

Amendment 76

Proposal for a directive – amending act

Article 4 – point 1 d (new)

Directive 2003/41/EC

Article 20 – paragraph 10 a (new)

Text proposed by the Commission

Amendment

(1d) In Article 20, the following paragraph is added:

"10a. In order to ensure consistent harmonisation and uniform application of this Article, the European Insurance and Occupational Pensions Authority shall develop draft technical standards concerning authorisation and notification procedures, methods for calculating technical provisions and information and disclosure procedures.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of

Justification

In Article 15(6) of the pension fund directive, in order to protect consumers against the effects of cross-border regulatory arbitrage the objective of further harmonisation of methods to calculate technical provisions is already explicitly stated. Given that to date the pension fund directive contains only minimally harmonised provisions, common technical standards are particularly important here.

Amendment 77

Proposal for a directive – amending act

Article 4 – point 2

Directive 2003/41/EC

Article 20 – paragraph 11 – subparagraph 1

Text proposed by the Commission

11. In order to ensure uniform application of this Directive, the European Insurance and Occupational Pension Authority shall develop draft technical standards listing for each Member State provisions of prudential nature relevant to the field of occupational pension schemes which are not covered by the reference to national social and labour law in paragraph 1. The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

Amendment

11. In order to ensure **consistent harmonisation and** uniform application of this Directive, the European Insurance and Occupational Pension Authority shall develop draft technical standards **regarding the methods for calculating technical provisions and shall prepare reports** listing for each Member State **other** provisions of prudential nature relevant to the field of occupational pension schemes which are not covered by the reference to national social and labour law in paragraph 1. The Authority shall submit those draft technical standards by 1 January 2014 **and those reports by 1 June 2011 to the Commission.**

Amendment 78

Proposal for a directive – amending act

Article 4 – point 2 a (new)

Directive 2003/41/EC

Article 21 – title

Text proposed by the Commission

Amendment

(2a) The title of Article 21 is replaced by the following:

**"Cooperation between Member States,
the European Insurance and
Occupational Pensions Authority and the
Commission"**

Amendment 79

Proposal for a directive – amending act

Article 4 – point 2 b (new)

Directive 2003/41/EC

Article 21 – paragraph 1

Text proposed by the Commission

Amendment

***(2b) Article 21(1) is replaced by the
following:***

***"1. Member States, in cooperation with
the European Insurance and
Occupational Pensions Authority, shall
ensure, in an appropriate manner, the
consistent harmonisation and the
uniform application of this Directive
through the application of common
technical standards concerning
authorisation, notification, rules
regarding the calculation of technical
provisions, information and disclosure
procedures, regular exchanges of
information and experience [...] and
closer cooperation, and by so doing,
preventing distortions of competition
and creating the conditions required for
unproblematic cross-border
membership and the portability of
annuity claims."***

Amendment 80

Proposal for a directive – amending act

Article 4 – point 2 c (new)

Directive 2003/41/EC

Article 21 – paragraph 2

Text proposed by the Commission

Amendment

***(2c) Article 21(2) is replaced by the
following:***

"2. The *European Insurance and Occupational Pensions Authority* and the competent authorities of the Member States shall collaborate closely with a view to facilitating supervision of the operations of institutions for occupational retirement provision *and where necessary for the purposes of this Directive.*

Competent authorities shall, without any delay, provide the European Insurance and Occupational Pensions Authority and other competent authorities with all relevant and necessary information in order to fulfil their duties under this Directive."

Amendment 81

Proposal for a directive – amending act

Article 4 – point 2 d (new)

Directive 2003/41/EC

Article 21 – paragraph 3

Text proposed by the Commission

Amendment

(2d) Article 21(3) is replaced by the following:

"3. Each Member State shall inform the Commission and the *European Insurance and Occupational Pensions Authority* of any major difficulties to which the application of this Directive gives rise.

The Commission, the *European Insurance and Occupational Pensions Authority* and the competent authorities of the Member States concerned shall examine such difficulties as quickly as possible in order to find an appropriate solution."

Amendment 82

Proposal for a directive – amending act

Article 4 – point 2 e (new)

Directive 2003/41/EC

Article 22 – paragraph 2

Text proposed by the Commission

Amendment

(2e) Article 22(2) is replaced by the following:

"2. Member States shall communicate to the Commission and the European Insurance and Occupational Pensions Authority the text of the main provisions of national law which they adopt in the field governed by this Directive."

Amendment 83

Proposal for a directive – amending act

Article 5 – point -1 (new)

Directive 2003/71/EC

Article 1 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(-1) In Article 1, the following paragraph is added:

"3a. In order to take account of technical developments on financial markets and to ensure consistent harmonisation and uniform application of this Directive, the Commission shall lay down, by means of delegated acts in accordance with Articles 24, 24a and 24b, measures concerning the adjustment of the limits referred to in points (h) and (j) of Article 1(2).

The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 84

Proposal for a directive – amending act

Article 5 – point -1 a (new)

Directive 2003/71/EC

Article 2 – paragraph 4

Text proposed by the Commission

Amendment

(-1a) Article 2(4) is replaced by the following:

"4. In order to take account of technical developments on financial markets and to ensure *consistent harmonisation and* uniform application of this Directive, the Commission *shall lay down, by means of delegated acts in accordance with Articles 24, 24a and 24b*, the definitions referred to in paragraph 1, including adjustment of the figures used for the definition of SMEs, taking into account *Union* legislation and recommendations as well as economic developments.

The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 85

Proposal for a directive – amending act

Article 5 – point -1 b (new)

Directive 2003/71/EC

Article 4 – paragraph 3

Text proposed by the Commission

Amendment

(-1b) Article 4(3) is replaced by the following:

"3. In order to take account of technical developments on financial markets and to ensure *consistent harmonisation and* uniform application of this Directive, the Commission *shall lay down, by means of delegated acts in accordance with Articles 24, 24a and 24b*, measures concerning paragraphs 1(b), 1(c), 2(c) and 2(d), notably in relation to the meaning of

equivalence.

The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 86

Proposal for a directive – amending act

Article 5 – point -1 c (new)

Directive 2003/71/EC

Article 4 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(-1c) In Article 4, the following paragraph is added:

"3a. In order to ensure consistent harmonisation and uniform application of this Directive, the European Securities and Markets Authority may develop draft technical standards to determine the conditions of application of the exemptions concerning paragraphs 1(a), 1(d), 1(e), 2(a), 2(b), 2(e), 2(f), 2(g), 2(h), notably in relation to the meaning of equivalence.

The Commission may adopt the draft technical standards referred to in this paragraph in accordance with the procedure laid down in Article 7 of Regulation (EU) No .../2010 [ESMA]."

Amendment 87

Proposal for a directive – amending act

Article 5 – point -1 d (new)

Directive 2003/71/EC

Article 5 – paragraph 5

Text proposed by the Commission

Amendment

(-1d) Article 5(5) is replaced by the following:

"5. In order to take account of technical developments on financial markets and to ensure consistent harmonisation and

uniform application of this Directive, the Commission shall lay down, by means of delegated acts in accordance with Articles 24, 24a and 24b, measures concerning the format of the prospectus or base prospectus and supplements.

The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 88

Proposal for a directive – amending act

Article 5 – point -1 e (new)

Directive 2003/71/EC

Article 5 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

(-1e) In Article 5, the following paragraph is added:

"5a. In order to achieve the objectives of this Directive, the Commission shall also lay down, by means of delegated acts in accordance with the Articles 24, 24a and 24b, measures to establish:

(a) the detailed content and specific form of the key information document referred to in paragraphs 2 and 3;

(b) the detailed content and specific form of the key information document with regard to:

(i) structured securities and base prospectuses;

(ii) shares; and

(iii) bonds.

Those delegated acts shall be adopted by*

The draft delegated acts shall be drawn up by the European Securities and Markets Authority.

** OJ please insert date: 18 months after entry into force of this Directive."*

Amendment 89

Proposal for a directive – amending act

Article 5 – point -1 f (new)

Directive 2003/71/EC

Article 6 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(-1f) In Article 6 the following paragraph is added:

"2a. In order to ensure consistent harmonisation and uniform application of this Directive, the European Securities and Markets Authority may develop draft technical standards to determine the conditions of application of the responsibility attaching to the prospectus.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation (EU) No.../2010 [ESMA]."

Justification

Competent authorities have different practices and would require the issuer and the offeror to bear responsibility or, depending on the type of issue, one of these persons. This creates uncertainty in the responsibility regime of the prospectus especially when the prospectus is passported. Further specifications for this issue are required.

Amendment 90

Proposal for a directive – amending act

Article 5 – point -1 g (new)

Directive 2003/71/EC

Article 7 – paragraph 1

Text proposed by the Commission

Amendment

(-1g) Article 7(1) is replaced by the following:

"1. Detailed delegated acts regarding the specific information which must be included in a prospectus, avoiding duplication of information when a

prospectus is composed of separate documents, shall be adopted by the Commission *in accordance with Articles 24, 24a and 24b*. The first set of *delegated acts* shall be adopted by 1 July 2004.

The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 91

Proposal for a directive – amending act

Article 5 – point -1 h (new)

Directive 2003/71/EC

Article 7 – paragraph 3

Text proposed by the Commission

Amendment

(-1h) Article 7(3) is replaced by the following:

"3. The *delegated acts* referred to in paragraph 1 shall be based on the standards in the field of financial and non-financial information set out by international securities commission organisations, and in particular by IOSCO and on the indicative Annexes to this Directive."

Amendment 92

Proposal for a directive – amending act

Article 5 – point -1 i (new)

Directive 2003/71/EC

Article 8 – paragraph 4

Text proposed by the Commission

Amendment

(-1i) Article 8(4) is replaced by the following:

"4. In order to take account of technical developments on financial markets and to ensure *consistent harmonisation and* uniform application of this Directive, the Commission shall *lay down, by means of delegated acts in accordance with Articles*

24, 24a and 24b, measures concerning paragraph 2.

The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 93

Proposal for a directive – amending act

Article 5 – point 1

Directive 2003/71/EC

Article 8 – paragraph 5

Text proposed by the Commission

5. In order to ensure uniform application of paragraph 2 and to take account of technical developments on financial markets, the European Securities and Markets Authority established by Regulation .../... of the European Parliament and of the Council shall develop draft technical standards to determine the conditions of application of the ***implementing measures*** adopted by the Commission according to paragraph 4. The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure ***laid down in Article 7 of Regulation .../... [ESMA]***.

Amendment

5. In order to ensure uniform application of paragraph 2 and to take account of technical developments on financial markets, the European Securities and Markets Authority established by Regulation ***(EU) No .../2010*** of the European Parliament and of the Council shall develop draft technical standards to determine the conditions of application of the ***delegated acts*** adopted by the Commission according to paragraph 4. The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure ***for implementing acts pursuant to Article 291 of the Treaty on the Functioning of the European Union***.

Amendment 94

Proposal for a directive – amending act

Article 5 – point 1 a (new)

Directive 2003/71/EC

Article 11 – paragraph 3

Text proposed by the Commission

Amendment

(-1a) Article 11(3) is replaced by the

following:

"3. In order to take account of technical developments on financial markets and to ensure *consistent harmonisation and* uniform application of this Directive, the Commission shall *lay down, by means of delegated acts in accordance with Articles 24, 24a and 24b*, measures concerning the information to be incorporated by reference.

The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 95

Proposal for a directive – amending act

Article 5 – point 2 – point b a (new)

Directive 2003/71/EC

Article 13 – paragraph 7

Text proposed by the Commission

Amendment

(ba) Article 13(7) is replaced by the following:

"7. In order to take account of technical developments on financial markets and to ensure *consistent harmonisation and* uniform application of this Directive, the Commission shall *lay down, by means of delegated acts in accordance with Articles 24, 24a and 24b*, measures concerning the conditions in accordance with which time limits may be adjusted."

Amendment 96

Proposal for a directive – amending act

Article 5 – point 2 a (new)

Directive 2003/71/EC

Article 14 – paragraph 1

Text proposed by the Commission

Amendment

(2a) Article 14(1) is replaced by the following:

"1. Once approved, the prospectus shall be filed with the competent authority of the home Member State *and the European Securities and Market Authority* and shall be made available to the public by the issuer, offeror or person asking for admission to trading on a regulated market as soon as practicable and in any case, at a reasonable time in advance of, and at the latest at the beginning of, the offer to the public or the admission to trading of the securities involved. In addition, in the case of an initial public offer of a class of shares not already admitted to trading on a regulated market that is to be admitted to trading for the first time, the prospectus shall be available at least six working days before the end of the offer."

Amendment 97

Proposal for a directive – amending act

Article 5 – point 3 a (new)

Directive 2003/71/EC

Article 14 – paragraph 8

Text proposed by the Commission

Amendment

(3a) Article 14(8) is replaced by the following:

"8. In order to take account of technical developments on financial markets and to ensure *consistent harmonisation and* uniform application of this Directive, the Commission shall *lay down, by means of delegated acts in accordance with Articles 24, 24a and 24b*, measures concerning paragraphs 1, 2, 3 and 4. The first set of *delegated acts* shall be adopted by 1 July 2004.

The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 98

Proposal for a directive – amending act

Article 5 – point 3 b (new)

Directive 2003/71/EC

Article 15 – paragraph 7

Text proposed by the Commission

Amendment

(3b) Article 15(7) is replaced by the following:

"7. In order to take account of technical developments on financial markets and to ensure consistent harmonisation and uniform application of this Directive, the Commission shall lay down, by means of delegated acts in accordance with Articles 24, 24a and 24b, measures concerning the dissemination of advertisements announcing the intention to offer securities to the public or the admission to trading on a regulated market, in particular before the prospectus has been made available to the public or before the opening of the subscription, and concerning paragraph 4. The first set of delegated acts shall be adopted by the Commission by 1 July 2004.

The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 99

Proposal for a directive – amending act

Article 5 – point 4

Directive 2003/71/EC

Article 16 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

3. In order to ensure uniform application of this Article and to take account of technical developments on financial markets, the European Securities and Markets Authority shall develop draft technical standards to determine the conditions of application of the obligation to provide a supplement to

3. In order to ensure ***consistent harmonisation and*** uniform application of this Article and to take account of technical developments on financial markets, the European Securities and Markets Authority ***shall determine what constitutes a significant new factor, material mistake***

the prospectus in case of a significant new factor, material mistake or inaccuracy relating to the information included in the prospectus. The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

or inaccuracy referred to in paragraph 1 and shall develop draft technical standards to determine the conditions of application *including the procedures to be followed* of the obligation to provide a supplement to the prospectus. The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

Amendment 100

Proposal for a directive – amending act

Article 5 – point 5

Directive 2003/71/EC

Article 17 – paragraph 1

Text proposed by the Commission

1. Without prejudice to Article 23, where an offer to the public or admission to trading on a regulated market is provided for in one or more Member States, or in a Member State other than the home Member State, the prospectus approved by the home Member State and any supplements thereto shall be valid for the public offer or the admission to trading in any number of host Member States, provided that the European Securities and Markets Authority and the competent authority of each host Member State *is* notified in accordance with Article 18. Competent authorities of host Member States shall not undertake any approval or administrative procedures relating to prospectuses.

Amendment

1. Without prejudice to Article 23, where an offer to the public or admission to trading on a regulated market is provided for in one or more Member States, or in a Member State other than the home Member State, the prospectus approved by the home Member State and any supplements thereto shall be valid for the public offer or the admission to trading in any number of host Member States, provided that the European Securities and Markets Authority and the competent authority of each host Member State *are* notified in accordance with Article 18. Competent authorities of host Member States shall not undertake any approval or administrative procedures relating to prospectuses.

Amendment 101

Proposal for a directive – amending act

Article 5 – point 5 a (new)

Directive 2003/71/EC

Article 17 – paragraph 2

Text proposed by the Commission

Amendment

(5a) Article 17(2) is replaced by the

following:

"2. If there are significant new factors, material mistakes or inaccuracies, as referred to in Article 16, arising since the approval of the prospectus, the competent authority of the home Member State shall require the publication of a supplement to be approved as provided for in Article 13(1). The *European Securities and Markets Authority* and the competent authority of the host Member State may draw the attention of the competent authority of the home Member State to the need for any new information."

Amendment 102

Proposal for a directive – amending act

Article 5 – point 6

Directive 2003/71/EC

Article 18 – paragraph 4

Text proposed by the Commission

4. In order to ensure uniform application of this Directive and to take account of technical developments on financial markets, the European Securities and Markets Authority **may** develop draft technical standards to determine the conditions of application relating to the procedures for the notification of the certificate of approval, the copy of the prospectus, the translation of the summary and any supplement to the prospectus.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure ***laid down in Article 7 of Regulation .../... [ESMA]***."

Amendment

4. In order to ensure uniform application of this Directive and to take account of technical developments on financial markets, the European Securities and Markets Authority **shall** develop draft technical standards to determine the conditions of application relating to the procedures for the notification of the certificate of approval, the copy of the prospectus, the translation of the summary and any supplement to the prospectus.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure ***subparagraph in accordance with the procedure for implementing acts pursuant to Article 291 of the Treaty on the Functioning of the European Union.***

Amendment 103

Proposal for a directive – amending act

Article 5 – point 6 a (new)

Directive 2003/71/EC

Article 20 – paragraph 3

Text proposed by the Commission

Amendment

(6a) Article 20(3) is replaced by the following:

"3. In order to ensure consistent harmonisation and uniform application of this Directive, the Commission shall lay down, by means of delegated acts in accordance with Articles 24, 24a and 24b, measures to establish general equivalence criteria, based on the requirements laid down in Articles 5 and 7.

The draft delegated acts shall be drawn up by the European Securities and Markets Authority.

On the basis of such criteria, the Commission may, in accordance with Articles 24, 24a and 24b, declare that a third country ensures the equivalence of prospectus drawn up in that country with this Directive by reason of its national law, or of practices or procedures based on international standards set by international organisations, including the IOSCO disclosure standards."

Amendment 104

Proposal for a directive – amending act

Article 5 – point 6 b (new)

Directive 2003/71/EC

Article 21 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(6b) In Article 21, the following paragraph is inserted after paragraph 1:

"1a. The competent authorities shall

cooperate with the European Securities and Markets Authority where necessary for the purposes of this Directive."

Amendment 105

Proposal for a directive – amending act

Article 5 – point 6 c (new)

Directive 2003/71/EC

Article 21 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

(6c) In Article 21, the following paragraph is inserted:

"1b. The competent authorities shall, without any delay, provide the European Securities and Markets Authority and other competent authorities with all relevant and necessary information in order to fulfil their duties under this Directive."

Amendment 106

Proposal for a directive – amending act

Article 5 – point 7 a (new)

Directive 2003/71/EC

Article 21 – paragraph 4 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

(7a) In Article 21(4), the following subparagraph is added:

"On-site inspections under point (d) may be carried out in collaboration with the European Securities and Markets Authority."

Amendment 107

Proposal for a directive – amending act

Article 5 – point 8 – point a

Directive 2003/71/EC

Article 22 – paragraph 3

Text proposed by the Commission

3. Paragraph 1 shall not prevent the competent authorities from exchanging confidential information or from transmitting confidential information to the European Securities and Markets Authority or the European Systemic Risk Board. Information exchanged between competent authorities and the European Securities and Markets Authority or the European Systemic Risk Board shall be covered by the obligation of professional secrecy, to which the persons employed or formerly employed by the competent authorities receiving the information are subject.

Amendment

3. Paragraph 1 shall not prevent the competent authorities from exchanging confidential information or from transmitting confidential information to the European Securities and Markets Authority or the European Systemic Risk Board, ***subject to constraints relating to firm-specific information and effects on third countries as provided for in Regulation (EU) No .../2010 [ESMA] and Regulation (EU) No .../2010 [ESRB] respectively.*** Information exchanged between competent authorities and the European Securities and Markets Authority or the European Systemic Risk Board shall be covered by the obligation of professional secrecy, to which the persons employed or formerly employed by the competent authorities receiving the information are subject.

Amendment 108

Proposal for a directive – amending act

Article 5 – point 8 – point (b)

Directive 2003/71/EC

Article 22 – paragraph 4 – subparagraph 1

Text proposed by the Commission

4. In order to ensure uniform application of paragraph 2 and to take account of technical developments on financial markets, the European Securities and Markets Authority ***may*** develop draft technical standards to specify the conditions of cooperation and exchange of information between competent authorities, including the development of standard forms or templates for such cooperation and exchange of information.

Amendment

4. In order to ensure ***consistent harmonisation and*** uniform application of paragraph 2 and to take account of technical developments on financial markets, the European Securities and Markets Authority ***shall*** develop draft technical standards to specify the conditions of cooperation and exchange of information between competent authorities, including the development of standard forms or templates for such cooperation and exchange of information.

Amendment 109

Proposal for a directive – amending act

Article 5 – point 8 a (new)

Directive 2003/71/EC

Article 23 – paragraph 2

Text proposed by the Commission

Amendment

(8a) Article 23(2) is replaced by the following:

"2. If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, the issuer or the financial institution in charge of the public offer persists in breaching the relevant legal or regulatory provisions, the competent authority of the host Member State, after informing the competent authority of the home Member State, shall take all the appropriate measures in order to protect investors. The Commission *and the European Securities and Markets Authority* shall be informed of such measures at the earliest opportunity."

Amendment 110

Proposal for a directive – amending act

Article 5 – point 8 b (new)

Directive 2003/71/EC

Chapter VII – title

Text proposed by the Commission

Amendment

(8b) The title of Chapter VII is replaced by the following:

***"DELEGATED POWERS AND
IMPLEMENTING MEASURES"***

Amendment 111

Proposal for a directive – amending act

Article 5 – point 8 c (new)

Directive 2003/71/EC

Article 24 – title

Text proposed by the Commission

Amendment

(8c) The title of Article 24 is replaced by the following:

"Delegation of powers and committee procedure"

Amendment 112

Proposal for a directive – amending act

Article 5 – point 8 d (new)

Directive 2003/71/EC

Article 24 – paragraph 2a

Text proposed by the Commission

Amendment

(8d) Article 24(2a) is replaced by the following:

"2a. The power to adopt the delegated acts referred to in Article 1(3a), Article 2(4), Article 4(3), Article 5(5), Article 5(5a), Article 7(1), Article 7(3), Article 8(4), Article 11(3), Article 13(7), Article 14(8), Article 15(7) and Article 20(3) shall be conferred on the Commission for an indeterminate period of time."

Amendment 113

Proposal for a directive – amending act

Article 5 – point 8 e (new)

Directive 2003/71/EC

Article 24 – paragraph 2a a (new)

Text proposed by the Commission

Amendment

(8e) In Article 24, the following paragraph is inserted:

"2aa. As soon as it adopts a delegated act, the Commission shall notify it"

simultaneously to the European Parliament and to the Council."

Amendment 114

Proposal for a directive – amending act

Article 5 – point 8 f (new)

Directive 2003/71/EC

Article 24 – paragraph 2a b (new)

Text proposed by the Commission

Amendment

(8f) In Article 24, the following paragraph is inserted:

"2ab. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 24a and 24b."

Amendment 115

Proposal for a directive – amending act

Article 5 – point 8 g (new)

Directive 2003/71/EC

Article 24 – paragraph 3

Text proposed by the Commission

Amendment

(8g) Article 24(3) is deleted.

Amendment 116

Proposal for a directive – amending act

Article 5 – point 8 h (new)

Directive 2003/71/EC

Article 24 a (new)

Text proposed by the Commission

Amendment

(8h) The following article is inserted after Article 24:

"Article 24a

Revocation of the delegation

1. The delegation of powers referred to in Article 1(3a), Article 2(4), Article 4(3),

Article 5(5), 5 Article (5a), Article 7(1), Article 7(3), Article 8(4), Article 11(3), Article 13(7), Article 14(8), Article 15(7) and Article 20(3) may be revoked by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure with a view to deciding whether to revoke the delegation of powers shall endeavour to inform the other institution and the Commission.

3. The revocation decision shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at such later date as may be specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union."

Amendment 117

Proposal for a directive – amending act

Article 5 – point 8 i (new)

Directive 2003/71/EC

Article 24 b (new)

Text proposed by the Commission

Amendment

(8i) The following article is inserted after Article 24a:

"Article 24b

Objections to delegated acts

1. The European Parliament or the Council may object to a delegated act within a period of four months from the date of notification. At the initiative of the European Parliament or the Council this period shall be extended by two months.

2. If, on the expiry of that period neither the European Parliament nor the Council has objected to the delegated act, it shall enter into force on the date stated therein. If the European Parliament or the Council objects to a delegated act, it shall not enter into force.

3. In order to expedite the adoption of delegated acts where appropriate, the European Parliament and the Council, pursuant to a procedure of early non-objection and in duly justified cases, may decide to shorten the four-month period referred to in the first subparagraph, following a request of the Commission."

Amendment 118

Proposal for a directive – amending act

Article 6 – point -1 (new)

Directive 2004/39/EC

Article 2 – paragraph 3

Text proposed by the Commission

Amendment

(-1) Article 2(3) is replaced by the following:

"3. In order to take account of developments on financial markets and to ensure consistent harmonisation and uniform application of this Directive, the Commission shall, by means of delegated acts in accordance with Articles 64, 64a and 64b, in respect of exemptions (c) (i), and (k) define the criteria for determining when an activity is to be considered as ancillary to the main business on a group level as well as for determining when an activity is provided in an incidental manner.

Draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 119

Proposal for a directive – amending act

Article 6 – point -1 a (new)

Directive 2004/39/EC

Article 4 – paragraph 1 – point 2 – subparagraph 2 – introductory wording

Text proposed by the Commission

Amendment

(-1a) In Article 4(1), the introductory wording of the second subparagraph of point 2 is replaced by the following:

"The European Securities and Markets Authority shall determine:"

Amendment 120

Proposal for a directive – amending act

Article 6 – point -1 b (new)

Directive 2004/39/EC

Article 4 – paragraph 2

Text proposed by the Commission

Amendment

(-1b) Article 4(2) is replaced by the following:

"2. In order to take account of developments on financial markets, and to ensure consistent harmonisation and the uniform application of this Article, the European Securities and Markets Authority shall develop draft technical standards to determine the conditions of application regarding the different elements of the definitions laid down in paragraph 1 of this Article as well as the different elements of the definitions laid down in Article 2 of Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive¹ and Article 2 of Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes

of that Directive². The Authority shall submit those draft technical standards to the Commission by 1 January 2015.

The Commission shall adopt those draft technical standards by means of delegated acts in accordance with Articles 64, 64a and 64b."

Amendment 121

Proposal for a directive – amending act

Article 6 – point 1

Directive 2004/39/EC

Article 5 – paragraph 3

Text proposed by the Commission

3. Member States shall **establish a** register **of** all investment firms. The register shall be publicly accessible and shall contain information on the services or activities for which the investment firm is authorised. It shall be updated on a regular basis.

The European Securities and Markets Authority **established by Regulation .../... of the European Parliament and of the Council** shall establish a **register** of all investment firms in the **Community**. The European Securities and Markets Authority shall publish that list and shall keep it up to date.

Amendment

3. Member States shall register all investment firms **which provide services or carry out activities within their sphere of authority**. The register shall be publicly accessible and shall contain information on the services or activities for which the investment firm is authorised. It shall be updated on a regular basis. **Every authorisation shall be notified to the European Securities and Markets Authority.**

The European Securities and Markets Authority shall establish a **register** of all investment firms in the **Union**. **The register shall contain information on the services or activities for which the investment firm is authorised and it shall be updated on a regular basis.** The European Securities and Markets Authority shall **be publicly accessible and the register shall be published on its website.**

Where a competent Authority has withdrawn an authorisation in accordance with points (b), (c) and (d) of Article 8, the withdrawal shall be published in the register for a period of five years.

Amendment 122

Proposal for a directive – amending act

Article 6 – point 2

Directive 2004/39/EC

Article 7 – paragraph 4 –subparagraph 1

Text proposed by the Commission

4. In order to ensure uniform application of this Article and of **Articles 7, 9(2)-(4), 10(1)-(2), and 12**, the European Securities and Markets Authority **may** develop draft technical standards to **determine the conditions of application of the requirements and procedures for such authorisation as laid down in this Article and in Articles 7, 9(2)-(4), 10(1)-(2) and 12.**

Amendment

4. In order to ensure **consistent harmonisation and** uniform application of this Article and of **Article 5(4), Article 9(2) to (4), Article 10(1) and (2), and Article 12**, the European Securities and Markets Authority **shall** develop draft technical standards to:

(a) specify the requirements regarding the head office under Article 5(4);

(b) determine the information to be provided to the competent authorities under Article 7(2);

(c) determine the information and develop standard forms, templates and procedures for the notification provided for in Article 9(2);

(d) specify the requirements and criteria under Article 9(2) to (4) and Article 10(1) and (2); and

(e) specify the initial capital requirement under Article 12.

The Authority shall submit those draft technical standards to the Commission by 1 January 2015.

Amendment 123

Proposal for a directive – amending act

Article 6 – point 2 a (new)

Directive 2004/39/EC

Article 8 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(2a) In Article 8, the following paragraph is added:

"Every withdrawal of authorisation shall be notified to the European Securities and Markets Authority."

Amendment 124

Proposal for a directive – amending act

Article 6 – point 3

Directive 2004/39/EC

Article 10a – paragraph 8 – subparagraph 1

Text proposed by the Commission

8. In order to ensure uniform application of this Article, the European Securities and Markets Authority shall develop draft technical standards to determine the conditions of application relating to the list of information required for the assessment of an acquisition as referred to in paragraph 1 and the modalities of the consultation process between the relevant competent authorities as referred to in Article 10 (4). The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

Amendment

8. In order to ensure ***consistent harmonisation and*** uniform application of this Article, the European Securities and Markets Authority shall develop draft technical standards to determine the conditions of application relating to the list of information required for the assessment of an acquisition as referred to in paragraph 1, ***the criteria for opposing acquisitions as referred to in paragraph 4*** and the modalities of the consultation process between the relevant competent authorities as referred to in Article 10 (4). The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

Amendment 125

Proposal for a directive – amending act

Article 6 – point 3 a (new)

Directive 2004/39/EC

Article 10b – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

(3a) In Article 10b(1), the second subparagraph is replaced by the following:

"In order to take account of [...] developments on financial markets, and to ensure consistent harmonisation and the uniform application of this Directive, the Commission shall, by means of

delegated acts in accordance with Articles 64, 64a and 64b, adopt measures which adjust the criteria set out in the first subparagraph of this paragraph.

The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 126

Proposal for a directive – amending act

Article 6 – point 3 b (new)

Directive 2004/39/EC

Article 13 – paragraph 10

Text proposed by the Commission

Amendment

(3b) Article 13(10) is replaced by the following:

"10. In order to take account of developments on financial markets, and to ensure consistent harmonisation and the uniform application of this Directive, the European Securities and Markets Authority shall develop draft technical standards to determine the conditions of application of paragraphs 2 to 8 of this Article and Article 18(1) and (2) of this Directive, and Articles 7 and 8 of Commission Regulation (EC) No 1287/2006/EC as well as Articles 16 to 20 and 51 of Commission Directive 2006/73/EC. The Authority shall submit those draft technical standards to the Commission by 1 January 2015.

The Commission may adopt the draft technical standards referred to in the first subparagraph by means of delegated acts in accordance with Articles 64, 64a and 64b."

Amendment 127

Proposal for a directive – amending act

Article 6 – point 3 c (new)

Directive 2004/39/EC

Article 15 – paragraph 1

Text proposed by the Commission

Amendment

(3c) Article 15(1) is replaced by the following:

"1. Member States shall inform the Commission and the European Securities and Markets Authority of any general difficulties which their investment firms encounter in establishing themselves or providing investment services and/or performing investment activities in any third country."

Amendment 128

Proposal for a directive – amending act

Article 6 – point 3 d (new)

Directive 2004/39/EC

Article 15 – paragraph 2

Text proposed by the Commission

Amendment

(3d) Article 15(2) is replaced by the following:

"2. Whenever it appears to the Commission, on the basis of information submitted to it under paragraph 1, that a third country does not grant *Union* investment firms effective market access comparable to that granted by the *Union* to investment firms from that third country, the Commission, following guidance issued by the European Securities and Markets Authority, shall submit proposals to the Council for an appropriate mandate for negotiation with a view to obtaining comparable competitive opportunities for *Union* investment firms. The Council shall act by a qualified majority."

*The proposals shall be transmitted
without delay to the European Parliament
for information."*

Amendment 129

Proposal for a directive – amending act
Article 6 – point 3 e (new)
Directive 2004/39/EC
Article 15 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

*(3e) In Article 15(3), the second
subparagraph is replaced by the
following:*

"In the circumstances referred to in the first subparagraph, the Commission may decide, by means of delegated acts in accordance with Articles 64, 64a and 64b, at any time and in addition to the initiation of negotiations, that the competent authorities of the Member States must limit or suspend their decisions regarding requests pending or future requests for authorisation and the acquisition of holdings by direct or indirect parent undertakings governed by the law of the third country in question. Such limitations or suspensions may not be applied to the setting-up of subsidiaries by investment firms duly authorised in the *Union* or by their subsidiaries, or to the acquisition of holdings in *Union* investment firms by such firms or subsidiaries. The duration of such measures may not exceed three months."

Amendment 130

Proposal for a directive – amending act
Article 6 – point 3 f (new)
Directive 2004/39/EC
Article 15 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Amendment

(3f) In Article 15(3), the third subparagraph is replaced by the following:

"Before the end of the three-month period referred to in the second subparagraph and in the light of the results of the negotiations, the Commission may decide by means of delegated acts in accordance with Articles 64, 64a and 64b, to extend these measures."

Amendment 131

Proposal for a directive – amending act

Article 6 – point 3 g (new)

Directive 2004/39/EC

Article 16 – paragraph 2

Text proposed by the Commission

Amendment

(3g) In Article 16(2), the following subparagraph is added:

"The European Securities and Markets Authority shall develop guidelines regarding the monitoring methods referred to in this Article."

Amendment 132

Proposal for a directive – amending act

Article 6 – point 3 h (new)

Directive 2004/39/EC

Article 18 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

(3h) In Article 18(3), the introductory part of the first subparagraph is replaced by the following:

"3. In order to take account of developments on financial markets, and to ensure consistent harmonisation and the uniform application of paragraphs 1

and 2, the Commission *shall, by means of delegated acts in accordance with Articles 64, 64a and 64b:*"

Amendment 133

Proposal for a directive – amending act
Article 6 – point 3 i (new)
Directive 2004/39/EC
Article 18 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

(3i) In Article 18(3), the second subparagraph is replaced by the following:

"The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 134

Proposal for a directive – amending act
Article 6 – point 3 j (new)
Directive 2004/39/EC
Article 19 – paragraph 6 – indent 1

Text proposed by the Commission

Amendment

(3j) In Article 19(6), the first indent is replaced by the following:

"– the above services relate to shares admitted to trading on a regulated market or in an equivalent third country market, money market instruments, bonds or other forms of securitised debt (excluding those bonds or securitised debt that embed a derivative), UCITS and other non-complex financial instruments. A third country market shall be considered as equivalent to a regulated market if it complies with equivalent requirements to those established under Title III. The European Securities and Markets Authority shall publish on its website a list of those markets that are to be

considered as equivalent. This list shall be updated periodically,"

Amendment 135

Proposal for a directive – amending act

Article 6 – point 3 k (new)

Directive 2004/39/EC

Article 19 – paragraph 10 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

(3k) In Article 19(10), the introductory part of the first subparagraph is replaced by the following:

"10. In order to take account of developments in financial markets and to ensure the necessary protection of investors, the consistent harmonisation and the uniform application of this Article, the European Securities and Markets Authority shall develop draft technical standards to determine the conditions of application of paragraphs 1 to 8 of this Article as well as of Articles 35 to 39 of Commission Directive 2006/73/EC. The Authority shall submit those draft technical standards to the Commission by 1 January 2015.

The Commission may adopt the draft technical standards referred to in the first subparagraph by means of delegated acts in accordance with Articles 64, 64a and 64b."

Amendment 136

Proposal for a directive – amending act

Article 6 – point 3 l (new)

Directive 2004/39/EC

Article 21 – paragraph 6 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

(3l) In Article 21(6), the introductory part of the first subparagraph is replaced by

the following:

"6. In order to take account of developments in financial markets and to ensure the protection necessary for investors, the fair and orderly functioning of markets, the consistent harmonisation and the uniform application of this Article, the European Securities and Markets Authority shall develop draft technical standards to determine the conditions of application of paragraphs 1 to 5 of this Article as well as Articles 44-46 of Commission Directive 2006/73/EC. The Authority shall submit those draft technical standards to the Commission by 1 January 2015.

The Commission may adopt the draft technical standards referred to in the first subparagraph by means of delegated acts in accordance with Articles 64, 64a and 64b."

Amendment 137

Proposal for a directive – amending act

Article 6 – point 3 m (new)

Directive 2004/39/EC

Article 22 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

(3m) In Article 22(3), the introductory part of the first subparagraph is replaced by the following:

"3. In order to ensure that measures for the protection of investors and fair and orderly functioning of markets take account of technical developments in financial markets, and to ensure consistent harmonisation and the uniform application of this Article, the European Securities and Markets Authority shall develop draft technical standards to determine the conditions of application of paragraphs 1 and 2 of this Article as well as Article 31 of Commission Regulation 2006/1287/EC.

The Authority shall submit those draft technical standards to the Commission by 1 January 2015.

The Commission may adopt the draft technical standards referred to in the first subparagraph by means of delegated acts in accordance with Articles 64, 64a and 64b."

Amendment 138

Proposal for a directive – amending act
Article 6 – point 3 n (new)
Directive 2004/39/EC
Article 23 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

(3n) Article 23(3), first subparagraph is replaced by the following:

"Member States that decide to allow investment firms to appoint tied agents shall send a systematically updated list of all tied agents to the European Securities and Market Authority. The European Authority shall establish a public register of all tied agents throughout the Union, which shall kept up to date and published on the internet for consultation free of charge."

Amendment 139

Proposal for a directive – amending act
Article 6 – point 3 o (new)
Directive 2004/39/EC
Article 23 – paragraph 3 – subparagraph 5

Text proposed by the Commission

Amendment

(3o) Article 23(3), the fifth subparagraph is replaced by the following:

"The register shall be updated on a regular basis. It shall be published on the internet and available for consultation.

The European Securities and Markets Authority shall establish a list of all appointed tied agents of the investment firms throughout the Union. The European Securities and Markets Authority shall publish that list on its website and shall keep it up to date."

Amendment 140

Proposal for a directive – amending act

Article 6 – point 3 p (new)

Directive 2004/39/EC

Article 24 – paragraph 5 –subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

(3p) In Article 24(5), the introductory part of the first subparagraph is replaced by the following:

"5. In order to ensure consistent harmonisation and the uniform application of paragraphs 2, 3 and 4 in the light of changing market practice and to facilitate the effective operation of the single market, the Commission shall, by means of delegated acts in accordance with Articles 64, 64a and 64b, define:"

Amendment 141

Proposal for a directive – amending act

Article 6 – point 3 q (new)

Directive 2004/39/EC

Article 24 – paragraph 5 –subparagraph 2

Text proposed by the Commission

Amendment

(3q) In Article 24(5), the second subparagraph is replaced by the following:

"The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 142

Proposal for a directive – amending act

Article 6 – point 3 r (new)

Directive 2004/39/EC

Article 25 – paragraph 1

Text proposed by the Commission

Amendment

(3r) Article 25(1) is replaced by the following:

"1. Without prejudice to the allocation of responsibilities for enforcing the provisions of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), *the European Securities and Markets Authority and Member States* shall ensure that appropriate measures are in place to enable the competent authority to monitor the activities of investment firms to ensure that they act honestly, fairly and professionally and in a manner which promotes the integrity of the market."

Amendment 143

Proposal for a directive – amending act

Article 6 – point 3 s (new)

Directive 2004/39/EC

Article 25 – paragraph 2

Text proposed by the Commission

Amendment

(3s) Article 25(2) is replaced by the following:

"2. Member States shall require investment firms to keep at the disposal of *the European Securities and Markets Authority and the competent authority*, for at least five years, the relevant data relating to all transactions in financial instruments which they have carried out, whether on own account or on behalf of a client. In the case of transactions carried out on behalf of

clients, the records shall contain all the information and details of the identity of the client, and the information required under Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering."

Amendment 144

Proposal for a directive – amending act

Article 6 – point 3 t (new)

Directive 2004/39/EC

Article 25 – paragraph 7

Text proposed by the Commission

Amendment

(3t) Article 25(7) is replaced by the following:

"7. In order to ensure that measures for the protection of market integrity are modified to take account of technical developments in financial markets, and to ensure *consistent harmonisation and* the uniform application of paragraphs 1 to 5, the Commission shall, *by means of delegated acts in accordance with Articles 64, 64a and 64b*, define the methods and arrangements for reporting financial transactions, the form and content of these reports and the criteria for defining a relevant market in accordance with paragraph 3.

The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 145

Proposal for a directive – amending act

Article 6 – point 3 u (new)

Directive 2004/39/EC

Article 27 – paragraph 2

Text proposed by the Commission

Amendment

(3u) Article 27(2) is replaced by the following:

"2. The competent authority of the most relevant market in terms of liquidity as defined in Article 25 for each share shall determine at least annually, on the basis of the arithmetic average value of the orders executed in the market in respect of that share, the class of shares to which it belongs. This information shall be made public to all market participants and transmitted to the European Securities and Markets Authority. The European Securities and Markets Authority shall publish this information on its website."

Amendment 146

Proposal for a directive – amending act

Article 6 – point 3 v (new)

Directive 2004/39/EC

Article 27 – paragraph 7 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

(3v) In Article 27(7), the introductory part of the first subparagraph is replaced by the following:

"7. In order to take account of developments in financial markets and to ensure consistent harmonisation and the uniform application of this Article, the European Securities and Markets Authority shall develop draft technical standards to determine the conditions of application of paragraphs 1 to 6 of this Article as well as Articles 21 to 26 of Commission Regulation 2006/1287/EC. The Authority shall submit those draft technical standards to the Commission by 1 January 2015.

The Commission may adopt the draft technical standards referred to in the first subparagraph by means of delegated acts

in accordance with Articles 64, 64a and 64b."

Amendment 147

Proposal for a directive – amending act

Article 6 – point 3 w (new)

Directive 2004/39/EC

Article 28 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

(3w) In Article 28(3), the introductory part of the first subparagraph is replaced by the following:

"3. In order to take account of developments in financial markets and to ensure the transparent and orderly functioning of markets, the consistent harmonisation and the uniform application of this Article, the European Securities and Markets Authority shall develop draft technical standards to determine the conditions of application of paragraphs 1 to 2 of this Article as well as Articles 27 to 30 and 32 to 34 of Commission Regulation 2006/1287/EC. The Authority shall submit those draft technical standards to the Commission by 1 January 2015.

The Commission may adopt the draft technical standards referred to in the first subparagraph by means of delegated acts in accordance with Articles 64, 64a and 64b."

Amendment 148

Proposal for a directive – amending act

Article 6 – point 3 x (new)

Directive 2004/39/EC

Article 29 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

(3x) In Article 29(3), the introductory part of the first subparagraph is replaced by

the following:

"3. In order to take account of developments in financial markets and to ensure consistent harmonisation and the uniform application of this Article, the European Securities and Markets Authority shall develop draft technical standards to determine the conditions of application of paragraphs 1 to 2 of this Article as well as Articles 17 to 20, 29 to 30 and 32 to 34 of Commission Regulation 2006/1287/EC. The Authority shall submit those draft technical standards to the Commission by 1 January 2015.

The Commission may adopt the draft technical standards referred to in the first subparagraph by means of delegated acts in accordance with Articles 64, 64a and 64b."

Amendment 149

Proposal for a directive – amending act

Article 6 – point 3 y (new)

Directive 2004/39/EC

Article 30 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

(3y) In Article 30(3), the introductory part of the first subparagraph is replaced by the following:

"3. In order to take account of developments in financial markets and to ensure consistent harmonisation and the uniform application of this Article, the European Securities and Markets Authority shall develop draft technical standards to determine the conditions of application of paragraphs 1 to 2 of this Article as well as Articles 27 to 30 and 32 to 34 of Commission Regulation 2006/1287/EC. The Authority shall submit those draft technical standards to the Commission by 1 January 2015.

The Commission may adopt the draft

technical standards referred to in the first subparagraph by means of delegated acts in accordance with Articles 64, 64a and 64b."

Amendment 150

Proposal for a directive – amending act

Article 6 – point 3 z (new)

Directive 2004/39/EC

Article 31 – paragraph 2 –subparagraph 2

Text proposed by the Commission

Amendment

(3z) In Article 31(2), the second subparagraph is replaced by the following:

"In cases where the investment firm intends to use tied agents, the competent authority of the home Member State of the investment firm shall, at the request of the competent authority of the host Member State and within a reasonable time, communicate the identity of the tied agents that the investment firm intends to use in that Member State. The host Member State may make public such information and shall transmit this information to the European Securities and Markets Authority."

Amendment 151

Proposal for a directive – amending act

Article 6 – point 4

Directive 2004/39/EC

Article 31 – paragraph 7 –subparagraph 1

Text proposed by the Commission

Amendment

7. In order to ensure uniform application of this Article and establish a uniform notification procedure, the European Securities and Markets Authority **may** develop draft technical standards to determine the conditions of application regarding the obligation to notify

7. In order to ensure **consistent harmonisation and** uniform application of this Article and establish a uniform notification procedure, the European Securities and Markets Authority **shall** develop draft technical standards to determine the conditions of application

information according to paragraphs 2 and 4 and the process of transmitting this information according to paragraphs 3 and 6, including the development of standard forms and templates.

regarding the obligation to notify information according to paragraphs 2 and 4 and the process of transmitting this information according to paragraphs 3 and 6, including the development of standard forms and templates.

Amendment 152

Proposal for a directive – amending act

Article 6 – point 5

Directive 2004/39/EC

Article 32 – paragraph 10 – subparagraph 1

Text proposed by the Commission

10. In order to ensure uniform application of this Article and establish a uniform notification procedure, the European Securities and Markets Authority *may* develop draft technical standards to determine the conditions of application regarding the obligation to notify information according to paragraphs 2 and 4 and the process of transmitting this information according to paragraph 3, including the development of standard forms and templates.

Amendment

10. In order to ensure ***consistent harmonisation and*** uniform application of this Article and establish a uniform notification procedure, the European Securities and Markets Authority ***shall*** develop draft technical standards to determine the conditions of application regarding the obligation to notify information according to paragraphs 2 and 4 and the process of transmitting this information according to paragraph 3, including the development of standard forms and templates.

Amendment 153

Proposal for a directive – amending act

Article 6 – point 5 a (new)

Directive 2004/39/EC

Article 36 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

(5a) In Article 36, the following paragraph is added:

"5a. The European Securities and Markets Authority shall be notified of any withdrawal of authorisation."

Amendment 154

Proposal for a directive – amending act

Article 6 – point 5 b (new)

Directive 2004/39/EC

Article 39 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(5b) In Article 39, the following paragraph is added:

"1a. In order to take account of developments in financial markets and to ensure consistent harmonisation and uniform application of this Article, the European Securities and Markets Authority shall develop draft technical standards to determine the conditions of application of point (d). The Authority shall submit those draft technical standards to the Commission by 1 January 2015.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation (EU) No .../2010 [ESMA]."

Justification

Uniform application of the Mifid in order to develop a level-playing field should be facilitated through the drafting of technical standards by ESMA..

Amendment 155

Proposal for a directive – amending act

Article 6 – point 5 c (new)

Directive 2004/39/EC

Article 40 – paragraph 6 –subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

(5c) In Article 40(6), the introductory part of the first subparagraph is replaced by the following:

"6. In order to ensure consistent harmonisation and the uniform application of paragraphs 1 to 5, the Commission shall, by means of delegated acts in accordance with Articles 64, 64a

and 64b:"

Amendment 156

Proposal for a directive – amending act

Article 6 – point 5 d (new)

Directive 2004/39/EC

Article 40 – paragraph 6 –subparagraph 2

Text proposed by the Commission

Amendment

(5d) In Article 40(6), the second subparagraph is replaced by the following:

"The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 157

Proposal for a directive – amending act

Article 6 – point 5 e (new)

Directive 2004/39/EC

Article 41 – paragraph 2

Text proposed by the Commission

Amendment

(5e) Article 41(2) is replaced by the following:

"2. A competent authority which demands the suspension or removal of a financial instrument from trading on one or more regulated markets shall immediately make public its decision and inform the European Securities and Markets Authority and the competent authorities of the other Member States. Except where it could cause significant damage to the investors' interests or the orderly functioning of the market the competent authorities of the other Member States shall demand the suspension or removal of that financial instrument from trading on the regulated markets and MTFs that operate under their authority."

Amendment 158

Proposal for a directive – amending act

Article 6 – point 5 f (new)

Directive 2004/39/EC

Article 42 – paragraph 6 –subparagraph 2

Text proposed by the Commission

Amendment

(5f) In Article 42(6), the second subparagraph is replaced by the following:

"The regulated market shall communicate to the competent authority of its home Member State and the European Securities and Markets Authority the Member State in which it intends to provide such arrangements. The competent authority of the home Member State shall communicate, within one month, this information to the Member State in which the regulated market intends to provide such arrangements."

Amendment 159

Proposal for a directive – amending act

Article 6 – point 5 g (new)

Directive 2004/39/EC

Article 42 – paragraph 7 a (new)

Text proposed by the Commission

Amendment

(5g) In Article 42, the following paragraph is added:

"7a. In order to take account of developments in financial markets and to ensure consistent harmonisation and uniform application of this Article, the European Securities and Markets Authority shall develop draft technical standards to determine the conditions of application of paragraph 1. The Authority shall submit those draft technical standards to the Commission by 1

January 2015.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation (EU) No .../2010 [ESMA]."

Justification

Uniform application of the Mifid in order to develop a level-playing field should be facilitated through the drafting of technical standards by ESMA..

Amendment 160

Proposal for a directive – amending act

Article 6 – point 5 h (new)

Directive 2004/39/EC

Article 44 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

(5h) In Article 44(3), the introductory part of the first subparagraph is replaced by the following:

"3. In order to take account of developments in financial markets and to ensure consistent harmonisation and the uniform application of this Article, the European Securities and Markets Authority shall develop draft technical standards to determine the conditions of application of paragraphs 1 to 2 of this Article as well as Articles 17 to 20, 29 to 30 and 32 to 34 of Commission Regulation 2006/1287/EC. The Authority shall submit those draft technical standards to the Commission by 1 January 2015.

The Commission may adopt the draft technical standards referred to in the first subparagraph by means of delegated acts in accordance with Articles 64, 64a and 64b."

Amendment 161

Proposal for a directive – amending act

Article 6 – point 5 i (new)

Directive 2004/39/EC

Article 45 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

(5i) In Article 45(3), the introductory part of the first subparagraph is replaced by the following:

"3. In order to provide for the efficient and orderly functioning of financial markets, to take account of developments in financial markets and to ensure consistent harmonisation and the uniform application of this Article, the European Securities and Markets Authority shall develop draft technical standards to determine the conditions of application of paragraphs 1 to 2 of this Article as well as Articles 27 to 30 and 32 to 34 of Commission Regulation 2006/1287/EC. The Authority shall submit those draft technical standards to the Commission by 1 January 2015.

The Commission may adopt the draft technical standards referred to in the first subparagraph by means of delegated acts in accordance with Articles 64, 64a and 64b."

Amendment 162

Proposal for a directive – amending act

Article 6 – point 7 a (new)

Directive 2004/39/EC

Article 51 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(7a) In Article 51, the following paragraph is inserted:

"2a. Member States shall inform the European Securities and Markets Authority of the administrative measures or sanctions determined in accordance

with paragraphs 1 and 2."

Amendment 163

Proposal for a directive – amending act

Article 6 – point 8 a (new)

Directive 2004/39/EC

Article 54 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

(8a) In Article 54, the following paragraph is added:

"5a. This Article shall not prevent the competent authorities from exchanging confidential information or from transmitting confidential information to the European Securities and Markets Authority or the European Systemic Risk Board. Information exchanged between competent authorities and the European Securities and Markets Authority or the European Systemic Risk Board shall be covered by the obligation of professional secrecy, to which the persons employed or formerly employed by the competent authorities receiving the information are subject."

Amendment 164

Proposal for a directive – amending act

Article 6 – point 8 b (new)

Directive 2004/39/EC

Article 56 – paragraph 1

Text proposed by the Commission

Amendment

(8b) Article 56(1) is replaced by the following:

"1. Competent authorities of different Member States shall cooperate with each other and with the European Securities and Markets Authority whenever necessary for the purpose of carrying out their duties under this Directive, making use of their powers whether set

out in this Directive or in national law.

Competent authorities shall render assistance to competent authorities of the other Member States *and to the European Securities and Markets Authority*. In particular, they shall exchange information and cooperate in any investigation or supervisory activities.

In order to facilitate and accelerate cooperation, and more particularly exchange of information, Member States shall designate one single competent authority as a contact point for the purposes of this Directive. Member States shall communicate to the Commission, *to the European Securities and Markets Authority* and to the other Member States the names of the authorities which are designated to receive requests for exchange of information or cooperation pursuant to this paragraph."

Amendment 165

Proposal for a directive – amending act

Article 6 – point 8 c (new)

Directive 2004/39/EC

Article 56 – paragraph 4

Text proposed by the Commission

Amendment

(8c) Article 56(4) is replaced by the following:

"Where a competent authority has good reasons to suspect that acts contrary to the provisions of this Directive, carried out by entities not subject to its supervision, are being or have been carried out on the territory of another Member State, it shall notify this in as specific a manner as possible to the competent authority of the other Member State *and to the European Securities and Markets Authority*. The latter authority shall take appropriate

action. It shall inform the notifying competent authority *and the European Securities and Markets Authority* of the outcome of the action and, to the extent possible, of significant interim developments. This paragraph shall be without prejudice to the competences of the competent authority that has forwarded the information."

Amendment 166

Proposal for a directive – amending act

Article 6 – point 8 d (new)

Directive 2004/39/EC

Article 56 – paragraph 5

Text proposed by the Commission

Amendment

(8d) Article 56(5) is replaced by the following:

"5. In order to ensure consistent harmonisation and the uniform application of paragraphs 1 and 2, the Commission shall, by means of delegated acts in accordance with Articles 64, 64a and 64b, define the modalities for the cooperation of the competent authorities and establish the criteria under which the operations of a regulated market in a host Member State could be considered as of substantial importance for the functioning of the securities markets and the protection of the investors in that host Member State [...]."

Amendment 167

Proposal for a directive – amending act

Article 6 – point 8 e (new)

Directive 2004/39/EC

Article 56 – paragraph 5 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

(8e) In Article 56(5), the following

subparagraph is added:

"The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 168

Proposal for a directive – amending act

Article 6 – point 9

Directive 2004/39/EC

Article 56 – paragraph 6

Text proposed by the Commission

6. In order to ensure uniform application of paragraphs 1 and 2, the European Securities and Markets Authority **may** develop draft technical standards to determine the conditions of application relating to the obligation for competent authorities to cooperate according to paragraph 1 and to the content of the cooperation agreements according to paragraph 2, including the development of standard forms and templates.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure ***laid down in Article 7 of Regulation .../.... [ESMA]***.

Amendment

6. In order to ensure uniform application of paragraphs 1 and 2, the European Securities and Markets Authority ***shall*** develop draft technical standards to determine the conditions of application relating to the obligation for competent authorities to cooperate according to paragraph 1 and to the content of the cooperation agreements according to paragraph 2, including the development of standard forms and templates.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure ***for implementing acts pursuant Article 291 of the Treaty on the Functioning of the European Union***.

Amendment 169

Proposal for a directive – amending act

Article 6 – point 10 – point a

Directive 2004/39/EC

Article 57 – paragraph 1

Text proposed by the Commission

(a) ***The existing text is renumbered as paragraph 1.***

Amendment

(a) ***In Article 57, the first paragraph is replaced by the following:***

"The European Securities and Markets Authority or a competent authority of one Member State may request the cooperation of the competent authority

of another Member State in a supervisory activity or for an on-the-spot verification or in an investigation. In the case of investment firms that are remote members of a regulated market the competent authority of the regulated market may choose to address them directly, in which case it shall inform the competent authority of the home Member State of the remote member accordingly."

Amendment 170

Proposal for a directive – amending act

Article 6 – point 10 – point b

Directive 2004/39/EC

Article 57 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. In order to ensure uniform application of paragraph 1, the European Securities and Markets Authority **may** develop draft technical standards to determine the conditions of application of the obligation for competent authorities to cooperate in supervisory activities, on-the-spot-verifications, and investigations.

Amendment

2. In order to ensure **consistent harmonisation and** uniform application of paragraph 1, the European Securities and Markets Authority **shall** develop draft technical standards to determine the conditions of application of the obligation for competent authorities to cooperate in supervisory activities, on-the-spot-verifications, and investigations.

Amendment 171

Proposal for a directive – amending act

Article 6 – point 11 – point -a (new)

Directive 2004/39/EC

Article 58 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(-a) In Article 58, the following paragraph is inserted:

"1a. Competent authorities shall, without any delay, provide the European Securities and Markets Authority and other competent authorities with all relevant and necessary information in

order to fulfil their duties under this Directive."

Amendment 172

Proposal for a directive – amending act

Article 6 – point 11 – point a

Directive 2004/39/EC

Article 58 – paragraph 4 – subparagraph 1

Text proposed by the Commission

4. In order to ensure uniform application of paragraphs 1 and 2, the European Securities and Markets Authority *may* develop draft technical standards to ***determine the conditions of application of the obligation to*** exchange information, including the development of standard forms or templates.

Amendment

4. In order to ensure ***consistent harmonisation and*** uniform application of paragraphs 1 and 2, the European Securities and Markets Authority ***shall*** develop draft technical standards to ***establish common procedures for the*** exchange ***of*** information, including the development of standard forms or templates.

Amendment 173

Proposal for a directive – amending act

Article 6 – point 11 a (new)

Directive 2004/39/EC

Article 59 – paragraph 2

Text proposed by the Commission

Amendment

(11a) In Article 59, the second paragraph is replaced by the following:

"In the case of such a refusal, the competent authority shall notify the requesting competent authority and the European Securities and Markets Authority accordingly, providing as detailed information as possible."

Amendment 174

Proposal for a directive – amending act

Article 6 – point 12

Directive 2004/39/EC

Article 60 – paragraph 4

Text proposed by the Commission

4. In order to ensure uniform application of this Article, the European Securities and Markets Authority **may** develop draft technical standards to determine the conditions of application of the obligation to consult other competent authorities prior to granting an authorisation, including the development of standard forms or templates.

Amendment

4. In order to ensure uniform application of this Article, the European Securities and Markets Authority **shall** develop draft technical standards to determine the conditions of application of the obligation to consult other competent authorities prior to granting an authorisation, including the development of standard forms or templates.

Amendment 175

Proposal for a directive – amending act

Article 6 – point 14 a (new)

Directive 2004/39/EC

Article 64 – paragraph 2

Text proposed by the Commission

Amendment

(14a) In Article 64, paragraph 2 is replaced by the following:

"2. The power to adopt the delegated acts referred to in Article 2, Article 4, Article 10b(1), Article 13(10), Articles 15, 18, 19, 21, 22, 24, 25, 27, 28, 29, 30, 40, 44, 45, and Article 56(2) shall be conferred on the Commission for an indeterminate period of time."

Amendment 176

Proposal for a directive – amending act

Article 6 – point 14 b (new)

Directive 2004/39/EC

Article 64 – paragraphs 2 a and 2 b (new)

Text proposed by the Commission

Amendment

(14b) In Article 64, the following paragraphs are inserted:

"2a. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council."

2b. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 64a and 64b."

Amendment 177

Proposal for a directive – amending act
Article 6 – point 14 c (new)
Directive 2004/39/EC
Article 64 – paragraph 2a

Text proposed by the Commission

Amendment

(14c) In Article 64, paragraph 2a is replaced by the following:

"2c. None of the delegated acts enacted may change the essential provisions of this Directive."

Amendment 178

Proposal for a directive – amending act
Article 6 – point 14 d (new)
Directive 2004/39/EC
Article 64 – paragraph 4

Text proposed by the Commission

Amendment

(14d) In Article 64, paragraph 4 is deleted.

Amendment 179

Proposal for a directive – amending act
Article 6 – point 14 e (new)
Directive 2004/39/EC
Article 64 a (new)

Text proposed by the Commission

Amendment

(14e) The following article is inserted after Article 64:

"Article 64a

Revocation of the delegation

1. The delegation of powers referred to in Articles 2 and 4, Article 10b(1), Article 13(10), Articles 15, 18, 19, 21, 22, 24, 25, 27, 28, 29, 30, 40, 44, 45, and Article 56(2) may be revoked by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure with a view to deciding whether to revoke the delegation of powers shall endeavour to inform the other institution and the Commission.

3. The revocation decision shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at such later date as may be specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union."

Amendment 180

Proposal for a directive – amending act

Article 6 – point 14 f (new)

Directive 2004/39/EC

Article 64 b (new)

Text proposed by the Commission

Amendment

(14f) The following article is inserted after Article 64a:

"Article 64b

Objections to delegated acts

1. The European Parliament or the Council may object to a delegated act within a period of four months from the date of notification. At the initiative of the European Parliament or the Council this period shall be extended by two months.

2. If, on the expiry of that period neither the European Parliament nor the Council has objected to the delegated act, it shall enter into force on the date stated therein.

If the European Parliament or the Council objects to a delegated act, it shall not enter into force.

3. In order to expedite the adoption of delegated acts where appropriate, the European Parliament and the Council, pursuant to a procedure of early non-objection and in duly justified cases, may decide to shorten the four-month period referred to in the first subparagraph, following a request of the Commission."

Amendment 181

Proposal for a directive – amending act

Article 7 – point -1 (new)

Directive 2004/109/EC

Article 2 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

(-1) The first subparagraph of Article 2(3) is replaced by the following:

"3. In order to take account of technical developments on financial markets and to ensure *consistent harmonisation and* the uniform application of paragraph 1, the Commission shall, in accordance with the procedures referred to in Article 27(2) and (2a), adopt *delegated acts* and implementing measures concerning the definitions set out in paragraph 1."

Amendment 182

Proposal for a directive – amending act

Article 7 – point -1 a (new)

Directive 2004/109/EC

Article 2 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Amendment

(-1a) The third subparagraph of Article 2(3) is replaced by the following:

"The measures referred to in points (a)

and (b) of the second subparagraph shall be *laid down by means of delegated acts* in accordance with Articles 27, 27a and 27b."

Amendment 183

Proposal for a directive – amending act

Article 7 – point -1 b (new)

Directive 2004/109/EC

Article 2 – paragraph 3 – subparagraph 3 a (new)

Text proposed by the Commission

Amendment

***(-1b) In Article 2(3), the following subparagraph is added:
"The draft delegated acts shall be drawn up by the European Securities and Markets Authority."***

Amendment 184

Proposal for a directive – amending act

Article 7 – point -1 c (new)

Directive 2004/109/EC

Article 4 – paragraph 2 – point a a (new)

Text proposed by the Commission

Amendment

***(-1c) In Article 4(2) the following point is inserted:
"(aa) a country-by-country disclosure of annual accounts;"***

Amendment 185

Proposal for a directive – amending act

Article 7 – point -1 d (new)

Directive 2004/109/EC

Article 4 – paragraph 6

Text proposed by the Commission

Amendment

***(-1d) Article 4(6) is replaced by the following:
"6. [...] In order to take account of technical developments in financial***

markets to ensure *consistent harmonisation and* uniform application of paragraph 1, *the European Securities and Markets Authority shall develop draft technical standards. The European Securities and Markets Authority shall in particular specify the technical conditions under which a published annual financial report, including the audit report, is to remain available to the public. Where appropriate, the European Securities and Markets Authority may also adapt the five-year period referred to in paragraph 1.*

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation (EU) No .../2010 [ESMA]."

Amendment 186

Proposal for a directive – amending act

Article 7 – point -1 e (new)

Directive 2004/109/EC

Article 5 – paragraph 6 – subparagraph 1

Text proposed by the Commission

Amendment

(-1e) In Article 5(6), the first subparagraph is replaced by the following:

"6. The Commission shall adopt *delegated acts* and implementing measures, in accordance with the procedures referred to in Article 27(2) and (2a), in order to take account of technical developments on financial markets and to ensure *consistent harmonisation and* the uniform application of paragraphs 1 to 5 of this Article."

Amendment 187

Proposal for a directive – amending act

Article 7 – point -1 f (new)

Directive 2004/109/EC

Article 5 – paragraph 6 – subparagraph 3

Text proposed by the Commission

Amendment

(-1f) In Article 5(6), the third subparagraph is replaced by the following:

"The measures referred to in point (a) shall be adopted in accordance with the regulatory procedure referred to in Article 27(2). The measures referred to in points (b) and (c) [...] shall be laid down by means of delegated acts in accordance with the Articles 27, 27a and 27b."

Amendment 188

Proposal for a directive – amending act

Article 7 – point -1 g (new)

Directive 2004/109/EC

Article 5 – paragraph 6 – subparagraph 4

Text proposed by the Commission

Amendment

(-1g) In Article 5(6), the fourth subparagraph is replaced by the following:

"Where appropriate, the Commission may also adapt the five-year period referred to in paragraph 1 by means of a delegated act in accordance with Articles 27, 27a and 27b."

Amendment 189

Proposal for a directive – amending act

Article 7 – point -1 h (new)

Directive 2004/109/EC

Article 5 – paragraph 6 – subparagraph 4 a (new)

Text proposed by the Commission

Amendment

(-1h) In Article 5(6), the following subparagraph is added:

"The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 190

Proposal for a directive – amending act

Article 7 – point -1 i (new)

Directive 2004/109/EC

Article 9 – paragraph 7 – subparagraph 1

Text proposed by the Commission

Amendment

(-1i) In Article 9(7), the first subparagraph is replaced by the following:

"7. The Commission shall be empowered to lay down, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures to take account of technical developments on financial markets and to ensure consistent harmonisation and the uniform application of paragraphs 2, 4 and 5."

Amendment 191

Proposal for a directive – amending act

Article 7 – point -1 j (new)

Directive 2004/109/EC

Article 9 – paragraph 7 – subparagraph 2

Text proposed by the Commission

Amendment

(-1j) In Article 9(7), the second subparagraph is replaced by the following:

"The Commission shall also specify the maximum length of the ‘short settlement cycle’ referred to in paragraph 4 of this Article, as well as the appropriate control mechanisms by the competent

authority of the home Member State by means of delegated acts in accordance with Articles 27, 27a and 27b."

Amendment 192

Proposal for a directive – amending act

Article 7 – point -1 k (new)

Directive 2004/109/EC

Article 9 – paragraph 7 – subparagraph 3 a (new)

Text proposed by the Commission

Amendment

(-1k) In Article 9(7), the following subparagraph is added:

"The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 193

Proposal for a directive – amending act

Article 7 – point 1 – point -a (new)

Directive 2004/109/EC

Article 12 – paragraph 8 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

(-a) In paragraph 8, the introductory part of the first subparagraph is replaced by the following:

"8. In order to take account of technical developments on financial markets and to ensure consistent harmonisation and the uniform application of paragraphs 1, 2, 4, 5 and 6 of this Article, the Commission shall lay down, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures:"

Amendment 194

Proposal for a directive – amending act

Article 7 – point 1 – point a a (new)

Directive 2004/109/EC

Article 12 – paragraph 8 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

(aa) In paragraph 8, the following subparagraph is added:

"The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 195

Proposal for a directive – amending act

Article 7 – point 1 – point b

Directive 2004/109/EC

Article 12 – paragraph 9 – subparagraph 1

Text proposed by the Commission

Amendment

9. In order to ensure the uniform application of paragraph 1 of this Article and to take account of technical developments in financial markets, the European Securities and Markets Authority established by Regulation .../... of the European Parliament and of the Council shall develop draft technical standards to establish a **harmonised** standard form to be used when notifying the required information to the issuer under paragraph 1 of this Article or when filing information under Article 19(3).

9. In order to ensure **consistent harmonisation and** the uniform application of paragraph 1 of this Article and to take account of technical developments in financial markets, the European Securities and Markets Authority established by Regulation **(EU) No .../2010** of the European Parliament and of the Council shall develop draft technical standards to establish a standard form to be used when notifying the required information to the issuer under paragraph 1 of this Article or when filing information under Article 19(3).

Amendment 196

Proposal for a directive – amending act

Article 7 – point 2 – point -a (new)

Directive 2004/109/EC

Article 13 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

(-a) In Article 13(2), the first subparagraph is replaced by the following:

"2. The Commission shall lay down, by means of delegated acts in accordance

with *Articles 27, 27a and 27b*, measures in order to take account of technical developments in financial markets and to ensure *consistent harmonisation and the uniform application of paragraph 1*. It shall in particular determine:"

Amendment 197

Proposal for a directive – amending act

Article 7 – point 2 – point a a (new)

Directive 2004/109/EC

Article 13 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

(aa) In Article 13(2), the second subparagraph is deleted.

Amendment 198

Proposal for a directive – amending act

Article 7 – point 2 – point a b (new)

Directive 2004/109/EC

Article 13 – paragraph 2 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

(ab) In Article 13(2) the following subparagraph is added:

"The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 199

Proposal for a directive – amending act

Article 7 – point 2 – point b – paragraph 1

Directive 2004/109/EC

Article 13 – paragraph 3 - subparagraph 1

Text proposed by the Commission

Amendment

3. In order to ensure the uniform application of paragraph 1 and to take account of technical developments on financial markets, the European Securities

3. In order to ensure *consistent harmonisation and* the uniform application of paragraph 1 and to take account of technical developments on

and Markets Authority shall develop draft technical standards to establish a harmonised standard form to when notifying the required information to the issuer under paragraph 1 or when filing information under Article 19(3).

financial markets, the European Securities and Markets Authority shall develop draft technical standards to establish a harmonised standard form to when notifying the required information to the issuer under paragraph 1 or when filing information under Article 19(3).

Amendment 200

Proposal for a directive – amending act

Article 7 – point 2 a (new)

Directive 2004/109/EC

Article 14 – paragraph 2

Text proposed by the Commission

Amendment

(2a) Article 14(2) is replaced by the following:

"2. The Commission shall lay down, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures in order to take account of technical developments in financial markets and to ensure consistent harmonisation and the uniform application of paragraph 1.

The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 201

Proposal for a directive – amending act

Article 7 – point 2 b (new)

Directive 2004/109/EC

Article 17 – paragraph 4

Text proposed by the Commission

Amendment

(2b) Article 17(4) is replaced by the following:

"4. The Commission shall lay down, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures in order to take account of technical developments in financial markets, to take account of developments in

information and communication technology and to ensure *consistent harmonisation and* the uniform application of paragraph 1, 2 and 3. It shall, in particular, specify the types of financial institution through which a shareholder may exercise the financial rights provided for in paragraph 2(c).

The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 202

Proposal for a directive – amending act

Article 7 – point 2 c (new)

Directive 2004/109/EC

Article 18 – paragraph 5

Text proposed by the Commission

Amendment

(2c) Article 18(5) is replaced by the following:

"5. The Commission shall lay down, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures in order to take account of technical developments in financial markets, to take account of developments in information and communication technology and to ensure *consistent harmonisation and* the uniform application of paragraph 1 to 4 of *this Article*. It shall, in particular, specify the types of financial institution through which a debt security holder may exercise the financial rights provided for in paragraph 2(c) of *this Article*.

The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 203

Proposal for a directive – amending act

Article 7 – point 2 d (new)

Directive 2004/109/EC

Article 19 – paragraph 4

Text proposed by the Commission

Amendment

(2d) Article 19(4) is replaced by the following:

"4. The Commission shall lay down, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures in order to ensure consistent harmonisation and the uniform application of paragraphs 1, 2 and 3 of this Article.

The Commission shall, in particular, specify the procedure in accordance with which an issuer, a holder of shares or other financial instruments, or a person or entity referred to in Article 10, is to file information with the competent authority of the home Member State under paragraphs 1 or 3 of this Article, respectively, in order to:

(a) enable filing by electronic means in the home Member State;

(b) coordinate the filing of the annual financial report referred to in Article 4 of this Directive with the filing of the annual information referred to in Article 10 of Directive 2003/71/EC.

The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 204

Proposal for a directive – amending act

Article 7 – point 2 e (new)

Directive 2004/109/EC

Article 21 – paragraph 4

Text proposed by the Commission

Amendment

(2e) Article 21(4) is replaced by the following:

"4. The Commission shall lay down, by

means of delegated acts in accordance with Articles 27, 27a and 27b, measures in order to take account of technical developments in financial markets, to take account of developments in information and communication technology and to ensure the uniform application of paragraphs 1, 2 and 3 of this Article.

The Commission shall in particular specify:

(a) minimum standards for the dissemination of regulated information, as referred to in paragraph 1;

(b) minimum standards for the central storage mechanism as referred to in paragraph 2.

The Commission may also specify and update a list of media for the dissemination of information to the public.

The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 205

Proposal for a directive – amending act

Article 7 – point 2 f (new)

Directive 2004/109/EC

Article 22 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

(2f) In Article 22(1), the first subparagraph of is replaced by the following:

"1. The competent authorities of the Member States shall draw up appropriate guidelines *and follow ESMA guidelines* with a view to further facilitating public access to information to be disclosed under Directive 2003/6/EC, Directive 2003/71/EC and this Directive."

Amendment 206

Proposal for a directive – amending act

Article 7 – point 2 g (new)

Directive 2004/109/EC

Article 22 – paragraph 2

Text proposed by the Commission

Amendment

(2g) Article 22(2) is replaced by the following:

2. The Commission shall review regularly the results achieved and may, by means of delegated acts in accordance with Articles 27, 27a and 27b, adopt measures to facilitate compliance with Articles 19 and 21.

Amendment 207

Proposal for a directive – amending act

Article 7 – point 2 h (new)

Directive 2004/109/EC

Article 23 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

(2h) In Article 23(1), the first subparagraph of is replaced by the following:

"1. Where the registered office of an issuer is in a third country, the competent authority of the home Member State, following guidelines of the European Securities and Markets Authority, may exempt that issuer from requirements under Articles 4 to 7 and Articles 12(6), 14, 15 and 16 to 18, provided that the law of the third country in question lays down equivalent requirements or such an issuer complies with requirements of the law of a third country that the competent authority of the home Member State considers as equivalent.

The competent authority shall then inform the European Securities and Markets Authority of the granted

exemption."

Amendment 208

Proposal for a directive – amending act

Article 7 – point 2 i (new)

Directive 2004/109/EC

Article 23 – paragraph 4

Text proposed by the Commission

Amendment

(2i) Article 23(4) is replaced by the following:

"4. In order to ensure consistent harmonisation and the uniform application of paragraph 1, the Commission shall lay down, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures:

(i) setting up a mechanism ensuring the establishment of equivalence of information required under this Directive, including financial statements and information, including financial statements, required under the law, regulations or administrative provisions of a third country;

(ii) stating that, by reason of its domestic law, regulations, administrative provisions, or of the practices or procedures based on the international standards set by international organisations, the third country where the issuer is registered ensures the equivalence of the information requirements provided for in this Directive.

In the context of point (ii) of the first subparagraph, the Commission shall lay down, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures concerning the assessment of standards relevant to the issuers of more than one country.

[...]

The Commission shall, in accordance with Articles 27, 27a and 27b, take the

necessary decisions on the equivalence of accounting standards which are used by third country issuers under the conditions set out in Article 30(3) at the latest five years following the date referred to in Article 31. If the Commission decides that the accounting standards of a third country are not equivalent, it may allow the issuers concerned to continue using such accounting standards during an appropriate transitional period.

In the context of the *third* subparagraph, the Commission shall also *lay down, by means of delegated acts* in accordance with Articles 27, 27a and 27b, measures aimed at establishing general equivalence criteria regarding accounting standards relevant to issuers of more than one country.

The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 209

Proposal for a directive – amending act

Article 7 – point 2 j (new)

Directive 2004/109/EC

Article 23 – paragraph 5

Text proposed by the Commission

Amendment

(2j) Article 23(5) is replaced by the following:

"5. In order to ensure consistent harmonisation and the uniform application of paragraph 2, the Commission may lay down, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures defining the type of information disclosed in a third country that is of importance to the public in the Union.

The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 210

Proposal for a directive – amending act

Article 7 – point 2 k (new)

Directive 2004/109/EC

Article 23 – paragraph 7

Text proposed by the Commission

Amendment

(2k) Article 23(7) is replaced by the following:

"7. In order to take account of technical developments in financial markets and to ensure *consistent harmonisation and* the uniform application of paragraph 6, the Commission shall, in accordance with *Articles 27, 27a and 27b*, adopt implementing measures stating that, by reason of its domestic law, regulations, or administrative provisions, a third country ensures the equivalence of the independence requirements provided for under this Directive and *delegated acts adopted under this Directive*.

The Commission shall also *lay down, by means of delegated acts in accordance with Articles 27, 27a and 27b*, measures aimed at establishing general equivalence criteria for the purpose of the first subparagraph.

The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 211

Proposal for a directive – amending act

Article 7 – point 2l (new)

Directive 2004/109/EC

Article 24 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

(2l) In Article 24(1), the first subparagraph is replaced by the following:

"1. Each Member State shall designate the central authority referred to in Article 21(1) of Directive 2003/71/EC as *the* central competent administrative authority responsible for carrying out the obligations provided for in this Directive and for ensuring that the provisions adopted pursuant to this Directive are applied. Member States shall inform the Commission *and the European Securities and Markets Authority* accordingly."

Justification

Amendment 212

Proposal for a directive – amending act

Article 7 – point 2 m (new)

Directive 2004/109/EC

Article 24 – paragraph 3

Text proposed by the Commission

Amendment

(2m) Article 24(3) is replaced by the following:

"3. Member States shall inform the Commission, *the European Securities and Markets Authority* and competent authorities of other Member States of any arrangements entered into with regard to the delegation of tasks, including the precise conditions for regulating the delegations."

Amendment 213

Proposal for a directive – amending act

Article 7 – point 2 n (new)

Directive 2004/109/EC

Article 25 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(2n) In Article 25, the following

paragraph is inserted:

"2a. Competent authorities shall cooperate with the European Securities and Markets Authority where it is necessary for the purposes of this Directive.

Competent authorities shall, without any delay, provide the European Securities and Markets Authority and other competent authorities with all relevant and necessary information in order to fulfil their duties under this Directive on their own initiative or on request of the European Securities and Markets Authority."

Amendment 214

Proposal for a directive – amending act

Article 7 – point 3 a (new)

Directive 2004/109/EC

Article 25 – paragraph 4

Text proposed by the Commission

Amendment

(3a) Article 25(4) is replaced by the following:

"4. Member States and the European Securities and Markets Authority may conclude cooperation agreements providing for the exchange of information with the competent authorities or bodies of third countries enabled by their respective legislation to carry out any of the tasks assigned by this Directive to the competent authorities in accordance with Article 24. Member States shall notify the European Securities and Markets Authority when they conclude cooperation agreements. Such an exchange of information is subject to guarantees of professional secrecy at least equivalent to those referred to in this Article. Such an exchange of information shall be intended for the performance of the supervisory task of the authorities or bodies mentioned.

Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement."

Amendment 215

Proposal for a directive – amending act

Article 7 – point 3 b (new)

Directive 2004/109/EC

Article 26 – paragraph 2

Text proposed by the Commission

Amendment

(3b) Article 26(2) is replaced by the following:

"2. If, despite the measures taken by the competent authority of the home Member State, or because such measures prove inadequate, the issuer or the security holder persists in infringing the relevant legal or regulatory provisions, the competent authority of the host Member State shall, after informing the competent authority of the home Member State, take, in accordance with Article 3(2), all the appropriate measures in order to protect investors. The Commission and the European Securities and Markets Authority shall be informed of such measures at the earliest opportunity."

Amendment 216

Proposal for a directive – amending act

Article 7 – point 3 c (new)

Directive 2004/109/EC

Chapter VI – title

Text proposed by the Commission

Amendment

(3c) The title of Chapter VI is replaced by the following:

**"DELEGATED ACTS AND
IMPLEMENTING MEASURES"**

Amendment 217

Proposal for a directive – amending act
Article 7 – point 3 d (new)
Directive 2004/109/EC
Article 27 – paragraph 2a

Text proposed by the Commission

Amendment

(3d) Article 27(2a) is replaced by the following:

"2a. The power to adopt the delegated acts referred to in Article 2(3), Article 5(6), Article 9(7), Article 12(8), Article 13(2), Article 14(2), Article 17(4), Article 18(5), Article 19(4), Article 21(4), Article 23(4), Article 23(5) and Article 23(7) shall be conferred on the Commission for an indeterminate period of time."

Amendment 218

Proposal for a directive – amending act
Article 7 – point 3 e (new)
Directive 2004/109/EC
Article 27 – paragraph 2a a (new)

Text proposed by the Commission

Amendment

(3e) In Article 27, the following paragraph is inserted:

"2aa. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council"

Amendment 219

Proposal for a directive – amending act
Article 7 – point 3 f (new)
Directive 2004/109/EC
Article 27 – paragraph 2a b (new)

Text proposed by the Commission

Amendment

(3f) In Article 27, the following paragraph is inserted:

"2ab. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 27a and 27b."

Amendment 220

Proposal for a directive – amending act
Article 7 – point 3 g (new)
Directive 2004/109/EC
Article 27 a (new)

Text proposed by the Commission

Amendment

(3g) The following article is inserted:

"Article 27a

Revocation of the delegation

1. The delegation of power referred to in Article 2(3), Article 5(6), Article 9(7), Article 12(8), Article 13(2), Article 14(2), Article 17(4), Article 18(5), Article 19(4), Article 21(4), Article 23(4), Article 23(5) and Article 23(7) may be revoked by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall endeavour to inform the other institution and the Commission stating the delegated powers which could be subject to revocation.

The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union."

Amendment 221

Proposal for a directive – amending act

Article 7 – point 3 h (new)

Directive 2004/109/EC

Article 27 b (new)

Text proposed by the Commission

Amendment

(3h) The following article is inserted after Article 27a:

"Article 27b

Objections to delegated acts

1. The European Parliament or the Council may object to a delegated act within a period of four months from the date of notification. At the initiative of the European Parliament or the Council this period shall be extended by two months.

2. If, on the expiry of that period neither the European Parliament nor the Council has objected to the delegated act, it shall enter into force on the date stated therein. If the European Parliament or the Council objects to a delegated act, it shall not enter into force.

3. In order to expedite the adoption of delegated acts where appropriate, the European Parliament and the Council, pursuant to a procedure of early non-objection and in duly justified cases, may decide to shorten the four-month period referred to in the first subparagraph, following a request of the Commission."

Amendment 222

Proposal for a directive – amending act

Article 8 – point -1 (new)

Directive 2005/60/EC

Article 11 – paragraph 4

Text proposed by the Commission

Amendment

(-1) Article 11(4) is replaced by the following:

"4. The Member States shall inform each other, *the ESAs* and the Commission of cases where they consider that a third country meets the conditions laid down in paragraphs 1 or 2 or in other situations which meet the technical criteria established in accordance with Article 40(1)(b)."

Amendment 223

Proposal for a directive – amending act
Article 8 – point -1 a (new)
Directive 2005/60/EC
Article 16 – paragraph 2

Text proposed by the Commission

Amendment

(-1a) Article 16(2) is replaced by the following:

"2. Member States shall inform each other, *the ESAs* and the Commission of cases where they consider that a third country meets the conditions laid down in paragraph 1(b). *The ESAs shall publish the list of equivalent countries on their websites.*"

Amendment 224

Proposal for a directive – amending act
Article 8 – point -1 b (new)
Directive 2005/60/EC
Article 28 – paragraph 7

Text proposed by the Commission

Amendment

(-1b) Article 28(7) is replaced by the following:

"7. The Member States shall inform each other, *the ESAs* and the Commission of cases where they consider that a third country meets the conditions laid down in paragraphs 3, 4 or 5."

Amendment 225

Proposal for a directive – amending act

Article 8 – point -1 c (new)

Directive 2005/60/EC

Article 31 – paragraph 2

Text proposed by the Commission

Amendment

(-1c) Article 31(2) is replaced by the following:

"2. Member States, the ESAs and the Commission shall inform each other of cases where the legislation of the third country does not permit application of the measures required under the first subparagraph of paragraph 1 and coordinated action could be taken to pursue a solution."

Amendment 226

Proposal for a directive – amending act

Article 8 – point 1

Directive 2005/60/EC

Article 31 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Amendment

4. In order to ensure the uniform application of this Article and to take account of technical developments in the fight against money laundering or terrorist financing, the European Banking Authority, the European Securities and Markets Authority and the European Insurance and Occupational Pensions Authority **may** develop draft technical standards in accordance with Articles 42 of Regulation .../..., Regulation .../... and Regulation .../... of the European Parliament and of the Council to determine the type of additional measures referred to in Article 31(3) and the minimum action to be taken by credit and financial institutions where the legislation of the third country does not permit application of the measures

4. In order to ensure **consistent harmonisation and** the uniform application of this Article and to take account of technical developments in the fight against money laundering or terrorist financing, the European Banking Authority, the European Securities and Markets Authority and the European Insurance and Occupational Pensions Authority, **subject to prior consultation of the Committee for the Prevention of Money Laundering and Terrorist Financing provided for in Article 41, shall** develop draft technical standards in accordance with Articles 42 of Regulation (EU) No .../2010 [EBA], Regulation (EU) No .../2010 [EIOPA] and Regulation (EU) .../2010 [ESMA] of the European

required under the first subparagraph of paragraph 1.

Parliament and of the Council to determine the type of additional measures referred to in Article 31(3) and the minimum action to be taken by credit and financial institutions where the legislation of the third country does not permit application of the measures required under the first subparagraph of paragraph 1.

Amendment 227

Proposal for a directive – amending act

Article 8 – point 2 a (new)

Directive 2005/60/EC

Article 37 a (new)

Text proposed by the Commission

Amendment

(2a) The following article is added:

"Article 37a

Competent authorities shall cooperate with the ESAs where it is necessary for the purposes of this Directive.

Competent authorities shall, without any delay, provide ESAs and other competent authorities with all relevant and necessary information in order to fulfil their duties under this Directive."

Amendment 228

Proposal for a directive – amending act

Article 8 – point 2 b (new)

Directive 2005/60/EC

Chapter VI – title

Text proposed by the Commission

Amendment

(2b) The title of Chapter VI is replaced by the following:

"DELEGATED ACTS"

Amendment 229

Proposal for a directive – amending act

Article 8 – point 2 c (new)

Directive 2005/60/EC

Article 40 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

(2c) In Article 40(1), the first subparagraph is replaced by the following:

"1. In order to take account of technical developments in the fight against money laundering or terrorist financing and to ensure *consistent harmonisation and uniform implementation* of this Directive, the Commission *shall* adopt the following [...] measures:"

Amendment 230

Proposal for a directive – amending act

Article 8 – point 2 d (new)

Directive 2005/60/EC

Article 40 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

(2d) In Article 40(1), the second subparagraph of is replaced by the following:

"The measures [...] shall be adopted by means of delegated acts in accordance with Articles 41, 41a and 41b."

Amendment 231

Proposal for a directive – amending act

Article 8 – point 2 e (new)

Directive 2005/60/EC

Article 40 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

(2e) In Article 40(1), the following subparagraph is added:

"The draft delegated acts shall be drawn up by the ESAs in the framework of the JCESA."

Amendment 232

Proposal for a directive – amending act
Article 8 – point 2 f (new)
Directive 2005/60/EC
Article 40 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

(2f) In Article 40(3) the second subparagraph is replaced by the following:

"The measures [...] shall be adopted by means of delegated acts in accordance with Articles 41, 41a and 41b."

Amendment 233

Proposal for a directive – amending act
Article 8 – point 2 g (new)
Directive 2005/60/EC
Article 40 – paragraph 3 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

(2g) In Article 40(3) the following subparagraph is added:

"The draft delegated acts shall be elaborated by the ESAs in the framework of the JCESA."

Amendment 234

Proposal for a directive – amending act
Article 8 – point 2 h (new)
Directive 2005/60/EC
Article 40 – paragraph 4

Text proposed by the Commission

Amendment

(2h) Article 40(4) is replaced by the following:

"Where the Commission finds that a third country does not meet the conditions laid down in Article 11(1) or (2), Article 28(3), (4) or (5), or in the measures established in accordance with paragraph 1(b) of this Article or in Article 16(1)(b), or that the legislation of that third country does not permit application of the measures required under the first subparagraph of Article 31(1), it shall adopt a decision so stating by means of delegated acts in accordance with Articles 41, 41a and 41b."

Amendment 235

Proposal for a directive – amending act

Article 8 – point 2 i (new)

Directive 2005/60/EC

Article 40 – paragraph 4 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

(2i) In Article 40(4) the following subparagraph is added:

"The draft delegated acts shall be elaborated by the ESAs in the framework of the JCESA."

Amendment 236

Proposal for a directive – amending act

Article 8 – point 2 j (new)

Directive 2005/60/EC

Article 41 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

(2j) In Article 41(2), the first subparagraph is replaced by the following:

"2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof and provided that the [...] measures adopted in accordance with this procedure do not

modify the essential provisions of this Directive."

Amendment 237

Proposal for a directive – amending act

Article 8 – point 2 k (new)

Directive 2005/60/EC

Article 41 – paragraph 2a

Text proposed by the Commission

Amendment

(2k) Article 41(2a) is replaced by the following:

"2a. The power to adopt delegated acts referred to in Article 40 shall be conferred on the Commission for an indeterminate period of time."

Amendment 238

Proposal for a directive – amending act

Article 8 – point 2 l (new)

Directive 2005/60/EC

Article 41 – paragraphs 2 b and 2 c (new)

Text proposed by the Commission

Amendment

(2l) In Article 41, the following paragraphs are inserted:

"2b. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

2c. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 41a and 41b."

Amendment 239

Proposal for a directive – amending act

Article 8 – point 2 m (new)

Directive 2005/60/EC

Article 41 – paragraph 3

Text proposed by the Commission

Amendment

(2m) Article 41(3) is deleted.

Amendment 240

Proposal for a directive – amending act

Article 8 – point 2 n (new)

Directive 2005/60/EC

Article 41 a (new)

Text proposed by the Commission

Amendment

(2n) The following article is inserted:

"Article 41a

Revocation of the delegation

1. The delegation of power referred to in Article 40 may be revoked by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall endeavour to inform the other institution and the Commission stating the delegated powers which could be subject to revocation.

The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union."

Amendment 241

Proposal for a directive – amending act

Article 8 – point 2 o (new)

Directive 2005/60/EC

Article 41 b (new)

Text proposed by the Commission

Amendment

(2o) The following article is inserted:

"Article 41b

Objections to delegated acts

1. The European Parliament or the Council may object to a delegated act within a period of four months from the date of notification. At the initiative of the European Parliament or the Council this period shall be extended by two months.

2. If, on the expiry of that period neither the European Parliament nor the Council has objected to the delegated act, it shall enter into force on the date stated therein. If the European Parliament or the Council objects to a delegated act, it shall not enter into force.

3. In order to expedite the adoption of delegated acts where appropriate, the European Parliament and the Council, pursuant to a procedure of early non-objection and in duly justified cases, may decide to shorten the four-month period referred to in the first subparagraph, following a request of the Commission."

Amendment 242

Proposal for a directive – amending act

Article 9 – point -1 (new)

Directive 2006/48/EC

Article 6

Text proposed by the Commission

Amendment

(-1) Article 6 is replaced by the following:

"Member States shall require credit institutions to obtain authorisation before commencing their activities. Without prejudice to Articles 7 to 12, they shall lay down the requirements for such authorisation and notify them to the EBA."

Amendment 243

Proposal for a directive – amending act

Article 9 – point 1

Directive 2006/48/EC

Article 6 – paragraph 1 a (new)

Text proposed by the Commission

In order to ensure uniform application of this Article, the European Banking Authority established by Regulation .../... of the European Parliament and of the Council **may** develop draft technical standards to determine the conditions of application of the requirements and procedures for such authorisation as laid down in Articles 7, 8, 10, 11 and 12, with the exception of the conditions established in the second sentence of Article 11(1).

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../... [EBA].

Amendment

In order to ensure **consistent harmonisation and uniform** application of this Article, the European Banking Authority established by Regulation **(EU) No .../2010** of the European Parliament and of the Council **shall** develop draft technical standards to determine the conditions of application of the requirements and procedures for such authorisation as laid down in Articles 7, 8, 10, 11 and 12, with the exception of the conditions established in the second sentence of Article 11(1).

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation **(EU) No .../2010** [EBA].

Amendment 244

Proposal for a directive – amending act

Article 9 – point 2

Directive 2006/48/EC

Article 14 – subparagraph 2

Text proposed by the Commission

The name of each credit institution to which authorisation has been granted shall be entered in a list. The European Banking Authority shall publish that list and shall keep it up-to-date.

Amendment

The name of each credit institution to which authorisation has been granted shall be entered in a list. The European Banking Authority shall publish that list **on its website** and shall keep it up-to-date.

Amendment 245

Proposal for a directive – amending act
Article 9 – point 2 a (new)
Directive 2006/48/EC
Article 17 – point e a (new)

Text proposed by the Commission

Amendment

(2a) In Article 17(1), the following point is added:

"(ea) has caused a serious and systematic infringement of Union or national law with regard to the EBA and the competent authorities."

Amendment 246

Proposal for a directive – amending act
Article 9 – point 2 b (new)
Directive 2006/48/EC
Article 17 – paragraph 2

Text proposed by the Commission

Amendment

(2b) Article 17(2) is replaced by the following:

"2. Reasons shall be given for any withdrawal of authorisation and those concerned informed thereof. Such withdrawal shall be notified to the EBA."

Amendment 247

Proposal for a directive – amending act
Article 9 – point 3
Directive 2006/48/EC
Article 19 – paragraph 9 – subparagraph 1

Text proposed by the Commission

Amendment

9. In order to ensure uniform application of this Article, the European Banking Authority shall develop draft technical standards regarding the list of information required for the assessment of an acquisition as referred to in paragraph 1 and on the consultation process between

9. In order to ensure **consistent harmonisation and** uniform application of this Article, the European Banking Authority shall develop draft technical standards regarding the list of information required for the assessment of an acquisition as referred to in paragraph 1

the relevant competent authorities as referred to in Article 19b(1). The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

and on the consultation process between the relevant competent authorities as referred to in Article 19b(1). The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

Amendment 248

Proposal for a directive – amending act

Article 9 – point 4

Directive 2006/48/EC

Article 26 – paragraph 5 – subparagraph 1

Text proposed by the Commission

5. In order to ensure uniform application of Article 25 and this Article, ***and establish a uniform notification procedure by electronic means***, the European Banking Authority shall develop draft technical standards to ***determine the conditions of application of the information referred to in*** Article 25 and ***in*** this Article and the process for transmitting this information. The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

Amendment

5. In order to ensure ***consistent harmonisation and*** uniform application of Article 25 and this Article the European Banking Authority shall develop draft technical standards to ***establish a uniform notification procedure and specify the information to be notified according to*** Article 25 and ***to*** this Article and the process for transmitting this information ***by electronic means***. The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

Amendment 249

Proposal for a directive – amending act

Article 9 – point 5

Directive 2006/48/EC

Article 28 – paragraph 4 – subparagraph 1

Text proposed by the Commission

4. In order to ensure uniform application of this Article ***and establish a uniform notification procedure by electronic means***, the European Banking Authority shall develop draft technical standards to ***determine the conditions of application of the information referred to in*** this Article and the process for transmitting this information. The Authority shall submit those draft technical standards to the

Amendment

4. In order to ensure ***consistent harmonisation and*** uniform application of this Article the European Banking Authority shall develop draft technical standards to ***establish a uniform notification procedure and specify the information to be notified according to*** this Article and the process for transmitting this information ***by secure electronic means***. The Authority shall submit those

Commission by 1 January 2014.

draft technical standards to the
Commission by 1 January 2014.

Amendment 250

Proposal for a directive – amending act

Article 9 – point 6 a (new)

Directive 2006/48/EC

Article 36

Text proposed by the Commission

Amendment

(6a) Article 36 is replaced by the following:

"The Member States shall inform the Commission *and the EBA* of the number and type of cases in which there has been a refusal pursuant to *Article 25* and *Article 26(1) to (3)* or in which measures have been taken in accordance with *Article 30(3)*."

Amendment 251

Proposal for a directive – amending act

Article 9 – point 6 b (new)

Directive 2006/48/EC

Article 38 – paragraph 2

Text proposed by the Commission

Amendment

(6b) Article 38(2) is replaced by the following:

"2. The competent authorities shall notify the Commission, *the EBA* and the European Banking Committee of all authorisations for branches granted to credit institutions having their head office outside the *Union*."

Amendment 252

Proposal for a directive – amending act

Article 9 – point 6 c (new)

Directive 2006/48/EC

Article 39 – paragraph 2 – point ba (new)

Text proposed by the Commission

Amendment

(6c) In Article 39(2) the following point ba is added:

"(ba) that the EBA is able to obtain from national authorities of third countries a level of information and cooperation equivalent to that received from competent authorities of the Member States."

Amendment 253

Proposal for a directive – amending act

Article 9 – point 6 d (new)

Directive 2006/48/EC

Article 39 – paragraph 3

Text proposed by the Commission

Amendment

(6d) Article 39(3) is replaced by the following:

"3. Without prejudice to Article 218(1) and (2) TFUE, the Commission and the EBA shall, with the assistance of the European Banking Committee, examine the outcome of the negotiations referred to in paragraph 1 and the resulting situation."

Amendment 254

Proposal for a directive – amending act

Article 9 – point 7

Directive 2006/48/EC

Article 42 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

In order to ensure uniform application of this Article, the European Banking Authority shall develop draft technical standards to determine the procedures, methods and ***conditions of application*** of the information sharing requirements ***for the information*** which is likely to facilitate

In order to ensure uniform application of this Article, the European Banking Authority shall develop draft technical standards to determine the procedures, methods and ***formats*** of the information sharing requirements which ***are*** likely to facilitate the monitoring of credit

the monitoring of credit institutions. The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

institutions *as well as to specify the information contained therein*. The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

Amendment 255

Proposal for a directive – amending act

Article 9 – point 8

Directive 2006/48/EC

Article 42a – paragraph 1 – end of subparagraph 4

Text proposed by the Commission

If, at the end of the two month period, *a* competent **authority** has referred the matter to the European Banking Authority in accordance with Article 11 of Regulation .../... [EBA], the **consolidating supervisor** shall await **any** decision that the European Banking Authority may take in accordance with Article 11(3) of that Regulation, and shall **act** in conformity with **that** decision. The two month period shall be deemed the conciliation period within the meaning of that Regulation. The European Banking Authority shall take its decision within one month. The matter shall not be referred to the Authority after the end of the two month period or after a joint decision has been reached.

Amendment

If, at the end of the two month period **following receipt of a request under the first subparagraph any of the** competent **authorities concerned** has referred the matter to the European Banking Authority in accordance with Article 11 of Regulation **(EU) No .../2010** [EBA], the **competent authorities of the host member State** shall await **the** decision that the European Banking Authority may take in accordance with Article 11(3) of that Regulation **to settle the matter in order to ensure compliance with Union law**, and shall **take their final decision** in conformity with **the Authority's** decision. **The Authority's decision shall not replace the prudential judgement of the competent authorities of the Member State.** The two month period shall be deemed the conciliation period within the meaning of that Regulation. The European Banking Authority shall take its decision within one month. The matter shall not be referred to the Authority after the end of **that two** month period or after a joint decision has been reached.

Amendment 256

Proposal for a directive – amending act

Article 9 – point 10

Directive 2006/48/EC

Article 44 – paragraph 2

Text proposed by the Commission

2. Paragraph 1 shall not prevent the competent authorities of the various Member States from exchanging information or transmitting information to the European Banking Authority in accordance with this Directive and with other Directives applicable to credit institutions. That information shall be subject to the conditions of professional secrecy set out in paragraph 1.

Amendment

2. Paragraph 1 shall not prevent the competent authorities of the various Member States from exchanging information or transmitting information to the European Banking Authority in accordance with this Directive and with other Directives applicable to credit institutions, **as well as with Regulation (EU) No .../... [EBA]**. That information shall be subject to the conditions of professional secrecy set out in paragraph 1.

Amendment 257

Proposal for a directive – amending act

Article 9 – point 11

Directive 2006/48/EC

Article 46 – paragraph 1

Text proposed by the Commission

Member States and the European Banking Authority may conclude cooperation agreements, providing for exchanges of information, with the competent authorities of third countries or with authorities or bodies of third countries as defined in Articles 47 and 48(1) only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in Article 44(1).

Amendment

Member States and the European Banking Authority, **in accordance with Article 18 of Regulation (EU) No .../2010 [EBA]**, may conclude cooperation agreements, providing for exchanges of information, with the competent authorities of third countries or with authorities or bodies of third countries as defined in Articles 47 and 48(1) only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in Article 44(1).

Amendment 258

Proposal for a directive – amending act
Article 9 – point 11 a (new)
Directive 2006/48/EC
Article 46 – paragraph 2

Text proposed by the Commission

Amendment

(11a) In Article 46, the second paragraph is replaced by the following:

"Information exchanged under the first subparagraph shall not be disclosed without the express agreement of the competent authorities which have transmitted it and solely for the purposes for which those authorities gave their agreement."

Amendment 259

Proposal for a directive – amending act
Article 9 – point 12 – point aa (new)
Directive 2006/48/EC
Article 49 – paragraph 2

Text proposed by the Commission

Amendment

(aa) In Article 49, the second paragraph is replaced by the following:

"This Section shall not prevent such authorities or bodies from communicating to the competent authorities and to the EBA such information as they may need for the purposes of Article 45."

Amendment 260

Proposal for a directive – amending act
Article 9 – point 12 – point b
Directive 2006/48/EC
Article 49 – paragraph 4

Text proposed by the Commission

Amendment

In an emergency situation as referred to in Article 130(1), Member States shall allow competent authorities to

Member States shall allow competent authorities to communicate information to the central banks in the European system of

communicate information to the central banks in the European system of the central banks when this information is relevant for the exercise of their statutory tasks, including the conduct of monetary policy and related liquidity provision, the oversight of payments, clearing and securities settlement systems, and the safeguarding stability of the financial system, and to the European Systemic Risk Board when this information is relevant for the exercise of its statutory tasks.

the central banks when this information is relevant for the exercise of their statutory tasks, including the conduct of monetary policy and related liquidity provision, the oversight of payments, clearing and securities settlement systems, and the safeguarding stability of the financial system, and to the European Systemic Risk Board ***under Regulation (EU) No .../2010 [ESRB]*** when this information is relevant for the exercise of its statutory tasks. ***The Member States will enable the competent authorities to communicate automatically this kind of information in an emergency situation as referred to in Article 130(1).***

Amendment 261

Proposal for a directive – amending act

Article 9 – point 13 – point b

Directive 2006/48/EC

Article 63a – paragraph 6

Text proposed by the Commission

6. In order to ensure uniform application of paragraph 1 of this Article and the convergence of supervisory practices, the European Banking Authority shall develop draft technical standards to determine ***the conditions of application of*** the provisions governing the instruments referred to in paragraph 1 of this Article. The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../... [EBA].

The European Banking Authority shall also issue guidelines in relation to instruments referred to in point (a) of the first paragraph of Article 57.

The European Banking Authority shall monitor the application of the technical

Amendment

6. In order to ensure ***consistent harmonisation and*** uniform application of paragraph 1 of this Article and the convergence of supervisory practices, the European Banking Authority shall develop draft technical standards to determine the provisions governing the instruments referred to in paragraph 1 of this Article. The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation ***(EU) No .../2010*** [EBA].

The European Banking Authority shall monitor the application of the technical

standards referred to in the first subparagraph.

standards referred to in the first subparagraph.

Before 1 January 2014, the European Banking Authority shall draw up guidelines for the convergence of supervisory practices with regard to the instruments referred to in paragraph 1 of this Article and in Article 57(a) and shall monitor their application.

The Commission may adopt the draft guidelines referred to in the first subparagraph in accordance with the procedure laid down in Article 8 of Regulation (EU) No .../2010 [EBA].

Amendment 262

Proposal for a directive – amending act
Article 9 – point 14
Directive 2006/48/EC
Article 74 – paragraph 2 –subparagraph 2

Text proposed by the Commission

For the communication of these calculations by credit institutions, competent authorities shall apply, from 31 December 2012, uniform formats, frequencies, language and dates of reporting. In order to ensure uniform application of the directive, the European Banking Authority shall develop draft technical standards to introduce, within the **Community**, uniform formats, frequencies, **languages** and dates of reporting before 1 January 2012. The reporting formats shall be proportionate to the nature, scale and complexity of the credit institutions' activities.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../... [EBA].

Amendment

For the communication of these calculations by credit institutions, competent authorities shall apply, from 31 December 2012, uniform formats, frequencies, **IT** language and dates of reporting. ***Reporting must be able to be done in any official language of the European Union.*** In order to ensure ***consistent harmonisation and*** uniform application of the directive, the European Banking Authority shall develop draft technical standards to introduce, within the **Union**, uniform formats, frequencies, **IT language** and dates of reporting before 1 January 2012. The reporting formats shall be proportionate to the nature, scale and complexity of the credit institutions' activities.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation ***(EU) No .../2010*** [EBA].

Amendment 263

Proposal for a directive – amending act

Article 9 – point 15

Directive 2006/48/EC

Article 81 – paragraph 2 – subparagraph 3

Text proposed by the Commission

In order to ensure uniform application of this Article, the European Banking Authority, in consultation with the European Securities and Market Authority, shall **develop** draft technical standards to **determine the conditions of application of** the assessment methodology relating to credit assessments. The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

Amendment

In order to ensure **consistent harmonisation and** uniform application of this Article, the European Banking Authority, in consultation with the European Securities and Market Authority, shall **propose** draft technical standards to **specify** the assessment methodology relating to credit assessments. The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

Amendment 264

Proposal for a directive – amending act

Article 9 – point 16

Directive 2006/48/EC

Article 84 – paragraph 2 – subparagraph 3

Text proposed by the Commission

In order to ensure uniform application of this paragraph, the European Banking Authority **may** develop draft technical standards to determine the practical **and procedural** application of the conditions under which competent authorities permit credit institutions to use the IRB Approach.

Amendment

In order to ensure **consistent harmonisation and** uniform application of this paragraph, the European Banking Authority **shall** develop draft technical standards to determine the practical application of the conditions under which competent authorities permit credit institutions to use the IRB Approach.

Amendment 265

Proposal for a directive – amending act

Article 9 – point 17

Directive 2006/48/EC

Article 97 – paragraph 2 – subparagraph 2

Text proposed by the Commission

In order to ensure uniform application of this Article, the European Banking Authority, in consultation with the European Securities and Market Authority, shall ***develop*** draft technical standards to ***determine the conditions of application of*** the assessment methodology relating to credit assessments. The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

Amendment

In order to ensure ***consistent harmonisation and*** uniform application of this Article, the European Banking Authority, in consultation with the European Securities and Market Authority, shall ***propose*** draft technical standards to ***specify*** the assessment methodology relating to credit assessments. The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

Amendment 266

Proposal for a directive – amending act

Article 9 – point 18

Directive 2006/48/EC

Article 105 – paragraph 1 – subparagraph 2

Text proposed by the Commission

In order to ensure uniform application of this Article, the European Banking Authority ***may*** develop draft technical standards to determine the practical and procedural application of the conditions under which competent authorities permit credit institutions to use the Advanced Measurement Approaches.

Amendment

In order to ensure ***consistent harmonisation and*** uniform application of this Article, the European Banking Authority ***shall*** develop draft technical standards to determine the practical and procedural application of the conditions under which competent authorities permit credit institutions to use the Advanced Measurement Approaches.

Amendment 267

Proposal for a directive – amending act

Article 9 – point 19

Directive 2006/48/EC

Article 106 – paragraph 2 – subparagraph 2

Text proposed by the Commission

In order to ensure uniform application of this Paragraph, the European Banking Authority shall develop draft technical standards in order to ***determine the conditions of application of the***

Amendment

In order to ensure ***consistent harmonisation and*** uniform application of this Paragraph, the European Banking Authority shall develop draft technical standards in order to ***specify*** exemptions in

exemptions in point (c) and (d). The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

The Commission may adopt those draft technical standards in accordance with the procedure laid down in Article 7 of Regulation .../... [EBA].

point (c) and (d). The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

The Commission may adopt those draft technical standards in accordance with the procedure laid down in Article 7 of Regulation **(EU) No .../2010** [EBA].

Amendment 268

Proposal for a directive – amending act

Article 9 – point 20

Directive 2006/48/EC

Article 110 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. Member States shall provide that reporting shall be carried out at least twice a year. The competent authorities shall apply, from 31 December 2012, uniform formats, frequencies, language and dates of reporting. In order to ensure uniform application of the directive, the European Banking Authority shall develop draft technical standards to introduce, within the **Community**, uniform formats, frequencies, language and dates of reporting before 1 January 2012. The reporting formats shall be proportionate to the nature, scale and complexity of the credit institutions' activities.

Amendment

2. Member States shall provide that reporting shall be carried out at least twice a year. The competent authorities shall apply, from 31 December 2012, uniform formats, frequencies, **IT** language and dates of reporting. **Reporting must be able to be done in any official language of the European Union.** In order to ensure **consistent harmonisation and** uniform application of the directive, the European Banking Authority shall develop draft technical standards to introduce, within the **Union**, uniform formats, frequencies, **IT** language and dates of reporting before 1 January 2012. The reporting formats shall be proportionate to the nature, scale and complexity of the credit institutions' activities.

Amendment 269

Proposal for a directive – amending act

Article 9 – point 20 a (new)

Directive 2006/48/EC

Article 111 – paragraph 1 – subparagraph 4

Text proposed by the Commission

Amendment

(20a) In Article 111(1), the following subparagraph is added:

"Member States may set a lower limit than EUR 150 million and shall inform the EBA and the Commission."

Amendment 270

Proposal for a directive – amending act

Article 9 – point 20 b (new)

Directive 2006/48/EC

Article 113 – paragraph 3 – subparagraph 5

Text proposed by the Commission

Amendment

(20b) In Article 113(3), the fifth subparagraph is replaced by the following:

"Member States shall inform the EBA and the Commission of any exemption granted under point (s) in order to ensure that it does not result in a distortion of competition."

Amendment 271

Proposal for a directive – amending act

Article 9 – point 21

Directive 2006/48/EC

Article 122a – paragraph 10 – subparagraph 2

Text proposed by the Commission

Amendment

In order to ensure uniform application of this Article, the European Banking Authority shall develop draft technical standards ***to determine the conditions of application*** of this Article, including the measures taken in case of breach of the due diligence and risk management obligations. The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

In order to ensure ***consistent harmonisation and*** uniform application of this Article, the European Banking Authority shall develop draft technical standards ***for the convergence of supervisory practices with regard to*** this Article, including the measures taken in case of breach of the due diligence and risk management obligations. The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

Amendment 272

Proposal for a directive – amending act

Article 9 – point 22

Directive 2006/48/EC

Article 124 – paragraph 6 – subparagraph 1

Text proposed by the Commission

6. In order to ensure uniform application of this Article, the European Banking Authority shall develop draft technical standards to determine the conditions of application of this Article and a common risk assessment procedure. The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

Amendment

6. In order to ensure **consistent harmonisation and** uniform application of this Article, the European Banking Authority shall develop draft technical standards to determine the conditions of application of this Article and a common risk assessment procedure **and methodology. These standards must differ according to risk.** The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

Amendment 273

Proposal for a directive – amending act

Article 9 – point 22 a (new)

Directive 2006/48/EC

Article 126 – paragraph 4

Text proposed by the Commission

Amendment

(22a) Article 126(4) is replaced by the following.

"4. The competent authorities shall notify the *EBA and the Commission* of any agreement falling within paragraph 3."

Amendment 274

Proposal for a directive – amending act

Article 9 – point 22 b (new)

Directive 2006/48/EC

Article 129 – paragraph 1 – point b a (new)

(22b) In Article 129(1), the following point is added:

"(ba) planning and coordination of supervisory activities in cooperation with the competent authorities involved and the EBA, and if necessary with central banks and the ESRB, in preparation for and during emergency situations, including adverse developments in credit institutions or in financial markets using, where possible, existing defined channels of communication for facilitating crisis management."

Amendment 275

Proposal for a directive – amending act

Article 9 – point 22 c (new)

Directive 2006/48/EC

Article 129 – paragraph 1 – subparagraph 1 a (new)

(22c) In Article 129(1), the following subparagraph is inserted:

"Where any competent authority concerned has referred a matter referred to in points (a), (b) and (c) of the first subparagraph to the European Banking Authority in accordance with Article 11 of Regulation (EU) No .../2010[EBA], that competent authority shall await the decision of the European Banking Authority, and shall take its decision in conformity with the decision of the European Banking Authority."

Justification

. Article 11 of the proposal for a Regulation establishing the European Banking Authority scopes the application of settlement of dispute in the case where a competent authority disagrees on the procedure or content of an action or action by another competent authority, in areas where the relevant legislation requires "cooperation, coordination or joint decisions". Therefore Article 11 shall be applicable in those cases where the Capital Requirements Directive requires the coordination and cooperation among the competent authorities as this is

also the case in Article 129 paragraph 1.

Amendment 276

Proposal for a directive – amending act

Article 9 – point 22 d (new)

Directive 2006/48/EC

Article 129 – paragraph 1 – subparagraph 1 b (new)

Text proposed by the Commission

Amendment

(22d) In Article 129(1), the following subparagraph is inserted:

"In order to ensure consistent harmonisation and uniform application of this Article, the European Banking Authority shall develop draft technical standards and guidelines to determine the conditions of the coordination and cooperation process with regard to the application of Articles 22, 123 and 124."

Justification

In order to provide supervisors with guidance on how cooperation and coordination shall be carried out in the areas covered by Article 22, 123 and 124, the European Banking Authority shall develop technical standards. Such standards will facilitate the cooperation and coordination among supervisors.

Amendment 277

Proposal for a directive – amending act

Article 9 – point 23

Directive 2006/48/EC

Article 129 – paragraph 2 – subparagraph 6

Text proposed by the Commission

Amendment

If, at the end of the six month period, ***a*** competent ***authority*** has referred the matter to the European Banking Authority in accordance with Article 11 of Regulation .../... [EBA], the consolidating supervisor shall await any decision that the European Banking Authority may take in accordance with Article 11(3) of that regulation, and shall ***act*** in conformity ***with that decision***. The six month period shall be deemed the

If, at the end of the six month period, ***any of the*** competent ***authorities concerned*** has referred the matter to the European Banking Authority in accordance with Article 11 of Regulation ***(EU) No .../2010*** [EBA], the consolidating supervisor shall ***defer its decision and*** await any decision that the European Banking Authority may take in accordance with Article 11(3) of that regulation ***to settle the matter in***

conciliation period within the meaning of the Regulation. The European Banking Authority shall take its decision within one month. The matter shall not be referred to the Authority after the end of the six month period or after a joint decision has been reached.

compliance with Union law, and shall take its final decision in conformity with the Authority's decision. The six month period shall be deemed the conciliation period within the meaning of the Regulation. The European Banking Authority shall take its decision within one month. The matter shall not be referred to the Authority after the end of the six month period or after a joint decision has been reached.

Amendment 278

Proposal for a directive – amending act

Article 9 – point 24 – point b

Directive 2006/48/EC

Article 129 – paragraph 3 – subparagraph 4

Text proposed by the Commission

In the absence of such a joint decision between the competent authorities within four months, a decision on the application of Articles 123 and 124 and Article 136(2) shall be taken on a consolidated basis by the consolidating supervisor after duly considering the risk assessment of subsidiaries performed by relevant competent authorities. If, at the end of the four month period, **a** competent **authority** has referred the matter to the European Banking Authority in accordance with Article 11 of Regulation .../... [EBA], the consolidating supervisor shall await any decision that the European Banking Authority may take in accordance with Article 11(3) of that Regulation, and shall **act** in conformity with **that** decision. The four month period shall be deemed the conciliation period within the meaning of the Regulation. The European Banking Authority shall take its decision within one month. The matter shall not be referred to the Authority after the end of the four month period or after a joint decision has been reached.

Amendment

In the absence of such a joint decision between the competent authorities within four months, a decision on the application of Articles 123 and 124 and Article 136(2) shall be taken on a consolidated basis by the consolidating supervisor after duly considering the risk assessment of subsidiaries performed by relevant competent authorities. If, at the end of the four month period, **any of the** competent **authorities concerned** has referred the matter to the European Banking Authority in accordance with Article 11 of Regulation **(EU) No .../2010** [EBA], the consolidating supervisor shall **defer its decision and** await any decision that the European Banking Authority may take in accordance with Article 11(3) of that Regulation **to settle the matter in compliance with Union law, and shall take its final decision** in conformity with **the Authority's** decision. . The four month period shall be deemed the conciliation period within the meaning of the Regulation. The European Banking Authority shall take its decision within one month. The matter shall not be referred to

the Authority after the end of the four month period or after a joint decision has been reached.

Amendment 279

Proposal for a directive – amending act

Article 9 – point 24 – point c

Directive 2006/48/EC

Article 129 – paragraph 3 – subparagraph 5

Text proposed by the Commission

The decision on the application of Articles 123 and 124 and Article 136(2) shall be taken by the respective competent authorities responsible for supervision of subsidiaries of an EU parent credit institution or an EU parent financial holding company on an individual or sub-consolidated basis after duly considering the views and reservations expressed by the consolidating supervisor. If, at the end of the four month period, ***the consolidating supervisor*** has referred the matter to the European Banking Authority in accordance with Article 11 of Regulation .../... [EBA], the competent authorities shall await any decision that the European Banking Authority shall take in accordance with Article 11(3) of that Regulation, and shall ***act*** in conformity with ***that*** decision. The four month period shall be deemed the conciliation period within the meaning of that Regulation. The European Banking Authority shall take its decision within one month. The matter shall not be referred to the Authority after the end of the four month period or after a joint decision has been reached.

Amendment

The decision on the application of Articles 123 and 124 and Article 136(2) shall be taken by the respective competent authorities responsible for supervision of subsidiaries of an EU parent credit institution or an EU parent financial holding company on an individual or sub-consolidated basis after duly considering the views and reservations expressed by the consolidating supervisor. If, at the end of the four month period, ***any of the competent authorities concerned*** has referred the matter to the European Banking Authority in accordance with Article 11 of Regulation ***(EU) No .../2010*** [EBA], the competent authorities shall ***defer its decision and*** await any decision that the European Banking Authority shall take in accordance with Article 11(3) of that Regulation ***to settle the matter in order to ensure compliance with Union law***, and shall ***take its final decision*** in conformity with ***the Authority's*** decision. ***The Authority's decision according to the precautionary principle shall not replace the consolidating supervisor's additional prudential judgement.*** The four month period shall be deemed the conciliation period within the meaning of that Regulation. The European Banking Authority shall take its decision within one month. The matter shall not be referred to the Authority after the end of the four month period or after a joint decision has

been reached.

Amendment 280

Proposal for a directive – amending act

Article 9 – point 24 – point d

Directive 2006/48/EC

Article 129 – paragraph 3 –subparagraph 7

Text proposed by the Commission

Where the European Banking Authority has been consulted, all competent authorities shall consider its advice, and explain any significant deviation therefrom.

Amendment

Where the European Banking Authority has been consulted, all competent authorities shall consider its advice, and explain any significant ***additional prudential*** deviation therefrom.

Amendment 281

Proposal for a directive – amending act

Article 9 – point 24 – point e

Directive 2006/48/EC

Article 129 – paragraph 3 –subparagraph 10

Text proposed by the Commission

In order to ensure uniform application of this Article, the European Banking Authority shall develop draft technical standards to determine the conditions of application of the joint decision process referred to in this paragraph, with regard to the application of Articles 123, 124 and 132(2) and with a view to facilitating joint decisions. The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

The Commission may adopt the draft technical standards referred to in the tenth subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../... [EBA]

Amendment

In order to ensure ***consistent harmonisation and*** uniform application of this Article, the European Banking Authority shall develop draft technical standards to determine the conditions of application of the joint decision process referred to in this paragraph, with regard to the application of Articles 123, 124 and 132(2) and with a view to facilitating joint decisions. The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

The Commission may adopt the draft technical standards referred to in the tenth subparagraph in accordance with the procedure laid down in Article 7 of Regulation ***(EU) No .../2010*** [EBA]

Amendment 282

Proposal for a directive – amending act
Article 9 – point 25 –subparagraph 1
Directive 2006/48/EC
Article 130 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Where **an** emergency situation, including adverse developments in financial markets, arises, which potentially jeopardises the market liquidity and the stability of the financial system in any of the Member State where entities of a group have been authorised or where significant branches referred to in Article 42a are established, the consolidating supervisor shall, subject to Chapter 1, Section 2, alert as soon as is practicable, the European Banking Authority and **the** authorities referred to in the fourth subparagraph of Article 49 and Article 50, and shall communicate all information essential for the pursuance of their tasks. Those obligations shall apply to all competent authorities under Articles 25 and 126 and to the competent authority identified under Article 129(1).

Amendment

Where **a potential or actual** emergency situation, including **any potential** adverse developments in financial markets **or in real economy**, arises, which potentially jeopardises the market liquidity and the stability of the financial system in any of the Member State where entities of a group have been authorised or where significant branches referred to in Article 42a are established, the consolidating supervisor shall, subject to Chapter 1, Section 2, alert as soon as is practicable, the European Banking Authority, **the European Systemic Risk Board** and **other** authorities referred to in the fourth subparagraph of Article 49 and Article 50, and shall communicate all information essential for the pursuance of their tasks. Those obligations shall apply to all competent authorities under Articles 125 and 126 and to the competent authority identified under Article 129(1).

Amendment 283

Proposal for a directive – amending act
Article 9 – point 27 – point a
Directive 2006/48/EC
Article 131a – paragraph 2 –subparagraph 2

Text proposed by the Commission

In order to ensure uniform application of this Article and Article 42a(3), the European Banking Authority shall develop draft technical standards for the operational functioning of colleges, including in relation to Article 42a(3). The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

Amendment

In order to ensure **consistent harmonisation and** uniform application of this Article and Article 42a(3), the European Banking Authority shall develop draft technical standards for the operational functioning of colleges, including in relation to Article 42a(3). The Authority shall submit those draft technical standards

to the Commission by 1 January 2014.

Amendment 284

Proposal for a directive – amending act

Article 9 – point 27 – point b – introductory phrase

Directive 2006/48/EC

Article 131a – paragraph 2 – seventh subparagraph

Text proposed by the Commission

(b) The ***seventh*** subparagraph is replaced by the following:

Amendment

(b) The ***sixth*** subparagraph is replaced by the following:

Amendment 285

Proposal for a directive – amending act

Article 9 – point 27 a (new)

Directive 2006/48/EC

Article 132 – paragraph 1 – subparagraphs 1 a and 1 b (new)

Text proposed by the Commission

Amendment

(27a) In Article 132(1), the following subparagraphs are inserted after the first subparagraph:

"The competent authorities shall cooperate with the EBA where it is necessary for the purposes of this Directive.

The competent authorities shall, without any delay, provide EBA and other competent authorities with all relevant and necessary information in order to fulfil their duties under this Directive."

Amendment 286

Proposal for a directive – amending act

Article 9 – point 27 b (new)

Directive 2006/48/EC

Article 140 – paragraph 3

Text proposed by the Commission

Amendment

(27b) In Article 140, the third paragraph

is replaced by the following:

"3. The competent authorities responsible for supervision on a consolidated basis shall establish lists of the financial holding companies referred to in Article 71(2). Those lists shall be communicated to the competent authorities of the other Member States, to the EBA and to the Commission."

Amendment 287

Proposal for a directive – amending act

Article 9 – point 28 – point b

Directive 2006/48/EC

Article 143 – paragraph 2 – subparagraph 2

Text proposed by the Commission

The competent authority carrying out the verification referred to in the first subparagraph of paragraph 1 shall take into account any such guidance. For this purpose, the competent authority shall consult the European Banking Authority before adopting a decision.

Amendment

The competent authority carrying out the verification referred to in the first subparagraph of paragraph 1 shall take into account any such guidance. For this purpose, the competent authority shall consult the European Banking Authority before adopting a decision **and decide in conformity**.

Amendment 288

Proposal for a directive – amending act

Article 9 – point 28 a (new)

Directive 2006/48/EC

Article 143 – paragraph 3 – subparagraph 4

Text proposed by the Commission

Amendment

(28a) In Article 143(3), the fourth subparagraph is replaced by the following:

"The supervisory techniques shall be designed to achieve the objectives of consolidated supervision as defined in this Chapter and shall be notified to the other competent authorities involved, the EBA and the Commission."

Amendment 289

Proposal for a directive – amending act

Article 9 – point 29

Directive 2006/48/EC

Article 144 – paragraph 3

Text proposed by the Commission

In order to ensure uniform application of this Article, the European Banking Authority shall develop draft technical standards to determine the key aspects on which aggregate statistical data are to be disclosed and the format, structure, contents list and annual publication date of the disclosures provided for in this Article. The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

Amendment

In order to ensure **consistent harmonisation and uniform** application of this Article, the European Banking Authority shall develop draft technical standards to determine the key aspects on which aggregate statistical data are to be disclosed and the format, structure, contents list and annual publication date of the disclosures provided for in this Article. The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

Amendment 290

Proposal for a directive – amending act

Article 9 – point 29 a (new)

Directive 2006/48/EC

Title VI – title

Text proposed by the Commission

Amendment

(29a) The title of Title VI is replaced by the following:

"DELEGATED ACTS AND POWERS OF EXECUTION"

Amendment 291

Proposal for a directive – amending act

Article 9 – point 29 b (new)

Directive 2006/48/EC

Article 150 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

(29b) In Article 150(1), the introductory part of the first subparagraph is replaced by the following:

"1. Without prejudice, as regards own funds, to the proposal that the Commission is to submit pursuant to Article 62, the technical adjustments [...] in the following areas shall be adopted by means of delegated acts in accordance with Articles 151, 151a and 151b:"

Amendment 292

Proposal for a directive – amending act

Article 9 – point 30 a (new)

Directive 2006/48/EC

Article 150 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

(30a) In Article 150(1), the second subparagraph is replaced by the following:

"The draft delegated acts shall be drawn up by the EBA."

Amendment 293

Proposal for a directive – amending act

Article 9 – point 30 b (new)

Directive 2006/48/EC

Article 150 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

(30b) In Article 150(2), the introductory part of the first subparagraph is replaced by the following:

"The Commission may adopt the following [...] measures:"

Amendment 294

Proposal for a directive – amending act

Article 9 – point 30 c (new)

Directive 2006/48/EC

Article 150 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

(30c) In Article 150(2), the second subparagraph is replaced by the following:

"These measures shall be adopted by means of delegated acts in accordance with Articles 151, 151a and 151 b."

Amendment 295

Proposal for a directive – amending act

Article 9 – point 30 d (new)

Directive 2006/48/EC

Article 150 – paragraph 2 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

(30) In Article 150(2), the following subparagraph is added:

"The draft delegated acts shall be drawn up by the EBA."

Amendment 296

Proposal for a directive – amending act

Article 9 – point 30 e (new)

Directive 2006/48/EC

Article 151 – paragraph 2

Text proposed by the Commission

Amendment

(30e) Article 151(2) is replaced by the following:

"2. The power to adopt delegated acts referred to in Article 150 shall be conferred on the Commission for an indeterminate period of time."

Amendment 297

Proposal for a directive – amending act

Article 9 – point 30 f (new)

Directive 2006/48/EC

Article 151 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(30f) In Article 151, the following paragraph is inserted:

"2a. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council."

Amendment 298

Proposal for a directive – amending act

Article 9 – point 30 g (new)

Directive 2006/48/EC

Article 151 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

(30g) In Article 151, the following paragraph is inserted:

"2b. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 151a and 151b."

Amendment 299

Proposal for a directive – amending act

Article 9 – point 30 h (new)

Directive 2006/48/EC

Article 151 – paragraph 3

Text proposed by the Commission

Amendment

(30h) Article 151(3) is deleted.

Amendment 300

Proposal for a directive – amending act

Article 9 – point 30 i (new)

Directive 2006/48/EC

Article 151 a (new)

Text proposed by the Commission

Amendment

(30i) The following article is inserted after Article 151:

"Article 151a

Revocation of the delegation

- 1. The delegation of power referred to in Article 150 may be revoked by the European Parliament or by the Council.***
- 2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall endeavour to inform the other institution and the Commission stating the delegated powers which could be subject to revocation.***

The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union."

Amendment 301

Proposal for a directive – amending act

Article 9 – point 30 j (new)

Directive 2006/48/EC

Article 151 b (new)

Text proposed by the Commission

Amendment

(30j) The following article is inserted after Article 151a:

"Article 151b

Objections to delegated acts

- 1. The European Parliament or the Council may object to a delegated act within a period of four months from the date of notification. At the initiative of the European Parliament or the Council this period shall be extended by two months.*
- 2. If, on the expiry of that period neither the European Parliament nor the Council has objected to the delegated act, it shall enter into force on the date stated therein. If the European Parliament or the Council objects to a delegated act, it shall not enter into force.*
- 3. In order to expedite the adoption of delegated acts where appropriate, the European Parliament and the Council, pursuant to a procedure of early non-objection and in duly justified cases, may decide to shorten the four-month period referred to in the first subparagraph, following a request of the Commission."*

Amendment 302

Proposal for a directive – amending act
Article 9 – point 31
 Directive 2006/48/EC
 Article 156

Text proposed by the Commission

(31) *In* Article 156, "Committee of European Banking Supervisors" is replaced by "European Banking Authority".

Amendment

(31) Article 156 *is amended as follows:*

(a) "Committee of European Banking Supervisors" is replaced by "European Banking Authority".

(b) The first subparagraph is replaced by the following:

"The Commission, in cooperation with the EBA and Member States, and taking into account the contribution of the European Central Bank, shall periodically monitor whether this Directive taken as a whole, together with Directive 2006/49/EC, has significant effects on the economic cycle and, in the

light of that examination, shall consider whether any remedial measures are justified."

Amendment 303

Proposal for a directive – amending act

Article 10 – point -1 (new)

Directive 2006/49/EC

Article 7 – paragraph 2

Text proposed by the Commission

Amendment

(-1) In Article 7, the second paragraph is replaced by the following:

"The amounts referred to in the first paragraph shall be periodically reviewed by the EBA in order to take account of changes in the European Index of Consumer Prices as published by Eurostat, in line with and at the same time as the adjustments made under Article 4(7) of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (1)."

Amendment 304

Proposal for a directive – amending act

Article 10 – point 1

Directive 2006/49/EC

Article 18 – paragraph 5

Text proposed by the Commission

Amendment

5. In order to ensure uniform application of paragraph 1, the European Banking Authority established by Regulation.../...of the European Parliament and of the Council **may** develop draft technical standards for endorsement by the Commission to determine the practical and procedural application of the conditions under which competent authorities permit **credit** institutions to use internal models for the purposes of

5. In order to ensure **consistent harmonisation and** uniform application of paragraph 1, the European Banking Authority established by Regulation **(EU) No .../2010** of the European Parliament and of the Council **shall** develop draft technical standards for endorsement by the Commission to determine the practical and procedural application of the conditions under which competent authorities permit institutions to use internal models for the

calculating capital requirements under this Directive.

purposes of calculating capital requirements under this Directive.

Amendment 305

Proposal for a directive – amending act

Article 10 – point 1 a (new)

Directive 2006/49/EC

Article 22 – paragraph 1 – subparagraph 3 a (new)

Text proposed by the Commission

Amendment

(1a) In Article 22(1), the following subparagraph is added:

"Where the competent authorities waive the application of capital requirements on a consolidated basis provided for in this Article, they shall notify the EBA."

Amendment 306

Proposal for a directive – amending act

Article 10 – point 1 b (new)

Directive 2006/49/EC

Article 32 – paragraph 1

Text proposed by the Commission

Amendment

(1b) Article 32(1) is replaced by the following:

"1. Following guidelines prepared by the EBA, the competent authorities shall establish procedures to prevent institutions from deliberately avoiding the additional capital requirements that they would otherwise incur, on exposures exceeding the limit laid down in Article 111(1) of Directive 2006/48/EC once those exposures have been maintained for more than 10 days, by means of temporarily transferring the exposures in question to another company, whether within the same group or not, and/or by undertaking artificial transactions to close out the exposure during the 10-day period and

create a new exposure.

The competent authorities shall notify *the EBA*, the Council and the Commission of those procedures.

Institutions shall maintain systems which ensure that any transfer which has the effect referred to in the first subparagraph is immediately reported to the competent authorities."

Amendment 307

Proposal for a directive – amending act

Article 10 – point 1 c (new)

Directive 2006/49/EC

Article 36 – paragraph 1

Text proposed by the Commission

Amendment

(1c) Article 36(1) is replaced by the following:

"1. Member States shall designate the authorities which are competent to carry out the duties provided for in this Directive. They shall inform *the EBA* and the Commission thereof, indicating any division of duties."

Amendment 308

Proposal for a directive – amending act

Article 10 – point 1 d (new)

Directive 2006/49/EC

Article 38 – paragraph 1

Text proposed by the Commission

Amendment

(1d) Article 38(1) is replaced by the following:

"1. The competent authorities of the Member States *and the EBA* shall cooperate closely in the performance of the duties provided for in this Directive, particularly where investment services are provided on the basis of the freedom

to provide services or through the establishment of branches.

The competent authorities shall on request supply one another *and the EBA* with all information likely to facilitate the supervision of the capital adequacy of institutions, in particular the verification of their compliance with the rules laid down in this Directive."

Amendment 309

Proposal for a directive – amending act

Article 10 – point 1 e (new)

Directive 2006/49/EC

Article 38 – paragraph 2

Text proposed by the Commission

Amendment

(1e) Article 38(2) is replaced by the following:

"2. Any exchange of information between competent authorities, *and the competent authorities and the EBA* which is provided for in this Directive shall be subject to the following obligations of professional secrecy:

(a) for investment firms, those imposed in Article 54 and 58 of Directive 2004/39/EC; and

(b) for credit institutions, those imposed in Articles 44 to 52 of Directive 2006/48/EC."

Amendment 310

Proposal for a directive – amending act

Article 10 – point 1 f (new)

Directive 2006/49/EC

Section 2 – title

Text proposed by the Commission

Amendment

(1f) The title of Section 2 is replaced by the following:

"Delegated acts and Powers of

execution"

Amendment 311

Proposal for a directive – amending act

Article 10 – point 1 g (new)

Directive 2006/49/EC

Article 41 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(1g) In Article 41, point a is replaced by the following:

"(a) clarification of the definitions in Article 3 in order to ensure consistent harmonisation and uniform application of this Directive;"

Amendment 312

Proposal for a directive – amending act

Article 10 – point 1 h (new)

Directive 2006/49/EC

Article 41 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(1h) In Article 41, point e is replaced by the following:

"(e) clarification of the requirement laid down in Article 21 to ensure consistent harmonisation and uniform application of this Directive;"

Amendment 313

Proposal for a directive – amending act

Article 10 – point 1 i (new)

Directive 2006/49/EC

Article 41 – paragraph 2

Text proposed by the Commission

Amendment

(1i) Article 41(2) is replaced by the following:

"2. These measures referred to in Paragraph 1 [...] shall be adopted by means of delegated acts in accordance with Articles 42, 42a and 42 b.

The draft delegated acts shall be drawn up by the EBA."

Amendment 314

Proposal for a directive – amending act

Article 10 – point 1 j (new)

Directive 2006/49/EC

Article 42 – paragraph 2

Text proposed by the Commission

Amendment

(1j) Article 42(2) is replaced by the following:

"2. The power to adopt delegated acts referred to in Article 41 shall be conferred on the Commission for an indeterminate period of time."

Amendment 315

Proposal for a directive – amending act

Article 10 – point 1 k (new)

Directive 2006/49/EC

Article 42 – paragraphs 2 a and 2 b (new)

Text proposed by the Commission

Amendment

(1k) In Article 42, the following paragraphs are inserted:

"2a. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

2b. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 42a and 42b. "

Amendment 316

Proposal for a directive – amending act

Article 10 – point 1 l (new)

Directive 2006/49/EC

Article 42 a (new)

Text proposed by the Commission

Amendment

(1l) The following article is inserted after Article 42:

"Article 42a

Revocation of the delegation

- 1. The delegation of power referred to in Article 41 may be revoked by the European Parliament or by the Council.***
- 2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall endeavour to inform the other institution and the Commission stating the delegated powers which could be subject to revocation.***

The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union."

Amendment 317

Proposal for a directive – amending act

Article 10 – point 1 m (new)

Directive 2006/49/EC

Article 42 b (new)

Text proposed by the Commission

Amendment

(1m) The following article is inserted after Article 42a:

"Article 42b

Objections to delegated acts

1. The European Parliament or the Council may object to a delegated act within a period of four months from the date of notification. At the initiative of the European Parliament or the Council this period shall be extended by two months.

2. If, on the expiry of that period neither the European Parliament nor the Council has objected to the delegated act, it shall enter into force on the date stated therein. If the European Parliament or the Council objects to a delegated act, it shall not enter into force.

3. In order to expedite the adoption of delegated acts where appropriate, the European Parliament and the Council, pursuant to a procedure of early non-objection and in duly justified cases, may decide to shorten the four-month period referred to in the first subparagraph, following a request of the Commission."

Amendment 318

Proposal for a directive – amending act

Article 11 – point 1

Directive 2009/65/EC

Article 5 – paragraph 8 – subparagraph 1

Text proposed by the Commission

8. In order to ensure uniform application of this Article, the European Securities and Markets Authority established by Regulation.../...of the European Parliament and of the Council may develop draft technical standards to determine the conditions of application relating to the information to be provided to the competent authorities in the application for authorisation of a UCITS.

Amendment

8. In order to ensure **consistent harmonisation and** uniform application of this Article, the European Securities and Markets Authority established by Regulation **(EU) No.../2010** of the European Parliament and of the Council **shall** develop draft technical standards to determine the conditions of application relating to the information to be provided to the competent authorities in the application for authorisation of a UCITS.

Amendment 319

Proposal for a directive – amending act

Article 11 – point 1 a (new)

Directive 2009/65/EC

Article 6 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

(1a) In Article 6(1), the following subparagraph is added:

"The European Securities and Markets Authority shall be notified of every authorisation granted and shall keep an updated list of authorised management companies on its website."

Amendment 320

Proposal for a directive – amending act

Article 11 – point 2

Directive 2009/65/EC

Article 7 – paragraph 6 – subparagraph 1

Text proposed by the Commission

Amendment

6. In order to ensure uniform application of this Article, the European Securities and Markets Authority ***may*** develop draft technical standards to ***further*** determine the ***conditions of application of the requirements*** for the authorisation of the management company, ***with the exception of the conditions established in paragraph 1(b) of this Article.***

6. In order to ensure ***consistent harmonisation and*** uniform application of this Article, the European Securities and Markets Authority ***shall*** develop draft technical standards to:

(a) determine the information to be provided to the competent authority in the application for the authorisation of the management company;

(b) develop the information and standard forms, templates and procedures for the notification of the programme of activity foreseen in this Article; and

(c) assess the reputation and experience of persons conducting the business of the management company.

Amendment 321

Proposal for a directive – amending act

Article 11 – point 2 a (new)

Directive 2009/65/EC

Article 7 – paragraphs 6 a and 6 b (new)

Text proposed by the Commission

Amendment

(2a) In Article 7, the following paragraphs are added:

"6a. In order to ensure consistent harmonisation and uniform application of the paragraph above, the European Securities and Markets Authority shall develop draft technical standards to assess the suitability of the shareholders or members of the management company.

6b. The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation (EU) No .../2010 [ESMA]."

Amendment 322

Proposal for a directive – amending act

Article 11 – point 2 b (new)

Directive 2009/65/EC

Article 9 – paragraph 2

Text proposed by the Commission

Amendment

(2b) Article 9(2) is replaced by the following:

"2. Member States shall inform the European Securities and Markets Authority and the Commission of any general difficulties which UCITS encounter in marketing their units in any third country.

The Commission, the European Securities and Markets Authority and the competent authorities of the Member States shall examine such difficulties as quickly as possible in order to find an appropriate

solution."

Amendment 323

Proposal for a directive – amending act

Article 11 – point 2 c (new)

Directive 2009/65/EC

Article 12 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

(2c) In Article 12(3), the first subparagraph is replaced by the following:

"3. Without prejudice to Article 116, the Commission shall adopt, by 1 July 2010, by means of delegated acts in accordance with Articles 112, 112a and 112b, measures specifying the procedures and arrangements as referred to under point (a) of the second subparagraph of paragraph 1 and the structures and organisational requirements to minimise conflicts of interests as referred to under point (b) of the second subparagraph of paragraph 1."

Amendment 324

Proposal for a directive – amending act

Article 11 – point 2 d (new)

Directive 2009/65/EC

Article 12 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

(2d) In Article 12(3), the second subparagraph is deleted.

Amendment 325

Proposal for a directive – amending act

Article 11 – point 2 e

Directive 2009/65/EC

Article 12 – paragraph 3 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

(2e) In Article 12(3), the following subparagraph is added:

"The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 326

Proposal for a directive – amending act

Article 11 – point 3

Directive 2009/65/EC

Article 12 – paragraph 4

Text proposed by the Commission

Amendment

4. In order to ensure uniform application of this Article, the European Securities and Markets Authority **may** develop draft technical standards to determine the conditions of application of the implementing measures adopted by the Commission regarding the procedures, arrangements, structures and organisational requirements referred to in paragraph 3 of this Article.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure ***laid down in Article 7 of Regulation .../.... [ESMA]***.

4. In order to ensure uniform application of this Article, the European Securities and Markets Authority **shall** develop draft technical standards to determine the conditions of application of the implementing measures adopted by the Commission regarding the procedures, arrangements, structures and organisational requirements referred to in paragraph 3 of this Article.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure ***for implementing acts in accordance with Article 291 of the Treaty on the Functioning of the European Union***.

Amendment 327

Proposal for a directive – amending act

Article 11 – point 3 a (new)

Directive 2009/65/EC

Article 14 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

(3a) In Article 14(2), the introductory part of the first subparagraph is replaced by

the following:

"2. Without prejudice to Article 116, the Commission shall adopt, by 1 July 2010, by means of delegated acts in accordance with Articles 112, 112a and 112b, measures, with a view to ensuring that the management company complies with the duties set out in paragraph 1, in particular to:"

Amendment 328

Proposal for a directive – amending act
Article 11 – point 3 b (new)
Directive 2009/65/EC
Article 14 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

(3b) In Article 14(2), the second subparagraph is deleted.

Amendment 329

Proposal for a directive – amending act
Article 11 – point 3 c (new)
Directive 2009/65/EC
Article 14 – paragraph 2 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

(3c) In Article 14(2), the following subparagraph is added:

"The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 330

Proposal for a directive – amending act
Article 11 – point 4
Directive 2009/65/EC
Article 14 – paragraph 3

Text proposed by the Commission

3. In order to ensure uniform application of this Article, the European Securities and Markets Authority **may** develop draft technical standards to determine the conditions of application of the implementing measures adopted by the Commission regarding the criteria, principles and steps referred to in points (a), (b), and (c) of **the first subparagraph** of this Article.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure ***laid down in Article 7 of Regulation .../... [ESMA]***.

Amendment

3. In order to ensure uniform application of this Article, the European Securities and Markets Authority **shall** develop draft technical standards to determine the conditions of application of the implementing measures adopted by the Commission regarding the criteria, principles and steps referred to in points (a), (b), and (c) of **paragraph 2** of this Article.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure ***for implementing acts pursuant Article 291 of the Treaty on the Functioning of the European Union***.

Amendment 331

**Proposal for a directive – amending act
Article 11 – point 4 a (new)**

Directive 2009/65/EC

Article 17 – paragraph 9 a (new)

Text proposed by the Commission

Amendment

(4a) In Article 17 the following paragraph is added:

"9a. In order to ensure consistent harmonisation and uniform application of this Article, the European Securities and Markets Authority established by Regulation.../...of the European Parliament and of the Council shall develop draft technical standards to determine the information to be provided to the competent authorities in the notification for establishment of a branch.

The Commission shall adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation (EU) No .../2010 [ESMA]."

Amendment 332

Proposal for a directive – amending act

Article 11 – point 4 b (new)

Directive 2009/65/EC

Article 18 – paragraphs 4 a and 4 b (new)

Text proposed by the Commission

Amendment

(4b) In Article 18, the following paragraphs are added:

"4a. In order to ensure consistent harmonisation and uniform application of this Article, the European Securities and Markets Authority established by Regulation.../...of the European Parliament and of the Council shall develop draft technical standards to determine the information to be communicated to the competent authorities in order to provide activities under the freedom to provide services.

4b. The Commission shall adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation (EU) No .../2010 [ESMA]."

Amendment 333

Proposal for a directive – amending act

Article 11 – point 4 c (new)

Directive 2009/65/EC

Article 20 – paragraphs 4 a and 4 b(new)

Text proposed by the Commission

Amendment

(4c) In Article 20, the following paragraphs are added:

"4a. In order to ensure consistent harmonisation and uniform application of this Article, the European Securities and Markets Authority established by Regulation.../...of the European Parliament and of the Council shall develop draft technical standards to determine the documentation to be provided to the competent authorities in

the application for managing a UCITS established in another Member State.

4b. The Commission shall adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation (EU) No .../2010 [ESMA]."

Amendment 334

Proposal for a directive – amending act

Article 11 – point 5 a (new)

Directive 2009/65/EC

Article 21 – paragraph 7 – subparagraph 2

Text proposed by the Commission

Amendment

(5a) In Article 21(7), the second subparagraph is replaced by the following:

"After consulting the competent authorities of the Member States concerned, the *European Securities and Markets Authority* may decide that the Member State in question must amend or abolish those measures."

Amendment 335

Proposal for a directive – amending act

Article 11 – point 5 b (new)

Directive 2009/65/EC

Article 21 – paragraph 9 – subparagraph 1

Text proposed by the Commission

Amendment

(5b) In Article 21(9), the first subparagraph is replaced by the following:

"9. Member States shall inform the *European Securities and Markets Authority* and the Commission of the number and type of cases in which they refuse authorisation under Article 17 or an application under Article 20 and of any measures taken in accordance with

paragraph 5 of this Article."

Amendment 336

Proposal for a directive – amending act

Article 11 – point 5 c (new)

Directive 2009/65/EC

Article 23 – paragraph 6 – subparagraph 1

Text proposed by the Commission

Amendment

(5c) In Article 23(6), the first subparagraph is replaced by the following:

"6. The Commission shall adopt, by means of delegated acts in accordance with Articles 112, 112a and 112b, measures in relation to the measures to be taken by a depositary in order to fulfil its duties regarding a UCITS managed by a management company established in another Member State, including the particulars that need to be included in the standard agreement to be used by the depositary and the management company in accordance with paragraph 5."

Amendment 337

Proposal for a directive – amending act

Article 11 – point 5 d (new)

Directive 2009/65/EC

Article 23 – paragraph 6 – subparagraph 2

Text proposed by the Commission

Amendment

(5d) In Article 23(6), the second subparagraph is deleted.

Amendment 338

Proposal for a directive – amending act

Article 11 – point 5 e (new)

Directive 2009/65/EC

Article 23 – paragraph 6 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

(5e) In Article 23(6), the following subparagraph is added:

"The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 339

Proposal for a directive – amending act

Article 11 – point 6

Directive 2009/65/EC

Article 29 – paragraph 5 – subparagraph 1

Text proposed by the Commission

Amendment

5. In order to ensure uniform application of this Article, the European Securities and Markets Authority **may** develop draft technical standards to determine the conditions of application of the conditions for the authorisation of the self-managed investment company, with the exception of the conditions established in **paragraph 1(b)** of this Article.

5. In order to ensure **consistent harmonisation and** uniform application of this Article, the European Securities and Markets Authority **shall** develop draft technical standards to determine the conditions of application of the conditions for the authorisation of the self-managed investment company, with the exception of the conditions established in **paragraph 1(c)** of this Article.

Amendment 340

Proposal for a directive – amending act

Article 11 – point 6 a (new)

Directive 2009/65/EC

Article 32 – paragraph 6

Text proposed by the Commission

Amendment

(6a) Article 32(6) is replaced by the following:

"6. Member States shall inform the European Securities and Markets Authority and the Commission of the identities of the investment companies benefiting from the derogations provided for in paragraphs 4 and 5."

Amendment 341

Proposal for a directive – amending act

Article 11 – point 6 b (new)

Directive 2009/65/EC

Article 33 – paragraph 6 –subparagraph 1

Text proposed by the Commission

Amendment

(6b) In Article 33(6), the first subparagraph is replaced by the following:

"6. The Commission shall adopt, by means of delegated acts in accordance with Articles 112, 112a and 112b, measures in relation to the measures to be taken by a depositary in order to fulfil its duties regarding a UCITS managed by a management company established in another Member State, including the particulars that need to be included in the standard agreement to be used by the depositary and the management company in accordance with paragraph 5."

Amendment 342

Proposal for a directive – amending act

Article 11 – point 6 c (new)

Directive 2009/65/EC

Article 33 – paragraph 6 –subparagraph 2

Text proposed by the Commission

Amendment

(6c) In Article 33(6), the second subparagraph is deleted.

Amendment 343

Proposal for a directive – amending act

Article 11 – point 6 d (new)

Directive 2009/65/EC

Article 33 – paragraph 6 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

(6d) In Article 33(6), the following subparagraph is added:

"The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 344

Proposal for a directive – amending act

Article 11 – point 6 e (new)

Directive 2009/65/EC

Article 43 – paragraph 5 –subparagraph 1

Text proposed by the Commission

Amendment

(6c) In Article 43(5), the first subparagraph is replaced by the following:

"5. The Commission shall adopt, by means of delegated acts in accordance with Articles 112, 112a and 112b, measures specifying the detailed content, format and method by which to provide the information referred to in paragraphs 1 and 3."

Amendment 345

Proposal for a directive – amending act

Article 11 – point 6 f (new)

Directive 2009/65/EC

Article 43 – paragraph 5 –subparagraph 2

Text proposed by the Commission

Amendment

(6f) In Article 42(5), the second subparagraph is deleted.

Amendment 346

Proposal for a directive – amending act

Article 11 – point 6 g (new)

Directive 2009/65/EC

Article 43 – paragraph 5 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

(6g) In Article 43(5), the following subparagraph is added:

"The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 347

Proposal for a directive – amending act

Article 11 – point 7

Directive 2009/65/EC

Article 43 – paragraph 6

Text proposed by the Commission

Amendment

6. In order to ensure uniform application of this Article, the European Securities and Markets Authority **may** develop draft technical standards to determine the conditions of application of the implementing measures adopted by the Commission regarding the content, format and method by which the information referred to in paragraphs 1 and 3 of this Article should be provided.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure ***laid down in Article 7 of Regulation .../.... [ESMA]***.

6. In order to ensure uniform application of this Article, the European Securities and Markets Authority **shall** develop draft technical standards to determine the conditions of application of the implementing measures adopted by the Commission regarding the content, format and method by which the information referred to in paragraphs 1 and 3 of this Article should be provided.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure ***for implementing acts in accordance with Article 291 of the Treaty on the Functioning of the European Union***.

Amendment 348

Proposal for a directive – amending act

Article 11 – point 8

Directive 2009/65/EC

Article 50 – paragraph 4 – subparagraph 1

Text proposed by the Commission

4. In order to ensure uniform application of this Article, the European Securities and Markets Authority **may** develop draft technical standards to determine the conditions of application of the provisions concerning the categories of assets in which UCITS can invest in accordance to this Article.

Amendment

4. In order to ensure **consistent harmonisation and** uniform application of this Article, the European Securities and Markets Authority **shall** develop draft technical standards to determine the conditions of application of the provisions concerning the categories of assets in which UCITS can invest in accordance to this Article.

Amendment 349

Proposal for a directive – amending act

Article 11 – point 8 a (new)

Directive 2009/65/EC

Article 51 – paragraph 1 – subparagraph 3 a (new)

Text proposed by the Commission

Amendment

(8a) In Article 51(1), the following subparagraph is added:

"National competent authorities shall ensure that all information received under the previous paragraph aggregated in respect of all the management or investment companies they supervise is transmitted to the European Securities and Markets Authority and the ESRB for the purpose of monitoring systemic risks at Union level."

Amendment 350

Proposal for a directive – amending act

Article 11 – point 8 b (new)

Directive 2009/65/EC

Article 51 – paragraph 4

(8b) In Article 51, paragraph 4 is replaced by the following:

"4. Without prejudice to Article 116, the Commission shall adopt, *by means of delegated acts in accordance with Articles 112, 112a and 112b*, by 1 July 2010, [...] measures specifying the following:

(a) criteria for assessing the adequacy of the risk management process employed by the management company in accordance with the first subparagraph of paragraph 1;

(b) detailed rules regarding the accurate and independent assessment of the value of OTC derivatives; and

(c) detailed rules regarding the content of and procedure to be followed for communicating the information referred to in the third subparagraph of paragraph 1 to the competent authorities of the management company's home Member State.

The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 351

Proposal for a directive – amending act

Article 11 – point 9

Directive 2009/65/EC

Article 51 – paragraph 5

5. In order to ensure uniform application of this Article, the European Securities and Markets Authority *may* develop draft technical standards to determine the conditions of application of the implementing measures adopted by the Commission regarding the criteria and rules referred to in points (a), (b) and (c) of paragraph 4.

5. In order to ensure uniform application of this Article, the European Securities and Markets Authority *shall* develop draft technical standards to determine the conditions of application of the implementing measures adopted by the Commission regarding the criteria and rules referred to in points (a), (b) and (c) of paragraph 4.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure *laid down in Article 7 of Regulation .../... [ESMA]*.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure *for implementing acts in accordance with Article 291 of the Treaty on the Functioning of the European Union*.

Amendment 352

Proposal for a directive – amending act

Article 11 – point 9 a (new)

Directive 2009/65/EC

Article 52 – paragraph 4 – subparagraph 3

Text proposed by the Commission

Amendment

(9a) In Article 52(4), the third subparagraph, is replaced by the following:

"Member States shall send to the *European Securities and Markets Authority* a list of the categories of bonds referred to in the first subparagraph together with the categories of issuers authorised, in accordance with the laws and supervisory arrangements mentioned in that subparagraph, to issue bonds complying with the criteria set out in this Article. A notice specifying the status of the guarantees offered shall be attached to those lists. The *European Securities and Markets Authority* shall draw up an aggregated list and publish it in its website. This list shall be updated whenever the *European Securities and Markets Authority* receives new information from the Member States. In addition, this new information shall also be immediately forwarded to the other Member States together with any comments *European Securities and Markets Authority* considers appropriate. Such communications may be the subject of exchanges of views within the *European Securities Committee* referred to in Article 112(1)."

Amendment 353

Proposal for a directive – amending act

Article 11 – point 9 b (new)

Directive 2009/65/EC

Article 60 – paragraph 6 –subparagraph 1

Text proposed by the Commission

Amendment

(9b) In Article 60(6), the first subparagraph is replaced by the following:

"6. The Commission shall adopt, by means of delegated acts in accordance with Articles 112, 112a and 112b, measures specifying:"

Amendment 354

Proposal for a directive – amending act

Article 11 – point 9 c (new) – point b (new)

Directive 2009/65/EC

Article 60 – paragraph 6 –subparagraph 2

Text proposed by the Commission

Amendment

(9c) In Article 60(6), the second subparagraph is deleted.

Amendment 355

Proposal for a directive – amending act

Article 11 – point 9 d (new)

Directive 2009/65/EC

Article 60 – paragraph 6 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

(9d) In Article 60(6), the following subparagraph is added:

"The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 356

Proposal for a directive – amending act

Article 11 – point 10

Directive 2009/65/EC

Article 60 – paragraph 7

Text proposed by the Commission

7. In order to ensure uniform application of this Article, the European Securities and Markets Authority **may** develop draft technical standards to determine the conditions of application of the implementing measures adopted by the Commission regarding the agreement, measures and procedures referred to in points (a), (b) and (c) of paragraph 6.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure ***laid down in Article 7 of Regulation .../... [ESMA]***.

Amendment

7. In order to ensure uniform application of this Article, the European Securities and Markets Authority **shall** develop draft technical standards to determine the conditions of application of the implementing measures adopted by the Commission regarding the agreement, measures and procedures referred to in points (a), (b) and (c) of paragraph 6.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure ***for implementing acts in accordance with Article 291 of the Treaty on the Functioning of the European Union***.

Amendment 357

Proposal for a directive – amending act

Article 11 – point 10 a (new)

Directive 2009/65/EC

Article 61 – paragraph 3

Text proposed by the Commission

Amendment

(10a) Article 61(3) is replaced by the following:

"3. The Commission shall adopt, by means of delegated acts in accordance with Articles 112, 112a and 112b, measures further specifying the following:

(a) the particulars that need to be included in the agreement referred to in paragraph 1; and

(b) the types of irregularities referred to in paragraph 2 which are deemed to

have a negative impact on the feeder UCITS.

The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 358

Proposal for a directive – amending act

Article 11 – point 11

Directive 2009/65/EC

Article 61 – paragraph 4

Text proposed by the Commission

4. In order to ensure uniform application of this Article, the European Securities and Markets Authority **may** develop draft technical standards to determine the conditions of application of the implementing measures adopted by the Commission regarding the agreement and types of irregularities referred to in points (a) and (b) of paragraph 3.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure ***laid down in Article 7 of Regulation .../... [ESMA]***.

Amendment

4. In order to ensure uniform application of this Article, the European Securities and Markets Authority **shall** develop draft technical standards to determine the conditions of application of the implementing measures adopted by the Commission regarding the agreement and types of irregularities referred to in points (a) and (b) of paragraph 3.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure ***for implementing acts in accordance with Article 291 of the Treaty on the Functioning of the European Union***.

Amendment 359

Proposal for a directive – amending act

Article 11 – point 11 a (new)

Directive 2009/65/EC

Article 62 – paragraph 4

Text proposed by the Commission

Amendment

(11a) Article 62(4) is replaced by the following:

"4. The Commission shall adopt, by means of delegated acts in accordance with Articles 112, 112a and 112b, measures specifying the content of the

agreement referred to in the first subparagraph of paragraph 1.

[...]."

Amendment 360

Proposal for a directive – amending act

Article 11 – point 11 b (new)

Directive 2009/65/EC

Article 64 – paragraph 4

Text proposed by the Commission

Amendment

(11b) Article 64(4) is replaced by the following:

"4. The Commission shall adopt, by means of delegated acts in accordance with Articles 112, 112a and 112b, measures specifying:

(a) the format and the manner in which to provide the information referred to in paragraph 1; or

(b) in the event that the feeder UCITS transfers all or parts of its assets to the master UCITS in exchange for units, the procedure for valuing and auditing such a contribution in kind and the role of the depositary of the feeder UCITS in that process.

The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 361

Proposal for a directive – amending act

Article 11 – point 12

Directive 2009/65/EC

Article 64 – paragraph 5

Text proposed by the Commission

Amendment

5. In order to ensure uniform application of this Article, the European Securities and Markets Authority **may** develop draft

5. In order to ensure uniform application of this Article, the European Securities and Markets Authority **shall** develop draft

technical standards to determine the conditions of application of the implementing measures adopted by the Commission regarding the information and procedure referred to in points (a) and (b) of paragraph 4.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure ***laid down in Article 7 of Regulation .../... [ESMA]***.

technical standards to determine the conditions of application of the implementing measures adopted by the Commission regarding the ***format and the manner of*** the information ***provided*** and procedure referred to in points (a) and (b) of paragraph 4.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure ***for implementing acts in accordance with Article 291 of the Treaty on the Functioning of the European Union***.

Amendment 362

Proposal for a directive – amending act
Article 11 – point 13
Directive 2009/65/EC
Article 69 – paragraph 5 – subparagraph 1

Text proposed by the Commission

5. In order to ensure uniform application of this Article, the European Securities and Markets Authority ***may*** develop draft technical standards to determine the conditions of application of the provisions concerning the content of the prospectus, the annual report and the half-yearly report as laid down in Annex I, and the format of these documents.

Amendment

5. In order to ensure ***consistent harmonisation and*** uniform application of this Article, the European Securities and Markets Authority ***shall*** develop draft technical standards to determine the conditions of application of the provisions concerning the content of the prospectus, the annual report and the half-yearly report as laid down in Annex I, and the format of these documents.

Amendment 363

Proposal for a directive – amending act
Article 11 – point 13 a (new)
Directive 2009/65/EC
Article 75 – paragraph 4

Text proposed by the Commission

Amendment

(13a) Article 75(4) is replaced by the following:

"4. The Commission shall adopt, by means of delegated acts in accordance with Articles 112, 112a and 112b, measures which define the specific conditions which need to be met when providing the prospectus in a durable medium other than paper or by means of a website which does not constitute a durable medium.

The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 364

Proposal for a directive – amending act

Article 11 – point 13 b (new)

Directive 2009/65/EC

Article 78 – paragraph 7

Text proposed by the Commission

Amendment

(13b) Article 78(7) is replaced by the following:

"7. The Commission shall adopt, by means of delegated acts in accordance with Articles 112, 112a and 112b, measures which define the following:

(a) the detailed and exhaustive content of the key investor information to be provided to investors as referred to in paragraphs 2, 3 and 4;

(b) the detailed and exhaustive content of the key investor information to be provided to investors in the following specific cases:

(i) for UCITS having different investment compartments, the key investor information to be provided to investors subscribing to a specific investment compartment, including how to pass from one investment compartment into another and the costs related thereto;

(ii) for UCITS offering different share classes, the key investor information to be provided to investors subscribing to a

specific share class;

(iii) for fund of funds structures, the key investor information to be provided to investors subscribing to a UCITS, which invests itself in other UCITS or other collective investment undertakings referred to in Article 50(1)(e);

(iv) for master-feeder structures, the key investor information to be provided to investors subscribing to a feeder UCITS; and

(v) for structured, capital protected and other comparable UCITS, the key investor information to be provided to investors in relation to the special characteristics of such UCITS; and

(c) the specific details of the format and presentation of the key investor information to be provided to investors as referred to in paragraph 5.

The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 365

Proposal for a directive – amending act

Article 11 – point 14

Directive 2009/65/EC

Article 78 – paragraph 8

Text proposed by the Commission

8. In order to ensure uniform application of this Article, the European Securities and Markets Authority **may** develop draft technical standards **for endorsement by the Commission** to determine the conditions of application of the implementing measures adopted by the Commission regarding the information referred to in paragraph 3.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure ***laid down in Article 7 of***

Amendment

8. In order to ensure uniform application of this Article, the European Securities and Markets Authority **shall** develop draft technical standards to determine the conditions of application of the implementing measures adopted by the Commission ***in accordance with paragraph 7*** regarding the information referred to in paragraph 3.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure ***for implementing acts pursuant***

Amendment 366

Proposal for a directive – amending act

Article 11 – point 14 a (new)

Directive 2009/65/EC

Article 81 – paragraph 2

Text proposed by the Commission

Amendment

(14a) Article 81(2) is replaced by the following:

"2. The Commission shall adopt, by means of delegated acts in accordance with Articles 112, 112a and 112b, measures which define the specific conditions which need to be met when providing key investor information in a durable medium other than on paper or by means of a website which does not constitute a durable medium.

The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 367

Proposal for a directive – amending act

Article 11 – point 15

Directive 2009/65/EC

Article 84 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Amendment

4. In order to ensure uniform application of this Article, the European Securities and Markets Authority ***may*** develop draft technical standards to ***determine*** the conditions ***of application of the conditions applying to*** the temporary suspension of the re-purchase or redemption of the units of the UCITS as referred to in point (a) of paragraph 2, once the suspension has been decided.

4. In order to ensure ***consistent harmonisation and*** uniform application of this Article, the European Securities and Markets Authority ***shall*** develop draft technical standards to ***specify*** the conditions ***which need to be met by the UCITS after the adoption of*** the temporary suspension of the re-purchase or redemption of the units of the UCITS as referred to in point (a) of paragraph 2, once the suspension has been decided.

Amendment 368

Proposal for a directive – amending act

Article 11 – point 15 a (new)

Directive 2009/65/EC

Article 95 – paragraph 1

Text proposed by the Commission

Amendment

(15a) Article 95(1) is replaced by the following:

"1. The Commission shall adopt, by means of delegated acts in accordance with Articles 112, 112a and 112b, measures specifying:

(a) the scope of the information referred to in Article 91(3);

(b) the facilitation of access for the competent authorities of the UCITS host Member States to the information or documents referred to in Article 93(1), (2) and (3) in accordance with Article 93(7).

The draft delegated acts shall be drawn up by the European Securities and Markets Authority."

Amendment 369

Proposal for a directive – amending act

Article 11 – point 16

Directive 2009/65/EC

Article 95 – paragraph 2

Text proposed by the Commission

Amendment

2. In order to ensure uniform application of Article 93, the European Securities and Markets Authority ***may*** develop draft technical standards to ***determine the conditions of application with regard to:***

(a) the form and contents of a standard model notification letter to be used by UCITS for the purpose of notification referred to in Article 93(1), including an indication as to which documents the translations refer to;

2. In order to ensure uniform application of Article 93, the European Securities and Markets Authority ***shall*** develop draft technical standards to specify:

(a) the form and contents of a standard model notification letter to be used by UCITS for the purpose of notification referred to in Article 93(1), including an indication as to which documents the translations refer to;

(b) the form and contents of a standard model attestation to be used by competent authorities of Member States referred to in Article 93(3);

(c) the procedure for the exchange of information and the use of electronic communication between competent authorities for the purpose of notification under the provisions of Article 93.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the *procedure laid down in Article 7 of Regulation .../... [ESMA]*.

(b) the form and contents of a standard model attestation to be used by competent authorities of Member States referred to in Article 93(3);

(c) the procedure for the exchange of information and the use of electronic communication between competent authorities for the purpose of notification under the provisions of Article 93.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure *for implementing acts in accordance with Article 291 of the Treaty on the Functioning of the European Union*.

Amendment 370

Proposal for a directive – amending act Article 11 – point 16 a (new)

Directive 2009/65/EC

Article 97 – paragraph 1

Text proposed by the Commission

Amendment

(16a) Article 97(1) is replaced by the following:

"1. Member States shall designate the competent authorities which are to carry out the duties provided for in this Directive. They shall inform the *European Securities and Markets Authority and the Commission* thereof, indicating any division of duties."

Amendment 371

Proposal for a directive – amending act Article 11 – point 16 b (new)

Directive 2009/65/EC

Article 101 – paragraph 1

Text proposed by the Commission

Amendment

(16b) Article 101(1) is replaced by the

following:

"1. The competent authorities of the Member States shall cooperate with each other *and with European Securities and Markets Authority* whenever necessary for the purpose of carrying out their duties under this Directive or of exercising their powers under this Directive or under national law.

Member States shall take the necessary administrative and organisational measures to facilitate the cooperation provided for in this paragraph.

In order to ensure consistent harmonisation and uniform application of the administrative and organisational measures to facilitate cooperation, the European Securities and Markets Authority shall develop draft technical standards. The Commission may adopt these draft technical standards in accordance with the procedure laid down in Article 7 of Regulation (EU) No .../2010 [ESMA].

Competent authorities shall use their powers for the purpose of cooperation, even in cases where the conduct under investigation does not constitute an infringement of any regulation in force in their Member State."

Amendment 372

Proposal for a directive – amending act

Article 11 – point 16 c (new)

Directive 2009/65/EC

Article 101 – paragraph 2

Text proposed by the Commission

Amendment

(16c) Article 101(2) is replaced by the following:

"2. The competent authorities of the Member States shall immediately provide each other *and the European Securities and Markets Authority* with the information required for the purposes of

carrying out their duties under this Directive."

Amendment 373

Proposal for a directive – amending act

Article 11 – point 17

Directive 2009/65/EC

Article 101 – paragraph 9 – subparagraph 1

Text proposed by the Commission

9. In order to ensure uniform application of this Article, the European Securities and Markets Authority **may** develop draft technical standards to determine the conditions of application with regard to the conduct of on-the-spot verifications and investigations as referred to in **paragraphs 4 and 5**.

Amendment

9. In order to ensure **consistent harmonisation and** uniform application of this Article, the European Securities and Markets Authority **shall** develop draft technical standards to determine the conditions of application with regard to the conduct of on-the-spot verifications and investigations as referred to in **paragraphs 4, 5, 6 and 7**.

Amendment 374

Proposal for a directive – amending act

Article 11 – point 17 a (new)

Directive 2009/65/EC

Article 103 – paragraph 3

Text proposed by the Commission

Amendment

(17a) Article 103(3) is replaced by the following:

"3. Member States shall communicate to the European Securities and Markets Authority, to the Commission and to the other Member States the names of the authorities which may receive information pursuant to paragraph 1."

Amendment 375

Proposal for a directive – amending act

Article 11 – point 17 b (new)

Directive 2009/65/EC

Article 103 – paragraph 7

Text proposed by the Commission

Amendment

(17b) Article 103(7) is replaced by the following:

"7. Member States shall communicate to the European Securities and Markets Authority, to the Commission and to the other Member States the names of the authorities or bodies which may receive information pursuant to paragraph 4."

Amendment 376

Proposal for a directive – amending act

Article 11 – point 19

Directive 2009/65/EC

Article 105 – paragraph 1

Text proposed by the Commission

In order to ensure uniform application of the provisions in this Directive concerning the exchange of information, the European Securities and Markets Authority *may* develop draft technical standards to determine ***the conditions of application with regard to*** the procedures for exchange of information between competent authorities and between the competent authorities and the European Securities and Markets Authority.

Amendment

In order to ensure ***consistent harmonisation and*** uniform application of the provisions in this Directive concerning the exchange of information, the European Securities and Markets Authority ***shall*** develop draft technical standards to determine the procedures for exchange of information between competent authorities and between the competent authorities and the European Securities and Markets Authority.

Amendment 377

Proposal for a directive – amending act

Article 11 – point 20 a (new)

Directive 2009/65/EC

Chapter XIII – title

Text proposed by the Commission

Amendment

(20a) The title of Chapter XIII is replaced by the following:

**"DELEGATED ACTS AND POWERS
OF EXECUTION"**

Amendment 378

Proposal for a directive – amending act

Article 11 – point 20 b (new)

Directive 2009/65/EC

Article 111

Text proposed by the Commission

Amendment

(20b) Article 111 is replaced by the following:

"Article 111

The Commission *shall* adopt technical amendments to this Directive in the following areas:

(a) clarification of the definitions in order to ensure *consistent harmonisation and* uniform application of this Directive throughout the *Union*; or

(b) alignment of terminology and the framing of definitions in accordance with subsequent acts on UCITS and related matters.

Those measures [...] shall be adopted by *means of delegated acts* in accordance with *Articles 112, 112a and 112b*.

***The draft of the delegated acts shall be drawn up by the European Securities and Markets Authority.*"**

Amendment 379

Proposal for a directive – amending act

Article 11 – point 20 c (new)

Directive 2009/65/EC

Article 112

Text proposed by the Commission

Amendment

(20c) Article 112 is replaced by the following:

"Article 112

1. The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC.

2. The power to adopt delegated acts referred to in Articles 12, 14, 23, 33, 43, 51, 60, 61, 62, 64, 75, 78, 81, 95 and 111 shall be conferred on the Commission for an indeterminate period of time.

2a. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

2b. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 112a and 112b.

3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof. The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months."

Amendment 380

Proposal for a directive – amending act

Article 11 – point 20 d (new)

Directive 2009/65/EC

Article 112 a (new)

Text proposed by the Commission

Amendment

(20d) The following article is inserted after Article 112:

"Article 112a

Revocation of the delegation

1. The delegation of power referred to in Articles 12, 14, 23, 33, 43, 51, 60, 61, 62, 64, 75, 78, 81, 95 and 111 may be revoked by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall endeavour to inform the other institution and the Commission stating the delegated powers which could be subject to revocation.

The revocation decision shall put an end to the delegation of the powers specified

in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union."

Amendment 381

Proposal for a directive – amending act

Article 11 – point 20 e (new)

Directive 2009/65/EC

Article 112 b (new)

Text proposed by the Commission

Amendment

(20e) The following article is inserted after Article 112a:

"Article 112b

Objections to delegated acts

1. The European Parliament or the Council may object to a delegated act within a period of four months from the date of notification. At the initiative of the European Parliament or the Council this period shall be extended by two months.

2. If, on the expiry of that period neither the European Parliament nor the Council has objected to the delegated act, it shall enter into force on the date stated therein. If the European Parliament or the Council objects to a delegated act, it shall not enter into force.

3. In order to expedite the adoption of delegated acts where appropriate, the European Parliament and the Council, pursuant to a procedure of early non-objection and in duly justified cases, may decide to shorten the four-month period referred to in the first subparagraph, following a request of the Commission."