



TEXTS ADOPTED

Provisional edition

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European Supervisory Authorities and financial markets *I**

European Parliament legislative resolution of 16 April 2019 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority); Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority); Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority); Regulation (EU) No 345/2013 on European venture capital funds; Regulation (EU) No 346/2013 on European social entrepreneurship funds; Regulation (EU) No 600/2014 on markets in financial instruments; Regulation (EU) 2015/760 on European long-term investment funds; Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds; Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market; and (EU) Directive 2015/849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing (COM(2018)0646 – C8-0409/2018 – 2017/0230(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0646),
- having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0409/2018),
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,

- having regard to the opinion of the European Central Bank of 11 April 2018¹ and of 7 December 2018²,
 - having regard to the opinion of the European Economic and Social Committee of 15 February 2018³ and of 12 December 2018⁴,
 - having regard to the provisional agreement approved by the committee responsible under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 1 April 2019 to approve Parliament’s position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Budgets (A8-0013/2019),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C 255, 20.7.2018, p. 2.

² OJ C 37, 30.1.2019, p. 1.

³ OJ C 227, 28.6.2018, p. 63.

⁴ OJ C 110, 22.3.2019, p. 58.

P8_TC1-COD(2017)0230

Position of the European Parliament adopted at first reading on 16 April 2019 with a view to the adoption of Regulation (EU) 2019/... of the European Parliament and of the Council amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority); Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority); Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority); Regulation (EU) No 600/2014 on markets in financial instruments; Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds; and Regulation (EU) 2015/847 on information accompanying transfers of funds*

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Central Bank¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with the ordinary legislative procedure³,

Whereas:

- (1) Following the financial crisis and the recommendations of a group of high level experts led by Jacques de Larosière, the Union has made important progress in creating not only stronger, but also more harmonised rules for the financial markets in the form of the Single Rule Book. The Union has also set up the European System

* TEXT HAS NOT YET UNDERGONE LEGAL-LINGUISTIC FINALISATION.

¹ OJ C , , p. .

² OJ C , , p. .

³ Position of the European Parliament of 16 April 2019.

of Financial Supervision ("ESFS"), built on a two-pillar system which combines micro-prudential supervision, coordinated by European Supervisory Authorities ("ESAs"), and macro-prudential supervision through the establishment of the European Systemic Risk Board ("ESRB"). The three ESAs namely the European Banking Authority ("EBA"), created by Regulation (EU) No 1093/2010 of the European Parliament and of the Council¹, the European Insurance and Occupational Pensions Authority ("EIOPA"), created by Regulation (EU) No 1094/2010 of the European Parliament and of the Council, and the European Securities and Markets Authority (ESMA), created by Regulation (EU) No 1095/2010 of the European Parliament and of the Council² (collectively "the founding regulations") – became operational in January 2011. The overall objective of the ESAs is to sustainably reinforce the stability and effectiveness of the financial system throughout the Union and to enhance consumer and investor protection.

- (2) The ESAs have made a crucial contribution to the *harmonisation* of the rules of the financial markets in the Union by providing the Commission with input for its initiatives for regulations and directives adopted by *Parliament and Council*. The *ESAs* have also provided the Commission with drafts of detailed technical rules which have been adopted as delegated and implementing acts.
- (3) The ESAs have also contributed to the convergence in financial supervision *and* supervisory *practices* in the Union by means of guidelines directed at *competent* authorities *or financial institutions* and by coordinating reviews of supervisory practices.

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¹ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

² Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

- (5) Any enhanced powers to be afforded to the ESAs, to enable them to meet those objectives, would also require ■ appropriate governance, ***an efficient use of resources*** and sufficient funding. Enhanced powers alone would not be sufficient to achieve the ESAs' objectives where they do not have sufficient funding or where they are not governed in an effective and efficient manner.
- (5a) ***When performing their tasks and exercising their powers the ESAs should act in accordance with the principle of proportionality anchored in the Treaty, as well as with the better regulation policy. The content and form of the ESAs' actions and measures including instruments such as guidelines, recommendations, opinions or questions and answers should always be based on and within the boundaries of the legislative acts or within the scope of the ESAs. The ESAs should not exceed what is necessary to achieve the objectives of this Regulation and should act proportionately to the nature, scale and complexity of the risks inherent in the financial activity or business of the affected institution or undertaking.***
- (5b) ***Questions and answers are an important convergence tool that promotes common supervisory approaches and practices by giving guidance on the application of the Union legislation within the scope of the ESAs.***
- (6) In the Commission's Communication of 8 June 2017 on the mid-term review of the Capital Markets Union Action Plan, it was emphasised that a more effective and consistent supervision of financial markets and services is pivotal for the elimination of regulatory arbitrage between Member States, when exercising their supervisory tasks, for the acceleration of market integration and for the creation of single market opportunities for financial entities and investors.
- (7) Further progress in supervisory ***convergence*** is therefore particularly urgent to complete the Capital Markets Union. Ten years after the onset of the financial crisis and the establishment of the new supervisory system, financial services and the Capital Markets Union will be increasingly driven by two major developments: sustainable finance and technological innovation. Both have the potential to transform financial services and our system of financial supervision should be ***equipped*** for them.

- (8) It is therefore crucial that the financial system plays its full part in meeting critical sustainability challenges. This will require ■ an active contribution *of the ESAs* to create the right regulatory and supervisory framework ■ .
- (9) The ESAs should play an important role in identifying and reporting risks that environmental, social and governance factors pose to financial stability, and in rendering financial markets activity more consistent with sustainability objectives. The ESAs should provide guidance on how sustainability considerations can be effectively embodied in relevant EU financial legislation and promote coherent implementation of these provisions upon adoption. ***When initiating and coordinating Union-wide assessments of the resilience of financial institutions to adverse market developments, the ESAs should duly consider risks that environmental, social and governance factors could pose to the financial stability of these institutions.***
- (10) Technological innovation has had an increasing impact on the financial sector and competent authorities have therefore taken various initiatives to deal with those technological developments. In order to ***continue promoting*** supervisory convergence and to exchange best practices between relevant authorities on the one hand, and between relevant authorities and financial institutions or financial market participants on the other hand, the role of the ESAs with regard to their oversight function and supervisory coordination should be strengthened.
- (11) Technological advancements in financial markets can improve financial inclusion, provide access to finance, enhance market integrity and operational efficiency and also lower barriers to entry in those markets. To the extent relevant for the applicable substantive rules, training of competent authorities should also extend to technological innovation. This should contribute to avoiding that Member States develop divergent approaches in these matters.
- (11-a) The Authority should, in its area of expertise, monitor the obstacles or impact to prudential consolidation and might provide an opinion or recommendations with the aim of identifying appropriate ways to address them.***
- (11a) It is becoming increasingly important to promote consistent, systematic and effective monitoring and assessment of risks in relation to money-laundering and terrorist

financing in the Union's financial system. ***Preventing and countering money laundering and financing of terrorism is a shared responsibility between Member States and European institutions and bodies, within their respective mandates. They should establish mechanisms for enhanced cooperation, coordination and mutual assistance, fully utilising all the tools and measures available under the existing regulatory and institutional framework.***

- (11aa) Given the consequences for financial stability which may stem from abuses of the financial sector for money-laundering or terrorist financing purposes, ***considering that it is in the banking sector that money-laundering and terrorist financing risks are most likely to have systemic impact***, and building on the experience already gained by EBA in protecting the banking sector from such abuses ***as an Authority, where the national competent authorities of all Member States are represented***, EBA should take a leading, ***coordinating and monitoring*** role at Union level to ***prevent the use of*** the financial system from money-laundering and terrorist financing risks. Therefore, it is necessary to entrust EBA, in addition to its present competences, with the authority to act within the remit of Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010 insofar as such authority relates to the prevention and ***countering*** of money-laundering and terrorist financing, where it concerns financial sector operators and the competent authorities supervising them, which are covered by those Regulations. Moreover, concentrating this mandate for the entire financial sector within EBA would optimise the use of its expertise and resources, and is without prejudice to the material obligations laid down in Directive (EU) 2015/849.
- (11b) In order for EBA to exercise its mandate effectively it should make full use of all its powers and tools under the Regulation ***in line with the principle of proportionality. For that purpose it shall develop regulatory and supervisory standards, in particular by developing draft regulatory technical standards, draft implementing technical standards, guidelines and recommendations and providing opinions for preventing and countering money laundering and terrorist financing in the financial sector and promoting their consistent implementation in line with the mandate provided in the legislative acts referred to in Article 1(2) and Article 16. The measures EBA adopts to promote integrity, transparency and security in the financial system and to prevent and counter money-laundering and terrorist***

financing should not exceed what is necessary to achieve the objectives of this Regulation or the acts referred to in Article 1(2) and should take duly into account nature, scale and complexity of risks, business practices, business models and size of financial sector operators and markets.

(11ba) In line with its new role, it is important that EBA **should collect** all relevant information **on weaknesses** in relation to money-laundering and terrorist financing activities identified by the relevant Union and national authorities, without prejudice to the tasks assigned to authorities under Directive (EU) 2015/849 **and without creating any unnecessary duplicates. In full compliance with data protection rules**, EBA should store such information in a centralised database and foster cooperation among authorities by ensuring appropriate dissemination of relevant information. **The Authority should therefore be mandated to develop draft regulatory technical standards for the information collection exercise. EBA may also, where appropriate, transmit to the national judicial authorities of the Member State concerned and, to the extent it concerns Member States included in the definition in Article 2(1) of Regulation EU 2017/1939, to the European Public Prosecutor, for this explicitly conferred tasks, evidence in its possession which could give rise to criminal proceedings.**

(11bb) **EBA should not collect information on concrete suspicious transactions, which financial sector operators are obliged to report to Financial Intelligence Units in their Member States according to Directive (EU) 2015/849. Weaknesses should be considered material where they constitute a breach or a potential breach by a financial sector operator, or constitute inappropriate or ineffective application by a financial sector operator, or inappropriate or ineffective application by a financial sector operator of its internal policies and procedures to comply with the legal provisions related to the prevention of the use of the financial system for the purpose of money laundering or terrorist financing. A breach is constituted by the failure of a financial sector operator to comply with the requirements of the Union acts and of national laws transposing them referred to in Article 1(2) of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively to the extent that those acts contribute to the prevention of the use of the financial system for the purpose of money laundering or terrorist financing. There is a potential breach where the competent authority has**

reasonable grounds to suspect that a breach has occurred, but at this stage is not in the position to finally conclude that it has occurred. However, due to the information obtained at this stage such as information from on-site inspections or off-site proceedings, it is very likely that a breach has occurred. Inappropriate or ineffective application of legal provisions is constituted by the failure of a financial sector operator to implement the requirements of the above mentioned acts in a satisfactory manner. Inappropriate or ineffective application of financial sector operator's internal policies and procedures aiming at ensuring compliance with those acts should be considered as constituting a weakness substantially raising the risk that breaches have occurred or can occur.

- (11bc) When assessing vulnerabilities and risks to money laundering and terrorist financing in the financial sector, EBA should also consider implications for money laundering and terrorist financing from all predicated offences, including those that are tax crimes, where applicable.*
- (11bd) Following requests from competent authorities in the exercise of their prudential supervisory functions, EBA should provide assistance. EBA should also coordinate closely, and, where appropriate, exchange information, with competent authorities including the European Central Bank, in its supervisory capacity, and authorities entrusted with the public duty of supervising obliged entities listed in points (1) and (2) of Article 2 (1) of Directive (EU) 2015/849 to ensure efficiency and to avoid any form of duplicative or inconsistent actions in preventing and countering money-laundering and terrorist financing.*
- (11be) The Authority should carry out peer reviews of competent authorities, as well as risk assessments on the appropriateness of the strategies and resources of competent authorities with a view to the most important emerging money laundering and terrorist financing risks as identified in the Supranational Risk Assessment. The Authority, when conducting such peer reviews in accordance with Article 30, should take into account relevant evaluations, assessments or reports drawn up by international organisations and intergovernmental bodies with competence in the field of preventing and countering money laundering or terrorist financing as well as the biannual Report of the Commission under Article 6 of Directive (EU)*

2015/849 and the National Risk Assessment of the relevant Member State prepared under Article 7 of Directive (EU) 2015/849.

- (11bf) Furthermore, EBA should ***have a leading role in contributing to facilitate cooperation between competent authorities in the Union and the relevant authorities in third countries*** on these matters with a view to better coordinate action at Union level in material cases of anti-money laundering and terrorist financing having a cross-border and third country dimension. ***Such role should be without prejudice to regular interactions by competent authorities with third country authorities.***
- (11c) In order to enhance the effectiveness of supervisory control of compliance in the area of money laundering and terrorist financing and to ensure greater coordination of the enforcement by national competent authorities of breaches of directly applicable Union law or its national transposing measures, EBA should have the power ***to carry out analysis of the information collected and, if necessary, pursue investigations on allegations brought to its attention concerning material breaches or non application of Union law, and***, where there are indications of material breaches, to request competent authorities to investigate any possible breaches of the relevant rules, to consider taking decisions and imposing sanctions addressed to financial institutions requiring them to comply with their legal obligations. This power should only be used where EBA has indications of material breaches. ■
- (14) ***For*** the purpose of the procedure provided for in Article 17 of the founding regulations and in the interest of proper application of Union law, it is appropriate to ease and speed up the ESAs' access to information. They should therefore be enabled to request information directly, via a duly justified and reasoned request, from ***other*** competent authorities ***whenever requesting information from*** the competent authority concerned ***has proven, or is deemed, insufficient to obtain the information that is deemed necessary for the purpose of investigating an alleged breach or non-application of Union law.***
- (15) A harmonised supervision of the financial sector requires a consistent approach among competent authorities. To that end, the activities of the competent authorities ***are*** subject to ***peer*** reviews. ■ The ESAs should also ***ensure that the methodology is***

applied in the same manner. The *peer* reviews should not only focus on the convergence of supervisory practices, but also on the capacity of competent authorities to achieve high quality supervisory outcomes, as well as on the independence of those competent authorities. The *main findings* of those *peer* reviews should be published to encourage compliance and increase transparency, unless such publication would involve risks to financial stability.

- (15a) In view of the importance of ensuring that the Union supervisory framework for *prevention and countering* of money-laundering and terrorist financing is applied effectively, *peer* reviews to provide objective and transparent perspectives on supervisory practices are of paramount importance. *EBA should also assess the strategies, capacities and resources of the competent authorities to address emerging risks related to money laundering and terrorist financing.*
- (15b) For carrying out its tasks and exercising its powers, EBA should be able to take individual decisions addressed to financial sector operators in the context of the procedure for breach of Union law and of the procedure of binding mediation even when the material rules are not directly applicable to financial sector operators, after having taken a decision addressed to the competent authority. Where the material rules are laid down in Directives, EBA should apply the national legislation *to the extent it is* transposing those Directives. Where the relevant Union law is composed of Regulations and where, on the date of entry into force of this Regulation, those Regulations expressly grant options to Member States, EBA should apply the national legislation *to the extent it is* exercising those options.
- (15c) *Where this Regulation authorises EBA to apply national laws transposing Directives, they can be applied by EBA only to the extent necessary for carrying out the tasks conferred on it by Union law. Therefore, EBA should apply all the relevant material Union rules, and where these are laid down in Directives, the Authority should apply the national legislation transposing those Directives up to the extent required by Union law, aiming at an even application of law throughout the Union while respecting the respective national law.*
- (15d) *Where a decision of EBA is based on or connected with the powers conferred upon it in Articles 9b, 17 or 19 and concerns financial institutions or competent*

authorities within the remit of EIOPA or ESMA, EBA should only be able to take the decision in agreement with EIOPA or ESMA, respectively. EIOPA and ESMA, in each case taking into account the urgency of the relevant decision at hand, should consider to make use of expedited decision procedures in line with their respective internal governance when expressing their views.

(15da) The Authority should have in place dedicated reporting channels for receiving and handling information provided by a natural or legal person reporting on actual or potential breaches, abuse of law, or non-application of Union law. The Authority should ensure that information may be submitted anonymously, or confidentially and safely. The reporting person should be protected against retaliation. The Authority should provide feedback to the reporting person.

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

(17) Integral to the ESAs work on convergence of supervisory practices is the promotion of a Union supervisory culture. *Therefore, the Board of Supervisors may identify up to two priorities of Union wide relevance regularly. These priorities should be taken into account by competent authorities when drawing up their work programmes. The Board of Supervisors should discuss the relevant activities by the Authorities in the next year and draw conclusions.*

(17a) Assessments by the review committees should allow in-depth studies based on self-assessment by the reviewed authorities, followed by an evaluation by the review team. The member of a competent authority under review should not take part in the assessment when it relates to that competent authority.

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(18a) Practical experience of the ESAs has revealed the benefits of enhanced coordination in certain areas via ad hoc groups or platforms. This regulation should provide a legal basis and strengthen such arrangements through the

creation of a new tool, the establishment of coordination groups. Such coordination groups should promote convergence in relation to the supervisory practices undertaken by competent authorities, in particular through the exchange of information and experiences. The participation of all competent authorities in these coordination groups should be mandatory and competent authorities should provide the coordination groups with the necessary information. Coordination groups should be considered to be set up wherever the competent authorities identify a need to coordinate in view of specific market developments. Such coordination groups may be set up with regard to all areas covered by the legal acts referred to in Article 1(2) of this Regulation.

- (19) *Orderly and well-functioning international financial markets require* that third-country equivalence decisions that have been adopted by the Commission are monitored. *Each ESA should monitor* the regulatory and supervisory developments and the enforcement practices in those third countries. *It shall do so in order to verify whether the criteria, on the basis of which those decisions have been taken and any conditions set out therein, are still fulfilled. The Authority should submit a confidential report on its monitoring activities to the Commission on an annual basis. In that context, each ESA should also, where possible,* develop administrative arrangements with third-country competent authorities to obtain information for monitoring purposes and for coordinating supervisory activities. This enhanced supervisory regime will ensure that third *country* equivalence is more transparent, more predictable for the third countries concerned and more consistent across all sectors.

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- (21a) *The representative of the ESRB in the Board of Supervisors should present the common view of the ESRB general board with a particular focus on financial stability.*

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- (24a) To ensure that the appropriate level of expertise underpins decisions relating to anti-money laundering and terrorist financing measures, it is necessary to set up a *permanent internal* committee composed of *high-level representatives with*

expertise and decision-making powers in the area of the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing of authorities and bodies in charge of compliance with anti-money laundering and terrorist financing legislation. The internal committee should also include high-level representatives from EBA, EIOPA and ESMA with expertise of different business models and sectoral specificities. This Committee will examine and prepare decisions to be taken by EBA. In order to avoid duplication, this new committee will replace the existing anti-money laundering sub-committee which has been set up within the ESAs Joint Committee. EBA, EIOPA and ESMA should be able at any time to submit written observations on any draft decision of the committee, which the Board of Supervisors of EBA should duly consider before taking its final decision.

(24ac) In line with the objective to achieve a more coherent and viable supervisory system in the Union to prevent and counter money-laundering and terrorist financing, the Commission should, after consulting all relevant authorities and stakeholders, conduct a comprehensive assessment on the implementation, functioning and effectiveness of the specific tasks conferred to EBA under this Regulation related to preventing and countering money-laundering and terrorist financing. In particular, the assessment should – to the extent possible – reflect experiences where the Authority requests a competent authority to investigate possible breaches of national laws to the extent that they transpose Directives or exercise options to Member States by Union law by financial sector operators, or to consider imposing sanctions on that operator in respect of such breaches, or to consider adopting an individual decision addressed to that financial sector operator requiring it to undertake all necessary action to comply with its obligations under national laws to the extent that they transpose Directives or exercise options granted to Member States by Union law, or where the Authority applies national legislation to the extent it transposes Directives or exercises options granted to Member States by Union law. The Commission should submit this assessment as part of its report pursuant to Article 65 of Directive (EU) 2015/849, and together with legislative proposals, if appropriate, to the European Parliament and the Council by 11 January 2022. Until the submission of this assessment, the powers granted to the Authority related to preventing the use of the financial system for the purposes of

money-laundering or terrorist financing in Articles 9b, 17(6) and 19(4) should be considered a provisional solution to the extent that they allow the Authority to base requests to competent authorities on possible breaches of national laws or allow the application of national legislation by the Authority.

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- (28) To preserve the confidentiality of the work of the ESAs, the requirements of professional secrecy should also apply to any person who provides any service, directly or indirectly, permanently or occasionally, related to the tasks of the ESA concerned.
- (29) Regulations (EU) No 1093/2010, 1094/2010 and 1095/2010 as well as sectoral financial services legislation require the ESAs to seek effective administrative arrangements, involving the exchange of information with third-country supervisors. The need for effective cooperation and information exchange should become all the more important when, pursuant to this amending Regulation, some of the ESAs assume additional, broader responsibilities in relation to the supervision of non-EU entities and activities. Where, in this context, the ESAs process personal data, including by transferring such data outside the Union, they are bound by the requirements of Regulation (EU) No 2018/1725 (Data Protection Regulation for EU institutions and Bodies). In the absence of an adequacy decision or of appropriate safeguards, for example provided for in administrative arrangements within the meaning of Article 49(3) of the Data Protection Regulation for EU institutions and Bodies, the ESAs may exchange personal data with third-country authorities in accordance with and under the conditions of the public interest derogation as set out in Article 51(1)(d) thereof, which notably applies to cases of international data exchange between financial supervisory authorities.

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- (31) The founding regulations of the ESAs provide that the ESAs, in cooperation with the ESRB, should initiate and coordinate Union-wide stress tests in order to assess the resilience of financial institutions or financial market participants to adverse market developments. It should also ensure that a consistent methodology is applied, in as much as possible, at national level to such tests. ■ It should also be clarified, in

respect of all of the ESAs, that the professional secrecy obligations of competent authorities shall not prevent competent authorities from transmitting the results of stress test to the ESAs for the purpose of publication.

- (32) To ensure a high level of convergence in the area of supervision and approval of internal models *in accordance with Directive 2009/138/EC*, EIOPA should *upon request* be able to assist competent authorities in *the decision* related to the approval of internal models.



- (33a) *The evolution of the scope of direct supervision might require financial institutions and financial markets participants directly supervised by the Authorities to make additional contributions based on the estimated expenditure of the relevant Authority;*



- (40) Inconsistencies in the quality, formatting, reliability and cost of trading data have a detrimental effect on transparency, investor protection and market efficiency. In order to enhance the monitoring and reconstruction of trading data, to improve the consistency and quality of those data and their availability and accessibility at reasonable cost throughout the Union for the relevant trading venues, Directive 2014/65/EU introduced a new legal regime for data reporting services, including the authorisation and supervision of data reporting services providers.
- (41) The quality of trading data and of the processing and provisioning those data, including cross-border data procession and provisioning, is of paramount importance to achieve the main objective of Regulation (EU) No 600/2014 of strengthening the transparency of financial markets. The provision of core data services are therefore pivotal for users to be able to obtain the desired overview of trading activity across Union financial markets and for competent authorities to receive accurate and comprehensive information on relevant transactions.
- (42) In addition, trading data is an increasingly essential tool for effective enforcement of requirements stemming from Regulation (EU) No 600/2014. Given the cross-border dimension of data handling, data quality and the necessity to achieve economies of

scale, and to avoid the adverse impact of potential divergences on both data quality and the tasks of data reporting service providers, it is beneficial and justified to transfer authorisation and supervisory powers in relation to data reporting service providers from competent authorities to ESMA *except for those benefiting from a derogation* and specify those powers in Regulation (EU) No 600/2014 enabling, at the same time, the consolidation of the benefits arising from pooling data-related competences within ESMA.

- (43) Retail investors should be adequately informed about potential risks when they decide to invest in a financial instrument. The legal framework of the Union aims at reducing the risk of misselling where retail investors are sold financial products which do not fit their needs or expectations. To that end, Directive 2014/65/EU and Regulation (EU) No 600/2014 enhance organisational and conduct of business requirements to ensure that investment firms act in the best interests of their clients. Those requirements include enhanced risk disclosure to clients, better assessment of suitability of products recommended as well as an obligation to distribute financial instruments to the identified target market, taking into account factors such as the solvency of issuers. ESMA should make full use of its powers to ensure supervisory convergence and support national authorities in achieving a high level of investor protection and effective oversight of risks associated with financial products.
- (44) It is important to ensure effective and efficient submissions, compilation, analysis and publication of data for the purposes of calculations for determining the requirements for the pre-and post-trade transparency and trading obligation regimes, as well as for the purposes of reference data in accordance with Regulation (EU) No 600/2014 and Regulation (EU) No 596/2014¹. ESMA, *in addition to competent authorities*, should therefore be conferred competences to undertake direct data gathering from market participants in relation to pre- and post-trade transparency requirements, as well as their authorisation and oversight of data reporting services providers.

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

- (45) Granting those competences to ESMA allows for a centrally managed authorisation and oversight, which would avoid the current situation where multiple trading venues, systematic internalisers, APAs and CTPs are required to provide multiple competent authorities with data which are only then provided to ESMA. Such a centrally managed system should be highly beneficial to the market participants in terms of higher data transparency, investor protection and market efficiency.
- (46) The conferral of data gathering powers, authorisation and oversight from competent authorities to ESMA is also instrumental to other tasks ESMA is performing under Regulation (EU) No 600/2014, such as market monitoring, ESMA's temporary intervention powers ■ .
- (47) For ESMA to exercise its supervisory powers effectively within the area of data processing and provision, ESMA should be able to conduct investigations and on-site inspections. ESMA should be able to impose penalties or periodic penalty payments to compel data reporting service providers to put an end to an infringement, to supply complete and correct information required by ESMA or to submit *them* to an investigation or an on-site inspection and to impose administrative sanctions or other administrative measures where it finds that a person has committed, intentionally or negligently, an infringement of Regulation (EU) No 600/2014.
- (48) Financial products using critical benchmarks are available in all Member States. Those benchmarks are therefore of crucial importance for the functioning of financial markets and financial stability in the Union. The supervision of a critical benchmark should therefore take a holistic view of potential impacts, not only in the Member State where the administrator is located and the Member States where its contributors are located, but across the entire Union. It is hence appropriate that *certain* critical benchmarks are supervised at Union level by ESMA. To avoid duplication of tasks, administrators of critical benchmarks should be supervised only by ESMA, including any non-critical benchmarks they might administer.
- (48a) *In order for ESMA and EBA to perform their tasks related to consumer protection, ESMA and EBA should be entitled to coordinate mystery shopping activities of the competent authorities, if applicable.***

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

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

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

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

■

(64a) The Authorities should be properly and adequately resourced and staffed to effectively contribute to the consistent, efficient and effective financial supervision within their respective competences under this Regulation. Additional competences and workload conferred upon the Authorities should be matched with sufficient human and financial resources.

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

(66) Regulation (EU) No 1093/2010); Regulation (EU) No 1094/2010; Regulation (EU) No 1095/2010; ■ Regulation (EU) No 600/2014; ■ Regulation (EU) **2016/1011** ■ and ■ **Regulation (EU) 2015/847** should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) No 1093/2010

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

(1) Article 1 is amended as follows:

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

“2. The Authority shall act within the powers conferred by this Regulation and within the scope of Directive 2002/87/EC, Directive 2008/48/EC of

the European Parliament and of the Council¹, **Directive of 2009/110 EC of the European Parliament and of the Council**², Regulation (EU) No 575/2013 of the European Parliament and of the Council, Directive 2013/36/EU of the European Parliament and of the Council, Directive 2014/49/EU of the European Parliament and of the Council³, Directive 2014/92/EU of the European Parliament and of the Council⁴, Directive (EU) 2015/2366 of the European Parliament and of the Council⁵ and, to the extent that those acts apply to credit and financial institutions and the **competent** authorities that supervise them, within the relevant parts of Directive 2002/65/EC⁶, including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority. The Authority shall also act in accordance with Council Regulation (EU) No 1024/2013⁶.

The Authority shall also act within the powers conferred by this Regulation and within the scope of Directive (EU) 2015/849⁷ **and of**

¹ Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66).

² Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC.

³ Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes Text with EEA relevance (OJ L 173, 12.6.2014, p. 149).

⁴ Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features Text with EEA relevance (OJ L 257, 28.8.2014, p. 214).

⁵ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

⁶ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

⁷ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the

Regulation (EU) 2015/847¹ of the European Parliament and of the Council to the extent that that Directive applies to financial sector operators and the competent authorities that supervise them. For this purpose only, EBA shall carry out the tasks conferred by any legally binding Union act on the European Insurance and Occupational Pensions Authority established by Regulation (EU) No 1094/2010 or to the European Securities and Markets Authority established by Regulation (EU) No 1095/2010. When carrying out such tasks, the Authority shall **consult** those Authorities **and keep them** informed of its activities concerning any entity which is a “financial” institution” as defined in Article 4(1) of Regulation (EU) No 1094/2010 or a “financial market participant” as defined in Article 4(1) of Regulation (EU) No 1095/2010.”

3. The Authority shall also act in the field of activities of credit institutions, financial conglomerates, investment firms, payment institutions and e-money institutions in relation to issues not directly covered in the acts referred to in paragraph 2, including matters of corporate governance, auditing and financial reporting, taking into account sustainable business models and the integration of environmental, social and governance related factors, provided that such actions by the Authority are necessary to ensure the effective and consistent application of those acts.

(b) in paragraph 5, the introductory part of the first subparagraph is replaced by the following:

“5. The objective of the Authority shall be to protect the public interest by contributing to the short, medium and long-term stability and effectiveness of the financial system, for the Union economy, its

European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

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

citizens and businesses. The Authority shall, within its respective competences, contribute to:”;

- (c) in the first subparagraph of paragraph 5, points (e) and (f) are replaced by the following:*

“(e) ensuring the taking of credit and other risks are appropriately regulated and supervised;”; ■

(f) enhancing customer *and consumer* protection;”;

(d) *in the first subparagraph of paragraph 5, the following points are added:*_

“(fa) enhancing supervisory convergence across the internal market;

(fb) preventing the use of the financial system for the purposes of money-laundering and terrorist financing.”;

(e) *in paragraph 5, the second subparagraph is replaced by the following:*

“For those purposes, the Authority shall contribute to ensuring the consistent, efficient and effective application of the acts referred to in paragraph 2, foster supervisory convergence, and provide opinions in accordance with Article 16a to the European Parliament, the Council, and the Commission ■ .”;

(f) *in paragraph 5, the fourth subparagraph is replaced by the following:*

“When carrying out its tasks, the Authority shall act independently, objectively and in a non-discriminatory and transparent manner, in the interests of the Union as a whole and shall respect, wherever relevant, the principle of proportionality. The Authority shall be accountable and act with integrity and shall ensure that all stakeholders are treated fairly.”;

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

“The content and form of the Authority’s actions and measures, in particular guidelines, recommendations, opinions, questions and answers, draft regulatory standards and draft implementing standards, shall fully respect the applicable legal provisions of this Regulation and of the acts referred to in paragraph 2. To the extent permitted and relevant under those provisions, such action shall, in accordance with the principle of proportionality, take due account of the nature, scale and complexity of the risks inherent in the

business of an institution, undertaking, other subject or financial activity, that is affected by the Authority's action.”;

(h) paragraph 6 is added:

“6. The Authority shall establish, as an integral part of the Authority, a Committee advising the Authority as to how, in full compliance with applicable rules, measures should take account of specific differences prevailing in the sector, pertaining to the nature, scale and complexity of risks, to business models and practice as well as to the size of financial institutions and markets to the extent that such factors are relevant under the rules considered.

”;

(2) Article 2 is amended as follows:

(a) paragraph 1 is replaced by the following:

“1. The Authority shall form part of a European System of Financial Supervision (ESFS). The main objective of the ESFS shall be to ensure that the rules applicable to the financial sector are adequately implemented to preserve financial stability and to ensure confidence in the financial system as a whole and effective and sufficient protection for the customers of financial services.”;

(b) paragraph 4 is replaced by the following:

“4. In accordance with the principle of sincere cooperation pursuant to Article 4(3) of the Treaty on European Union, the parties to the ESFS shall cooperate with trust and full mutual respect, in particular in ensuring the flow of appropriate and reliable information among them and from the Authority to the European Parliament, the Council and the Commission.”;

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

“References in this Regulation to supervision include all relevant activities, without prejudice to national competences, of all competent authorities to be carried out pursuant to the legislative acts referred to in Article 1(2).”;

(3) Article 3 is replaced by the following:

“Article 3

Accountability of the Authorities

- 1. The Authorities referred to in points (a) to (d) of Article 2(2) shall be accountable to the European Parliament and to the Council. The European Central Bank shall be accountable to the European Parliament and to the Council with regard to the exercise of the supervisory tasks conferred on it by Regulation (EU) No 1024/2013 in accordance with that Regulation.***
- 2. In accordance with Article 226 TFEU, the Authority shall fully cooperate with the European Parliament during any investigations carried out by under that Article.***
- 3. The Board of Supervisors shall adopt an annual report on the activities of the Authority, including on the performance of the Chairperson’s duties, and shall transmit that report to the European Parliament, the Council, the Commission, the Court of Auditors and the European Economic and Social Committee by 15 June each year. The report shall be made public.***
- 4. At the request of the European Parliament, the Chairperson shall participate in a hearing before the European Parliament on the performance of the Authority. A hearing shall take place at least annually. The Chairperson shall make a statement before the European Parliament and answer any questions put by its members, whenever so requested.***
- 5. The Chairperson shall report in writing on the activities of the Authority to the European Parliament when requested and at least 15 days before making the statement referred to in paragraph 4.***

6. *In addition to the information referred to in Articles 11 to 18 and Articles 20 and 33, the report shall also include any relevant information requested by the European Parliament on an ad hoc basis.*
7. *The Authority shall reply orally or in writing to questions addressed to it by the European Parliament or by the Council within five weeks of receipt of a question.*
8. *Upon request, the Chairperson shall hold confidential oral discussions behind closed doors with the Chair, Vice-Chairs and Coordinators of the competent committee of the European Parliament. All participants shall respect requirements of professional secrecy.*
10. *Without prejudice to its confidentiality obligations stemming from participation in international fora, the Authority shall inform the European Parliament upon request about its contribution to a united, common, consistent and effective representation of the Union's interests in such international fora.”;*

(4) Article 4 is amended as follows:

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

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

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

“(1a) ‘financial sector *operator*’ means *an* entity *referred to in Article 2 of* Directive (EU) 2015/849, **■** which is either a ‘financial institution’ as defined in Article 4(1) of this Regulation *or* in Article 4(1) of Regulation (EU) No 1094/2010 or a ‘financial market participant’ as defined in Article 4(1) of Regulation (EU) No 1095/2010;”;

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

“(2) ‘*competent authorities*’ means:

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

■

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

(ia) with regard to Directive (EU) 2015/849 the authorities and bodies that supervise *financial sector operators as defined in point (1a) of this paragraph* and are competent for ensuring their compliance with the requirements of that Directive;

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

■

(iv) *with regard to Directive 2014/59/EU of the European Parliament and of the Council ([11](#)) and to Regulation (EU) No 806/2014 of the European Parliament and of the Council ([12](#)), the resolution authorities, defined in Article 3 of Directive 2014/59/EU, the Single Resolution Board, established by Regulation (EU) No 806/2014, and the Council and the Commission when taking actions under Article 18 of Regulation (EU) No 806/2014, except where they exercise discretionary powers or make policy choices.*

- (v) competent authorities as referred to in Directive 2014/17/EU; in Regulation 2015/751, in Directive EU 2015/2366, in Directive 2009/110/EC, in Regulation (EC) No 924/2009 and in Regulation (EU) No 260/2012;
- (vi) bodies and authorities referred to in Article 20 of Directive 2008/48/EC.”;

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

(a) *paragraph 1 is amended as follows:*

(i) *point (a) is replaced by the following:*

“(a) based on the legislative acts referred to in Article 1(2), to contribute to the establishment of high-quality common regulatory and supervisory standards and practices, in particular by developing draft regulatory and implementing technical standards, guidelines, recommendations, and other measures, including opinions;”;

(ii) *point (aa) is replaced by the following:*

*“(aa) to develop and maintain an up-to-date Union supervisory handbook on the supervision of financial institutions in the Union **which sets out supervisory best practices and high quality methodologies and processes and takes into account, inter alia, changing business practices and business models and the size of financial institutions and markets;**”;*

(iii) *the following point is inserted:*

*“(ab) to develop and maintain **an** up-to-date Union resolution handbook on the resolution of financial institutions in the Union which sets out supervisory best practices and high quality methodologies and processes **for resolution, taking into account the work by the***

Single Resolution Board, and changing business practices and business models and the size of financial institutions and markets;”;

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

“(b) to contribute to the consistent application of legally binding Union acts, in particular by contributing to a common supervisory culture, ensuring consistent, efficient and effective application of the acts referred to in Article 1(2), preventing regulatory arbitrage, fostering and monitoring supervisory independence, mediating and settling disagreements between competent authorities, ensuring effective and consistent supervision of financial institutions, ensuring a coherent functioning of colleges of supervisors and taking actions, inter alia, in emergency situations;”;

(v) points (e) to (h) are replaced by the following:

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

*(f) to monitor and assess market developments in the area of its competence including where relevant, developments relating to trends in credit, in particular, to households and SMEs and in innovative financial services **duly considering developments relating to environmental, social and governance related factors;***

■ (g) to undertake market analyses ■ to inform the discharge of the Authority’s functions;

*(h) to foster, **where relevant**, depositor, consumer and investor protection, **in particular with regards to short-comings in a cross-border context and taking related risks into account;**”;*

(vi) the following point is inserted after point (i):

“(ia) to contribute to the establishment of a common Union financial data strategy;”;

(vii) the following point is inserted after point (k):

“(ka) to publish on its website, and to update regularly, all regulatory technical standards, implementing technical standards, guidelines, recommendations and Q&As for each legislative act referred to in Article 1(2), including overviews that concern the state of play of ongoing work and the planned timing of the adoption of draft regulatory technical standards and draft implementing technical standards.”;

(viii) the following point is added:

“(1) to contribute to the prevention of the use of the financial system for the purposes of money-laundering and terrorist financing, including by promoting consistent, efficient and effective application of Union law referred to in Article 1(2) of this Regulation, Article 1(2) of Regulation (EU) No 1094/2010 and Article 1(2) of Regulation (EU) No 1095/2010 respectively with regard to the prevention of the use of the financial system for the purpose of money laundering or terrorist financing;”;

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

“(b) with due regard to the objective to ensure the safety and soundness of financial institutions, take fully into account the different types, business models and sizes of financial institutions.”;

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

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

(d) paragraph 2 *is amended as follows*:

i) the following █ point is inserted:

“(ca) issue recommendations as laid down in Articles 29a █;”;

ii) *the following point is inserted*:

“(da) *issue warnings in accordance with Article 9(3)*;”;

iii) *point (g)* is replaced by the following:

“(g) *issue opinions to* the European Parliament, the Council, or the Commission as provided for in *Article 16a*;”;

iv) the following *points* are inserted:

“(ga) *issue answers to questions, as laid down in Article 16b*;

(gb) *take action in accordance with Article 9c*;”;

█

(e) *paragraph 2a is replaced by* the following:

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

The open public consultations referred to in Articles 10, 15, 16 and 16a shall be conducted as widely as possible to ensure an inclusive approach towards all interested parties and shall allow reasonable time for stakeholders to respond. The Authority shall publish a summary of the input received from stakeholders and an overview on how information and views gathered from the consultation were used in a draft regulatory technical standard and a draft implementing technical standard.”;

(6) Article 9 is amended as follows:

(a) *paragraph 1 is amended as follows:*

(i) *point (a) is replaced by the following:*

“(a) collecting, analysing and reporting on consumer trends, such as the development of costs and charges of retail financial services and products in Member States;”;

(ii) *the following points ■ are inserted:*

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

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

■ *(iii) the following points are added:*

“(da) contributing to a level playing field in the single market where consumers and other users of financial services have fair access to financial services and products;

(db) to foster further developments in terms of regulation and supervision which could ease a deeper harmonization and integration at the EU level;

(dc) coordinating mystery shopping activities of competent authorities, if applicable.”;

(b) paragraph 2 is replaced by the following:

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

(c) paragraphs 4 *and 5 are* replaced by the following:

“4. The Authority shall establish, as an integral part of the Authority, a Committee on *consumer protection and* financial innovation, which brings together all relevant competent **■** authorities and authorities responsible for consumer protection with a view to *enhancing consumer protection and* achieving a coordinated approach to the regulatory and supervisory treatment of new or innovative financial activities and providing advice for the Authority to present to the European Parliament, the Council and the Commission. *The Authority shall closely cooperate with the European Data Protection Board to avoid duplication, inconsistencies and legal uncertainty in the sphere of data protection.*

The Authority may also *invite* national data protection authorities as *observers in* the Committee.

5. *The Authority may temporarily prohibit or restrict the marketing, distribution or sale of certain financial products, instruments or activities that have the potential to cause significant financial damage to customers or consumers or threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union in the cases specified and under the conditions laid down in the legislative acts referred to in Article 1(2) or,*

if so required, in the case of an emergency situation in accordance with and under the conditions laid down in Article 18.

The Authority shall review the decision referred to in the first subparagraph at appropriate intervals and at least every 6 months. Following at least two consecutive renewals and based on proper analysis in order to assess the impact on the consumer, the Authority may decide on the annual renewal of the prohibition.

A Member State may request the Authority to reconsider its decision. In that case, the Authority shall decide, in accordance with the procedure set out in the second subparagraph of Article 44(1), whether it maintains its decision.

The Authority may also assess the need to prohibit or restrict certain types of financial activity or practice and, where there is such a need, inform the Commission and the competent authorities in order to facilitate the adoption of any such prohibition or restriction.”;

(7) the following articles **■** are inserted:

“Article 9a

Special tasks related to *preventing and countering* money-laundering and terrorist financing

1. The Authority shall, *within its respective competences*, take a leading, *coordinating and monitoring* role in promoting integrity, transparency and security in the financial system by means of adopting measures to prevent and *counter* money laundering and terrorist financing *therein. In line with the principle of proportionality, these measures shall not exceed what is necessary to achieve the objectives of this Regulation or the acts referred to in Article 1(2) and shall take duly into account nature, scale and complexity of risks, business practices, business models and size of financial sector operators and markets. Those measures shall include:*
 - (a) collecting information from competent authorities relating to weaknesses identified *during ongoing supervision and authorisation procedures* in

the processes and procedures, governance arrangements, *fitness and properness, acquisition of qualifying holdings*, business models and activities of financial sector operators *in relation to preventing and countering* money-laundering and terrorist financing as well as measures taken by competent authorities, *in response to the following material weaknesses:*

(i) a breach or a potential breach by a financial sector operator of, or

(ii) inappropriate or ineffective application by a financial sector operator of, or

(iii) inappropriate or ineffective application by a financial sector operator of its internal policies and procedures to comply with

one or more requirements of the Union acts and of national laws transposing them referred to in Article 1(2) of Regulation (EU) No 1093/2010, Article 1(2) of Regulation (EU) No 1094/2010 and Article 1(2) of Regulation (EU) No 1095/2010 respectively with regard to the prevention and countering of the use of the financial system for the purpose of money laundering or terrorist financing.

Competent authorities shall provide all such information to the Authority in addition to any obligations under Article 35 *and shall keep the Authority informed in due time about any subsequent developments relating to the information provided. The Authority shall coordinate closely with Financial Intelligence Units, while respecting their status and obligations and without creating any unnecessary duplicates;*

i. By ... [12 months after the entry into force of this amending Regulation], the Authority shall develop draft regulatory technical standards specifying the definition of weaknesses, including the corresponding situations where weaknesses may occur, their materiality of weaknesses and the practical implementation of the information collection by the Authority as

well as the type of information that should be provided pursuant to paragraph 1(a). In developing those technical standards, the Authority shall consider the volume of the information to be provided and the need to avoid duplication. It shall also set out arrangements to ensure effectiveness and confidentiality.

ii. Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in paragraph 1a of this Article in accordance with Articles 10 to 14.

iii. Competent authorities may share, in accordance with national law, any additional information that they deem relevant to the prevention and countering of the use of the financial system for the purposes of money-laundering or terrorist financing with the central database referred to in paragraph 2.

(aa) coordinating closely, and, where appropriate, exchanging information, with competent authorities, including the European Central Bank with regard to matters relating to the tasks conferred on it by Regulation (EU) No 1024/2013, and with authorities entrusted with the public duty of supervising obliged entities listed in points (1) and (2) of Article 2 (1) of Directive (EU) 2015/849 as well as with Financial Intelligence Units, while respecting the status and obligations of the Financial Intelligence Units under Directive (EU) 2015/849;

*(b) developing common **guidance and** standards for **preventing and countering** money-laundering and terrorist financing in the financial sector and promoting their consistent implementation **in particular by developing draft regulatory and implementing technical standards, in line with the mandates laid down in the legislative acts referred to in Article 1(2), guidelines, recommendations, and other measures, including opinions, which shall be based on the legislative acts referred to in Article 1(2);***

(ba) providing assistance to competent authorities, following their specific requests;

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

2. *In compliance with data protection rules, the Authority shall establish and keep up to date a central database of information collected pursuant to point (a) in paragraph 1. The Authority shall ensure that information is analysed and made available to competent authorities on a need-to-know and confidential basis. **The Authority may also, where appropriate, transmit to the national judicial authorities and the national competent authorities of the Member State concerned in accordance with national procedural rules evidence in its possession which could give rise to criminal proceedings. The Authority may also, where appropriate, transmit evidence to the European Public Prosecutor where such evidence concerns offences in respect of which the EPPO exercises or could exercise competence in accordance with Council Regulation (EU) 2017/1939¹.***

Competent authorities may address to the Authority reasoned requests for information about financial sector operators relevant for their supervisory activities with regard to the prevention of the use of the financial system for the purposes of money laundering or terrorist financing. The Authority shall assess these requests and provide the information requested by competent authorities on a need-to-know basis in a timely manner. Where the Authority does not provide the requested information, it shall inform the requesting competent authority and give an explanation of why the information is not provided. The Authority shall inform the competent authority or any other authority or institution that has initially provided the requested information the identity of the requesting competent authority, the identity of the financial sector operator concerned, the reason for the information request as well as whether the information has been shared or not. In addition, the

¹ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO').

Authority shall analyse the information in order to share relevant information on its own initiative with competent authorities for their supervisory activities with regard to the prevention of the use of the financial system for the purposes of money laundering or terrorist financing. Where it does so, it shall notify the competent authority that initially provided the information. It shall also conduct analysis on an aggregate basis for the opinion it is requested to deliver pursuant to paragraph 5 of Article 6 of Directive (EU) 2015/849.

(a) By [12 months after the entry into force of this amending Regulation], the Authority shall develop draft regulatory technical standards specifying how information is analysed and made available to competent authorities on a need-to-know and confidential basis.

(b) Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in paragraph 2a of this Article in accordance with Articles 10 to 14.

3. The Authority shall promote convergence of supervisory processes referred to in Directive (EU) 2015/849, including by conducting *peer reviews, and issuing hereto related reports and follow-up measures* in accordance with Article 30. *The Authority, when conducting such reviews in accordance with Article 30, shall take into account relevant evaluations, assessments or reports drawn up by international organisations and intergovernmental bodies with competence in the field of preventing money laundering or terrorist financing as well as the biannual Report of the Commission under Article 6 of Directive (EU) 2015/849 and the National Risk Assessment of the relevant Member State prepared under Article 7 of Directive (EU) 2015/849.*

■

4. The Authority shall, *with the participation of the competent authorities,* ■ perform risk assessments on competent authorities ■ to assess their strategies, *capacities* and resources to address ■ the most important emerging risks related to money-laundering and terrorist financing *at Union level as identified in the Supranational Risk Assessment. It shall perform these risk*

assessments in particular for the purpose of issuing the opinion it is requested to deliver pursuant to paragraph 5 of Article 6 of Directive (EU) 2015/849. The Authority shall perform risk assessments on the basis of the information available to it, including peer reviews in accordance with Article 30, the analysis that it has conducted on an aggregate basis of the information collected by the central database pursuant to paragraph 2 as well as relevant evaluations, assessments or reports drawn up by international organisations and intergovernmental bodies with competence in the field of preventing money laundering and terrorist financing and the National Risk Assessment of the relevant Member State prepared under Article 7 of Directive (EU) 2015/849. The Authority shall make the risk assessments available to all competent authorities.

For the purpose of subparagraph 1, the Authority, through the internal committee established under paragraph 6, shall develop and apply methods to allow for an objective assessment, as well as a high quality and consistent review of the assessments and the application of the methodology and to ensure a level playing field. The internal committee established under paragraph 6 shall carry out the quality and consistency review of the risk assessments. It shall prepare the draft risk assessments for adoption by the Board of Supervisors in accordance with Article 44.

5. In **■** cases *where there are indications of breaches on the part of financial sector operators of the requirements laid down in Directive (EU) 2015/849 and where there is a cross-border dimension* with third countries, the Authority shall have a leading role *in contributing to facilitate* cooperation between competent authorities in the Union and the relevant authorities in third countries *where necessary. This role of the Authority shall be without prejudice to the regular interactions by competent authorities with third country authorities.*
6. The Authority shall establish a permanent internal committee on anti-money laundering and countering terrorist financing to coordinate measures in order to *prevent and counter the use of the financial system for the purposes of money-laundering or terrorist financing* and to prepare, *in the context of*

Directive 2015/849/EU and Regulation 2015/847/EU, all draft decisions to be taken by the Authority in accordance with Article 44.

7. The committee shall be composed of *high-level representatives with expertise and decision-making powers in the area of the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing of the authorities* and bodies *of all Member States* competent for ensuring compliance with the requirements of Directive (EU) 2015/849 *and Regulation 2015/847/EU* by *financial sector operators as well as high-level representatives with expertise of different business models and sectoral specificities, of the Authority, of the European Insurance and Occupational Pensions Authority and of the European Securities and Markets Authority respectively. The high-level representatives of the Authority, the European Insurance and Occupational Pensions Authority and of the European Securities and Markets Authority shall participate in the meetings of the committee without the right to vote. In addition, the Commission, the ESRB, and the Supervisory Board of the European Central Bank, shall each nominate a high-level representative to participate in the committee meetings as observers. The chair of the committee shall be elected by and from the voting members of the committee. Each competent authority and Union body shall be responsible for nominating an alternate from its staff, who may replace the member where that person is prevented from attending. Member States where more than one authority is competent for ensuring compliance with the requirements of Directive (EU) 2015/849 for financial sector operators may nominate one representative for each competent authority. Irrespective of the number of competent authorities represented in the meeting, each Member State shall have one vote. The Committee may establish internal working groups on specific aspects of its work with a view to preparing draft decisions of the committee, which shall be open for participation to staff from all competent authorities represented in the Committee and from the Authority, of the European Insurance and Occupational Pensions Authority and of the European Securities and Markets Authority.*

8. *The Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority may at any time submit written observations on any draft decision of the committee, which the Board of Supervisors shall duly consider before taking its final decision. Where a draft decision is based on or connected with the powers conferred upon the Authority under Articles 9b, 17 or 19 and concerns*
- (i) financial institutions as defined in Article 4(1) of Regulation (EU) No 1094/2010 or any of the competent authorities supervising them, or*
 - (ii) financial market participants as defined in Article 4(1) of Regulation (EU) No 1095/2010 or any of the competent authorities supervising them,*
- the Authority may only take the decision in agreement with the European Insurance and Occupational Pensions Authority (in case of (i) above) or of the European Securities and Markets Authority (in case of (ii) above). EIOPA or ESMA shall notify their views within 20 days from the date of the draft decision by the committee. Where ESMA or EIOPA do not notify their views within 20 days nor request a duly justified prolongation for notifying such views the agreement shall be presumed.*

Article 9b

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

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

referred to in point (ia) of Article 4(2) to consider adopting an individual decision addressed to that financial sector operator requiring it to undertake all necessary action to comply with its obligations under directly applicable Union law, or under national laws *to the extent that they transpose* Directives or *exercise* options granted to Member States by Union law, including the cessation of any conduct. ***The requests referred to in this paragraph shall not impede ongoing supervisory measures by the competent authority to which the request is addressed.***

2. The competent authority shall comply with any request addressed to it in accordance with paragraph 1 and shall inform the Authority ***as soon as possible and*** within 10 ***working*** days ***at the latest*** of the steps it has taken or intends to take to comply with that request.
3. Without prejudice to the powers of the Commission under Article 258 TFEU, where a competent authority does not ***inform the Authority within 10 working days of the steps it has taken or intends to take*** to comply with paragraph 2 of this Article, Article 17 shall apply.

Article 9c

No action letters

1. ***The Authority shall take the measures referred to in paragraph 2 only in exceptional circumstances when it considers that the application of one of the acts referred to in Article 1(2) or of any delegated or implementing acts based on those acts is liable to raise significant issues, for one of the following reasons:***
 - (a) ***the Authority considers that provisions contained in such act may directly conflict with another relevant act,***
 - (b) ***where the act is one of the acts referred to in Article 1(2), the absence of delegated or implementing acts that would complement or specify the act in question would raise legitimate doubts concerning the legal consequences flowing from the act or its proper application,***

(c) the absence of guidelines and recommendations as referred to in Article 16 would raise practical difficulties concerning the application of the relevant act.

2. *In the cases referred to in paragraph 1, the Authority shall address to the competent authorities and the Commission by letter a detailed account of the issues it considers to exist.*

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

In the case referred to in point (c) of paragraph 1, the Authority shall evaluate as soon as possible the need to adopt relevant guidelines or recommendations under Article 16.

The Authority shall act expeditiously, notably with a view to contributing to the prevention of issues as referred to in paragraph 1, whenever possible.

3. *Where necessary in the cases referred to in paragraph 1, and pending the adoption and application of new measures following the steps referred to in paragraph 2, the Authority shall issue opinions regarding specific provisions of the acts referred to in paragraph 1 with a view to furthering consistent, efficient and effective supervisory and enforcement practices, and common, uniform and consistent application of Union law.*
4. *Where, on the basis of information received, notably from competent authorities, the Authority considers that acts referred to in Article 1(2) or any delegated or implementing acts based on those acts raises significant exceptional issues pertaining to*
 - *market confidence,*
 - *costumer or investor protection,*

- *the orderly functioning and integrity of financial markets or commodity markets, or*
- *the stability of the whole or part of the financial system in the Union,*

it shall immediately address to the competent authorities and the Commission by letter a detailed account of the issues it considers to exist. The Authority may provide the Commission with an opinion on any action it considers appropriate, in form of new legislation or new delegated or implementing acts, and on the urgency that, in the Authority's judgment, is attached to the issue. The Authority shall make its opinion public.”;

(8) *Article 10 is amended as follows:*

(a) *paragraph 1 is amended as follows:*

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

“1. Where the European Parliament and the Council delegate power to the Commission to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU in order to ensure consistent harmonisation in the areas specifically set out in the legislative acts referred to in Article 1(2), the Authority may develop draft regulatory technical standards. The Authority shall submit its draft regulatory technical standards to the Commission for endorsement. At the same time, the Authority shall forward those draft regulatory technical standards for information to the European Parliament and to the Council.”;

(ii) *the third subparagraph is replaced by the following:*

“Before submitting them to the Commission, the Authority shall conduct open public consultations on draft regulatory technical standards and analyse the potential related costs and benefits, unless such consultations and analyses are strongly disproportionate in relation to the scope and impact of the draft regulatory technical standards concerned or in relation to the particular urgency of the matter. The Authority shall also request the advice of the Banking Stakeholder Group referred to in Article 37.”;

- (iii) *the fourth subparagraph is deleted;*
- (iv) *the fifth and the sixth subparagraphs are replaced by the following:*
“Within 3 months of receipt of a draft regulatory technical standard, the Commission shall decide whether to endorse it. The Commission shall inform the European Parliament and the Council in due time that the decision regarding endorsement cannot be taken within the 3 months period. The Commission may endorse the draft regulatory technical standards in part only, or with amendments, where the Union’s interests so require.

Where the Commission intends not to endorse a draft regulatory technical standard or to endorse it in part or with amendments, it shall send the draft regulatory technical standard back to the Authority, explaining why it does not endorse it, or, as the case may be, explaining the reasons for its amendments, and shall send a copy of its letter to the European Parliament and to the Council. Within a period of 6 weeks, the Authority may amend the draft regulatory technical standard on the basis of the Commission’s proposed amendments and resubmit it in the form of a formal opinion to the Commission. The Authority shall send a copy of its formal opinion to the European Parliament and to the Council.”;

- (b) *paragraph 2 is replaced by the following:*
“2. Where the Authority has not submitted a draft regulatory technical standard within the time limit set out in the legislative acts referred to in Article 1(2), the Commission may request such a draft within a new time limit. The Authority shall inform the European Parliament, the Council and the Commission in due time that it will not comply with the time limit.”;
- (c) *in paragraph 3, the second subparagraph is replaced by the following:*
“The Commission shall conduct open public consultations on draft regulatory technical standards and analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft regulatory technical standards

concerned or in relation to the particular urgency of the matter. The Commission shall also request the advice of the Banking Stakeholder Group referred to in Article 37.”;

(d) paragraph 4 is replaced by the following:

“4. The regulatory technical standards shall be adopted by means of regulations or decisions. The words ‘regulatory technical standard’ shall appear in their title. They shall be published in the Official Journal of the European Union and shall enter into force on the date stated therein.”;

(9) in Article 13(1), the second subparagraph is deleted.

(10) Article 15 is amended as follows:

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

“1. Where the European Parliament and the Council confer implementing powers on the Commission to adopt implementing technical standards by means of implementing acts pursuant to Article 291 TFEU, in the areas specifically set out in the legislative acts referred to in Article 1(2), the Authority may develop draft implementing technical standards. Implementing technical standards shall be technical, shall not imply strategic decisions or policy choices and their content shall be to determine the conditions of application of those acts. The Authority shall submit its draft implementing technical standards to the Commission for endorsement. At the same time, the Authority shall forward those technical standards for information to the European Parliament and to the Council.

Before submitting draft implementing technical standards to the Commission, the Authority shall conduct open public consultations and shall analyse the potential related costs and benefits, unless such consultations and analyses are strongly disproportionate in relation to the scope and impact of the draft implementing technical standards concerned or in relation to the particular urgency of the matter. The

Authority shall also request the advice of the Banking Stakeholder Group referred to in Article 37.

Within 3 months of receipt of a draft implementing technical standard, the Commission shall decide whether to endorse it. The Commission may extend that period by 1 month. The Commission shall inform the European Parliament and the Council in due time that the decision regarding endorsement cannot be taken within the 3 months period. The Commission may endorse the draft implementing technical standard in part only, or with amendments, where the Union's interests so require.

Where the Commission intends not to endorse a draft implementing technical standard or intends to endorse it in part or with amendments, it shall send it back to the Authority explaining why it does not intend to endorse it, or, as the case may be, explaining the reasons for its amendments and shall send a copy of its letter to the European Parliament and to the Council. Within a period of 6 weeks, the Authority may amend the draft implementing technical standard on the basis of the Commission's proposed amendments and resubmit it in the form of a formal opinion to the Commission. The Authority shall send a copy of its formal opinion to the European Parliament and to the Council.

If, on the expiry of the six-week period referred to in the fifth subparagraph, the Authority has not submitted an amended draft implementing technical standard, or has submitted a draft implementing technical standard that is not amended in a way consistent with the Commission's proposed amendments, the Commission may adopt the implementing technical standard with the amendments it considers relevant or reject it.

The Commission shall not change the content of a draft implementing technical standard prepared by the Authority without prior coordination with the Authority, as set out in this Article.

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

(b) *in paragraph 3, subparagraph 2 is replaced by the following:*

“The Commission shall conduct open public consultations on draft implementing technical standards and analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft implementing technical standards concerned or in relation to the particular urgency of the matter. The Commission shall also request the advice of the Banking Stakeholder Group referred to in Article 37.”;

(c) *paragraph 4 is replaced by the following:*

“4. The implementing technical standards shall be adopted by means of regulations or decisions. The words ‘implementing technical standard’ shall appear in their title. They shall be published in the Official Journal of the European Union and shall enter into force on the date stated therein.”;

(11) Article 16 is amended as follows:

(a) *paragraph 1 is replaced by the following:*

“1. The Authority shall, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of Union law, issue guidelines addressed to all competent authorities or all financial institutions and issue recommendations to one or more competent authorities or to one or more financial institutions.

Guidelines and recommendations shall be in accordance with the empowerments conferred in the legislative acts referred to in Article 1(2) or in this Article.”;

(b) paragraph 2 is replaced by the following:

“2. The Authority shall, ***where appropriate***, conduct open public consultations regarding the guidelines and recommendations which it issues and **█** analyse the related potential costs and benefits of issuing such guidelines and recommendations. Those consultations and analyses shall be proportionate in relation to the scope, nature and impact of the guidelines or recommendations. The Authority shall, ***where appropriate***, also request **█** advice from the Banking Stakeholder Group referred to in Article 37. ***Where the Authority does not conduct open public consultations or does not request advice from the Banking Stakeholder Group, the Authority shall provide reasons.”;***

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

“2c. ***Guidelines and recommendations shall not merely refer to, or reproduce, elements of legislative acts. Before issuing a new guideline or recommendation, the Authority shall first review existing guidelines and recommendations, in order to avoid any duplication.”;***

(d) ***paragraph 4 is replaced by the following:***

“4. ***In the report referred to in Article 43(5) the Authority shall inform the European Parliament, the Council and the Commission of the guidelines and recommendations that have been issued.”;***

█

(12) ***the following articles are inserted:***

“Article 16a
Opinions

1. *The Authority may, upon a request from the European Parliament, the Council or the Commission, or on its own initiative, provide opinions to the European Parliament, the Council and the Commission on all issues related to its area of competence.*
2. *The request referred to in paragraph 1 may include a public consultation or a technical analysis.*
3. *With regard to assessments under Article 22 of Directive 2013/36/EC, and which according to that Directive require consultation between competent authorities from two or more Member States, the Authority may, at the request of one of the competent authorities concerned, issue and publish an opinion on such an assessment. The opinion shall be issued promptly and in any event before the end of the assessment period referred to in that Directive.*
4. *The Authority may, upon a request from the European Parliament, the Council or the Commission provide technical advice to the European Parliament, the Council and the Commission in the areas set out in the legislative acts referred to in Article 1(2).*

Article 16b

Questions and answers

1. *Without prejudice to paragraph 5, questions relating to the practical application or implementation of the provisions of legislative acts referred to in Article 1(2), associated delegated and implementing acts, and guidelines and recommendations, adopted under these legislative acts, may be submitted by any natural or legal person, including competent authorities and EU institutions, to the Authority in any official language of the Union.*

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

Before publishing answers to admissible questions, the Authority may seek further clarification on questions asked by the natural or legal person referred to in paragraph 1.

2. *Answers by the Authority to questions referred to in paragraph 1 are non-binding. The answer shall be made available at least in the language it was submitted in.*
3. *The Authority shall establish and maintain a web based tool available on its website for the submission of questions and the timely publication of all questions upon receipt as well as all answers to all admissible questions pursuant to paragraph 1, unless such publication is in conflict with the legitimate interest of those persons or would involve risks to the stability of the financial system. The Authority may reject questions it does not intend to answer. Rejected questions shall be published by the Authority on its website for a period of two months.*
4. *Three voting members of the Board of Supervisors may request the Board of Supervisors to decide pursuant to Article 44 whether to address the issue of the admissible question referred to in paragraph 1 in guidelines pursuant to Article 16, to request opinions or advice from the Stakeholder Group referred to in Article 37, to review questions and answers at appropriate intervals, to conduct open public consultations or to analyse potential related costs and benefits. Such consultations and analyses shall be proportionate in relation to the scope, nature and impact of the draft questions and answers concerned or in relation to the particular urgency of the matter. When involving the*

Stakeholder Group referred to in Article 37, due care of confidentiality shall be guaranteed.

5. *The Authority shall forward questions that require the interpretation of Union law to the European Commission. The Authority shall publish any answers provided by the European Commission.”;*

(13) Article 17 is amended as follows:

- (a) *in paragraph 2, the first subparagraph is replaced by the following:*

“2. Upon a request from one or more competent authorities, the European Parliament, the Council, the Commission, the Banking Stakeholder Group, or on its own initiative, including when this is based on well substantiated information from natural or legal persons, and after having informed the competent authority concerned, the Authority shall respond to the request by outlining how it intends to proceed with the case and if appropriate, investigate the alleged breach or non-application of Union law.”;

- (b) *in paragraph 2, the following subparagraphs are added:*

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

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

█

(c) *the following paragraph is inserted:*

“2a. Without prejudice to powers under this Regulation and before issuing a recommendation as set out in paragraph 3, where it deems this to be appropriate to resolve a breach of Union law, the Authority shall engage with the competent authority concerned in an attempt to reach agreement on actions necessary for the competent authority to comply with Union law.”;

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

“6. Without prejudice to the powers of the Commission pursuant to Article 258 TFEU, where a competent authority does not comply with the formal opinion referred to in paragraph 4 within the period of time specified therein, and where it is necessary to remedy in a timely manner such non-compliance in order to maintain or restore neutral conditions of competition in the market or ensure the orderly functioning and integrity of the financial system, the Authority may, where the relevant requirements of the acts referred to in Article 1(2) are directly applicable to financial institutions or, in the context of matters relating to the prevention and **countering** of money laundering and terrorist financing, to financial sector operators, adopt an individual decision addressed to a financial institution or a financial sector operator requiring it to take all necessary action to comply with its obligations under Union law, including the cessation of any conduct.

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

that Union law is composed of Directives the national legislation *to the extent that it transposes* those Directives. Where the relevant Union law is composed of Regulations and where currently those Regulations explicitly grant options for Member States, the Authority shall apply also the national legislation *to the extent that it exercises* those options.

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

7. Decisions adopted in accordance with paragraph 6 shall prevail over any previous decision adopted by the competent authorities on the same matter.

When taking action in relation to issues which are subject to a formal opinion pursuant to paragraph 4 of this Article or to a decision pursuant to paragraph 6, competent authorities shall comply with the formal opinion or the decision, as the case may be.”;

(14) *the following article is inserted:*

“Article 17a

Protection of reporting persons

1. ***The Authority shall have in place dedicated reporting channels for receiving and handling information provided by a natural or legal person reporting on actual or potential breaches, abuse of law, or non-application of Union law.***
2. ***The natural or legal persons reporting through those channels shall be protected against retaliation in accordance with Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law, where applicable [COM/2018/218/final].***
3. ***The Authority shall ensure that all information may be submitted anonymously or confidentially, and safely. Where the Authority deems that the submitted information contains evidence or significant indications of material breaches, it shall provide feedback to the reporting person.”;***

(15) *in Article 18, paragraph 3 is replaced by the following:*

“3. Where the Council has adopted a decision pursuant to paragraph 2, and in exceptional circumstances where coordinated action by competent authorities is necessary to respond to adverse developments which may seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union or customer and consumer protection, the Authority may adopt individual decisions requiring competent authorities to take the necessary action in accordance with the legislation referred to in Article 1(2) to address any such developments by ensuring that financial institutions and competent authorities satisfy the requirements laid down in that legislation.”;

(16) Article 19 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

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

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

In cases where the acts referred to in Article 1(2) require a joint decision to be taken by competent authorities *and where in accordance with those acts the Authority may assist on its own initiative in reaching an agreement in accordance with the procedure set out in paragraph 2 to*

4, the competent authorities concerned, a disagreement shall be presumed in the absence of a joint decision being taken by those authorities within the time limits set out in those acts.”;

(b) the following paragraphs ■ are inserted:

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

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

(i) the time limit has expired; **or**

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

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

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

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

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

Pending the Authority’s decision in accordance with the procedure set out in Article 47(3a), in cases where the acts referred to in Article 1(2)

require a joint decision to be taken, all competent authorities involved in the joint decision shall defer their individual decisions. Where the Authority decides to act, all the competent authorities involved in the joint decision shall defer their decisions until the procedure set out in paragraphs 2 and 3 is concluded.”;

(c) paragraph 3 is replaced by the following:

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

(d) the following paragraph ■ is inserted:

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

(e) paragraph 4 is replaced by the following:

“4. Without prejudice to the powers of the Commission pursuant to Article 258 TFEU, where a competent authority does not comply with the decision of the Authority, and thereby fails to ensure that a financial institution or, in the context of matters relating to the prevention **and countering** of money laundering and terrorist financing, a financial sector operator complies with requirements directly applicable to it by virtue of the acts referred to in Article 1(2), the Authority may adopt an individual decision addressed to that financial institution or financial sector operator requiring it to take all necessary action to comply with its obligations under Union law, including the cessation of any practice.

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

(17) *Article 21 is amended as follows:*

(a) *paragraph 1 is replaced by the following:*

“1. ***The Authority shall promote and monitor, within the scope of its powers, the efficient, effective and consistent functioning of the colleges of supervisors where established by legislative acts referred to***

in Article 1(2) and foster the consistency of the application of Union law among the colleges of supervisors. With the objective of converging supervisory best practices, the Authority shall promote joint supervisory plans and joint examinations, and staff from the Authority shall have full participation rights in the colleges of supervisors and, as such, shall be able to participate in the activities of the colleges of supervisors, including on-site examinations, carried out jointly by two or more competent authorities.”;

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

“(b) initiate and coordinate Union-wide stress tests in accordance with Article 32 to assess the resilience of financial institutions, in particular the systemic risk posed by financial institutions as referred to in Article 23, to adverse market developments, and evaluate the potential for systemic risk to increase in situations of stress, ensuring that a consistent methodology is applied at the national level to such tests and, where appropriate, address a recommendation to the competent authority to correct issues identified in the stress test, including to conduct specific assessments. It may recommend competent authorities to carry out on-site inspections, and may participate in such on-site inspections, in order to ensure comparability and reliability of methods, practices and results of Union-wide assessments;”;

(c) paragraph 3 is replaced by the following:

“3. The Authority may develop draft regulatory and implementing technical standards in accordance with the empowerments laid down in the legislative acts referred to in Article 1(2) and in accordance with the procedure laid down in Articles 10 to 15 to ensure uniform conditions of application with respect to the provisions regarding the operational functioning of colleges of supervisors and issue guidelines and recommendations adopted pursuant to Article 16 to promote

convergence in supervisory functioning and best practices adopted by the colleges of supervisors.”;

(18) Article 22 is amended as follows:

(a) *the title is replaced by the following:*

“General provisions on systemic risks”;

■

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

“2. The Authority shall, in collaboration with the ESRB, and in accordance with Article 23, develop a common set of quantitative and qualitative indicators (risk dashboard) to identify and measure systemic risk.”;

(c) *paragraph 4 is replaced by the following:*

“4. Upon a request from one or more competent authorities, the European Parliament, the Council or the Commission, or on its own initiative, the Authority may conduct an inquiry into a particular type of financial institution or type of product or type of conduct in order to assess potential threats to the stability of the financial system or to the protection of customers or consumers.

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

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

(19) *in Article 23, paragraph 1 is replaced by the following:*

“1. The Authority shall, in consultation with the ESRB, develop criteria for the identification and measurement of systemic risk and an adequate stress-testing regime which includes an evaluation of the potential for systemic risk

posed by or to financial institutions to increase in situations of stress, including potential environmental-related systemic risk. The financial institutions that may pose a systemic risk shall be subject to strengthened supervision, and where necessary, the recovery and resolution procedures referred to in Article 25.”;

(20) *in Article 27, the third subparagraph of paragraph 2 is deleted;*

(21) Article 29 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the following *points are* inserted:

“(aa) *establishing Union Strategic supervisory priorities* in accordance with Article 29a;

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

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

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

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

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

(iv) the following point is added:

“(ea) putting in place a monitoring system to assess material environmental, social and governance-related risks, taking into account the COP 21 Paris agreement;”;

(b) █ paragraph 2 *is replaced by the following* █ :

“2. The Authority may, as appropriate, develop new practical instruments and convergence tools to promote common supervisory approaches and practices.

For the purpose of establishing a common supervisory culture, the Authority shall develop and maintain an up-to-date Union supervisory handbook on the supervision of financial institutions in the Union, taking **duly** into account **nature, scale and complexity of risks**, business practices, business models **and size** of financial institutions **and markets**. The Authority shall also develop and maintain an up-to-date Union resolution handbook on the resolution of financial institutions in the Union, **taking duly into account the nature, scale and complexity of risks, business practices, business models and size of financial institutions and markets**. Both the Union supervisory handbook and the Union resolution handbook shall set out best practices and shall specify high quality methodologies and processes.

The Authority shall, where appropriate, conduct open public consultations regarding the opinions referred to in point (a) of paragraph 1, and tools and instruments referred to in paragraph 2 and analyse the related potential costs and benefits. Such consultations and analyses shall be proportionate in relation to the scope, nature and impact of the opinions or tools and instruments. The Authority shall, where appropriate, also request advice from the Banking Stakeholder Group.”;

(22) the following article ■ is inserted:

“Article 29a

Union Strategic supervisory priorities

At least every three years and by 31 March following a debate in the Board of Supervisors and taking into account contributions received from competent authorities, existing work by the EU Institutions and analysis, warnings and recommendations published by the ESRB, the Authority shall identify up to two priorities of union wide relevance which shall reflect future developments and

trends. Competent authorities shall take the priorities highlighted by the Authority into account when drawing up their work programmes and shall notify accordingly. The Authority shall discuss the relevant activities by the competent authorities in the following year and draw conclusions. The Authority shall discuss possible follow up which may include inter alia guidelines, recommendations to competent authorities and peer reviews in the respective area.

The priorities of Union wide relevance identified by the Authority shall not prevent national competent authorities from applying national best practices, acting on additional national priorities and developments, and shall consider national specificities.”;

(23) Article 30 is *replaced by the following:*

“Article 30

Peer reviews of competent authorities

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

1a. For the purposes of this Article, the Authority shall establish *ad hoc peer* review *committees, which shall be* composed of staff from the Authority *and members of the competent authorities. The peer review committees shall be chaired by a staff member from the Authority. The Chairperson, after consulting the Management Board and following an open call for participation, shall propose the chair and the members of a peer review team, which shall be approved by the Board of Supervisors. The proposal shall be considered adopted unless the Board of Supervisors adopts a decision to reject it within 10 days.*

2. The *peer* review shall include an assessment of, but shall not be limited to:
 - (a) the adequacy of resources, the degree of independence, and governance arrangements of the competent authority, with particular regard to the effective application of the Union acts referred to in Article 1(2) and the capacity to respond to market developments;
 - (b) *the effectiveness and the degree of convergence reached in the application of Union law and in supervisory practice, including regulatory technical standards and implementing technical standards, guidelines and recommendations adopted pursuant to Articles 10 to 16, and the extent to which the supervisory practice achieves the objectives set out in Union law;*
 - (c) *the application of best practices developed by some competent authorities which might be of benefit for other competent authorities to adopt;*
 - (d) *the effectiveness and the degree of convergence reached with regard to the enforcement of the provisions adopted in the implementation of Union law, including the administrative measures and sanctions imposed against persons responsible where those provisions have not been complied with.*
3. The Authority shall produce a report setting out the results of the *peer* review *which shall be prepared by the peer review committee and adopted by the Board of Supervisors in accordance with Article 44(4). When drafting that report, the peer review committee shall consult the Management Board in order to maintain consistency with other peer review reports and to ensure a level playing field. The Management Board shall assess in particular whether the methodology has been applied in the same manner. The report shall explain and indicate the follow-up measures that are deemed appropriate, proportionate and necessary as a result of the peer review.* Those follow-up measures may be adopted in the form of guidelines and recommendations pursuant to Article 16 and opinions pursuant to Article 29(1)(a).

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

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

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

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

4. *The peer review committee shall after consulting the competent authorities subject to the peer review, identify the reasoned main findings of the peer review. The Authority shall publish the reasoned main findings of the peer review and of the follow-up reports referred to in paragraph 3b. Where the reasoned main findings of the Authority differ from those identified by the review committee, the Authority shall transmit, on a confidential basis, the review committee's findings to the European Parliament, the Council and*

the Commission. Where a competent authority that is subject to the review is concerned that the publication of the Authority's main findings would pose risks to the stability of the financial system, it shall have the possibility to refer the matter to the Board of Supervisors. The Board of Supervisors may decide not to publish those extracts.

5. *For the purposes of this Article the Management Board shall make a proposal for a peer review work plan for the coming two years, which shall inter alia reflect the les-sons learnt from the past peer re-view processes and the discussions of the coordination group referred to in Art 29(1)aa. The peer review work plan shall constitute a separate part of the annual and multiannual working programme. It shall be made public. In case of urgency or unforeseen events, the Authority may decide to carry out additional peer reviews.”;*

(24) *Article 31 is amended as follows:*

- (a) *the first paragraph is replaced by the following:*

“1. The Authority shall fulfil a general coordination role between competent authorities, in particular in situations where adverse developments could potentially jeopardise the orderly functioning and integrity of financial markets or the stability of the financial system in the Union.”;

- (b) *the second paragraph is amended as follows:*

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

“2. The Authority shall promote a coordinated Union response, inter alia, by:”;

- (i) *point (e) is replaced by the following:*

“(e) taking ■ appropriate measures in case of developments which may jeopardise the functioning of the financial markets with a

view to the coordination of actions undertaken by relevant competent authorities;”;

(ii) *the following point is inserted:*

■

“(ea) taking appropriate measures to coordinate actions undertaken by relevant competent authorities with a view to facilitating the entry into the market of actors or products relying on technological innovation;”;

(c) *the following paragraph is added:*

“1a. In order to contribute to the establishment of a common European approach towards technological innovation the Authority shall promote supervisory convergence, with the support, where relevant, of the Committee on consumer protection and financial innovation, facilitating entry into the market of actors or products relying on technological innovation, in particular through the exchange of information and best practices. Where appropriate, the Authority may adopt guidelines or recommendations in accordance with Article 16.”;

(25) the following Article is inserted:

“Article 31b

Information exchange on fitness and propriety

The Authority shall, together with EIOPA and ESMA, establish a system for the exchange of information relevant to the assessment of the fitness and propriety of holders of qualifying holdings, directors and key function holders of financial institutions by competent authorities in accordance with the acts referred to in Article 1(2).”;

(26) *Article 32 is amended as follows:*

(a) *the title is replaced by the following:*

“Assessment of market developments, including stress tests”;

(b) paragraph 1 is replaced by the following:

“1. The Authority shall monitor and assess market developments in the area of its competence and, where necessary, inform the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), the ESRB and the European Parliament, the Council and the Commission about the relevant micro-prudential trends, potential risks and vulnerabilities. The Authority shall include in its assessments an analysis of the markets in which financial institutions operate and an assessment of the impact of potential market developments on such institutions.”;

(c) paragraph 2 is amended as follows:

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

“2. The Authority shall initiate and coordinate Union-wide assessments of the resilience of financial institutions to adverse market developments. To that end it shall develop:”;

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

“(a) common methodologies for assessing the effect of economic scenarios on an institution’s financial position taking into account inter alia risks stemming from adverse environmental developments;”;

(iii) the following point is inserted:

“(aa) common methodologies for identifying financial institutions to be included in Union-wide assessments;”

(iv) points (c) and (d) are replaced by the following:

“(c) common methodologies for assessing the effect of particular products or distribution processes on an institution; █

(d) common methodologies for asset evaluation, as necessary, for the purpose of the stress testing; and”

(v) the following point is added:

“(da) common methodologies for assessing the effect of environmental risks on the financial stability of institutions.”;

(vi) the following subparagraph is added:

“For the purposes of this paragraph, the Authority shall cooperate with the ESRB.”;

█

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

“3. Without prejudice to the tasks of the ESRB set out in Regulation (EU) No 1092/2010, the Authority shall, once a year, and more frequently where necessary, provide assessments to the European Parliament, the Council, the Commission and the ESRB of trends, potential risks and vulnerabilities in its area of competence, in combination with the risk dashboard referred to in Article 22(2).”;

(e) paragraph 3b is replaced by the following:

“3b. The Authority may request that the competent authorities require that financial institutions make information that they must provide under paragraph 3a subject to an independent audit.”

(27) Article 33 is replaced by the following:

“Article 33

International relations including equivalence

1. ***Without prejudice to the respective competences of the Member States and the Union institutions, the Authority may develop contacts and enter into administrative arrangements with regulatory, supervisory and, where applicable, resolution authorities, international organisations and the administrations of third countries. Those arrangements shall not create legal obligations in respect of the Union and its Member States nor shall they prevent Member States and their competent authorities from concluding bilateral or multilateral arrangements with those third countries.***

Where a third country, in accordance with a delegated act in force adopted by the Commission pursuant to Article 9 of Directive (EU) 2015/849 of the European Parliament and of the Council, is on the list of jurisdictions which have strategic deficiencies in their national anti-money laundering and countering the financing of terrorism regimes that pose significant threats to the financial system of the Union, the Authority shall not conclude administrative arrangements with the regulatory, supervisory and, where applicable, resolution authorities of that third country. This shall not preclude other forms of cooperation between the Authority and the respective third country authorities with a view to reduce threats to the financial system of the Union.

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

2a. ■

The Authority shall monitor ***with a particular focus on their implications for financial stability, market integrity, investor protection and the functioning of the internal market, relevant*** regulatory and supervisory ***and, where applicable, resolution*** developments and enforcement practices and ■ market developments in third countries ***to the extent they are relevant to risk-based***

equivalence assessments for which equivalence decisions have been adopted by the Commission pursuant to the acts referred to in Article 1(2).■

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

The Authority may liaise with relevant authorities in third countries. The Authority shall submit a confidential report to the European Parliament, the Council, the Commission and the EIOPA and ESMA summarising its findings of its monitoring activities of all equivalent third countries. The report shall focus in particular on implications for financial stability, market integrity, investor protection or the functioning of the internal market.

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

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

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

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

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

(2ca) The Authority may develop model administrative arrangements, with a view to establishing consistent, efficient and effective supervisory practices within the Union and to strengthening international supervisory coordination. The competent authorities shall make every effort to follow such model arrangements.

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

3a. *The Authority shall, within its powers pursuant to this Regulation and to the legislative acts referred to in Article 1(2), contribute to the united, common, consistent and effective representation of the Union's interests in the international fora.”;*

(28) Article 34 is deleted.

(29) *Article 36 is amended as follows:*

(a) *paragraph 3 is deleted;*

(b) *paragraphs 4 and 5 are replaced by the following:*

“4. *On receipt of a warning or recommendation from the ESRB addressed to the Authority, the Authority shall discuss that warning or*

recommendation at the next meeting of the Board of Supervisors or, where appropriate, earlier, in order to assess the implications of, and possible follow-up to, such a warning or recommendation for the fulfilment of its tasks.”;

It shall decide, by the relevant decision-making procedure, on any actions to be taken in accordance with the powers conferred upon it by this Regulation for addressing the issues identified in the warnings and recommendations.

If the Authority does not act on a warning or recommendation, it shall explain to the ESRB its reasons for not doing so. The ESRB shall inform the European Parliament thereof in accordance with Article 19(5) of Regulation (EU) No 1092/2010. The ESRB shall also inform the Council thereof.

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

Where the addressee intends not to follow the recommendation of the ESRB, it shall inform and discuss with the Board of Supervisors its reasons for not acting.

Where the competent authority, in accordance with Article 17(1) of Regulation (EU) No 1092/2010, informs the European Parliament, the Council, the Commission and the ESRB of the actions it has undertaken in response to a recommendation of the ESRB, it shall take due account of the views of the Board of Supervisors.”;

(c) *paragraph 6 is deleted;*

(30) Article 37 is amended as follows:

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

“2. The Banking Stakeholder Group shall be composed of 30 members, 13 members representing in balanced proportions credit and investment institutions operating in the Union, three of whom shall represent

cooperative and savings banks, 13 members representing their employees' representatives, consumers, users of banking services and representatives of SMEs and four of its members shall be independent top-ranking academics.

3. *The members of the Banking Stakeholder Group shall be appointed by the Board of Supervisors following an open and transparent selection procedure. In making its decision, the Board of Supervisors shall, to the extent possible, ensure an appropriate reflection of diversity of the banking sector, geographical and gender balance and representation of stakeholders across the Union. Members of the Banking Stakeholder Group shall be selected according to their qualifications, skills, relevant knowledge and proven expertise.”;*

(b) *the following paragraph is inserted:*

- “3a. *Members of the Banking Stakeholder Group shall elect the Chair of that Group from among its Members. The position of Chair shall be held for a period of two years.*

The European Parliament may invite the Chair of the Banking Stakeholder Group to make a statement before it and answer any questions put by its Members whenever so requested.”;

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

- “4. *The Authority shall provide all necessary information subject to professional secrecy as set out in Article 70 and ensure adequate secretarial support for the Banking Stakeholder Group. Adequate compensation shall be provided to members of the Banking Stakeholder Group representing non-profit organisations, excluding industry representatives. This compensation shall take into account the members' preparatory and follow-up work and shall be at least equivalent to the reimbursement rates of officials pursuant to Title V, Chapter 1, Section 2 of the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 (Staff Regulations). The Banking*

Stakeholder Group may establish working groups on technical issues.

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

(d) paragraph 5 is replaced by the following:

5. *The Banking Stakeholder Group may submit █ advice to the Authority on any issue related to the tasks of the Authority with particular focus on the tasks set out in Articles 10 to 16 and Articles 29, 30 and 32.*

Where members of the Banking Stakeholder Group cannot *agree on* advice, *one third of its* members *or* the members representing one group of stakeholders shall be permitted to issue a █ separate advice.

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

(e) paragraph 7 is replaced by the following:

- “7. *The Authority shall make public the █ advice of the Banking Stakeholder Group, the separate advice of its Members, and the results of its consultations as well as how advice and results of consultations have been taken into account.*”;

(31) Article 39 is replaced by the following:

“Article 39

Decision-making procedures

1. The Authority shall act in accordance with paragraphs 2 to 6 when adopting decisions *pursuant to* Articles 17, 18 and 19.
2. The Authority shall inform any addressee of a decision of its intention to adopt the decision, *in the official language of the addressee*, setting a time limit within which the addressee may express its views on the subject-matter of the decision, taking full account of the urgency, complexity and potential

consequences of the matter. The *addressee may express its views in its official language. The* provision laid down in the first sentence shall apply *mutatis mutandis* to recommendations as referred to in Article 17(3).

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

(32) Article 40 is amended as follows

- (a) paragraph 1 is amended as follows:

-
- (i) point (a) is replaced by the following:**
“(a) the Chairperson;”;

(b) the following paragraph ■ is added:

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

(33) *Articles 41 and 42 are* replaced by the following:

“Article 41

Internal committees

1. The Board of Supervisors, *on its own initiative or at the request from the Chairperson*, may establish internal committees for specific tasks attributed to it. *Upon request from the Management Board or from the Chairperson, the Board of Supervisors may establish internal committees for specific tasks attributed to the Management Board.* The Board of Supervisors may provide for the delegation of certain clearly defined tasks and decisions to internal committees, to the *Management* Board or to the Chairperson.

1a. For the purposes of Article 17, and without prejudice to the role of the committee referred to in Article 9a(6), the Chairperson shall propose a decision to convene an independent panel, to be adopted by the Board of Supervisors. The independent panel shall consist of the Chairperson of the Board of Supervisors and six other members, to be proposed by the Chairperson after consulting the Management Board and following an open call for participation. The six other members shall not be representatives of the competent authority alleged to have breached Union law and shall have neither any interest in the matter nor direct links to the competent authority concerned.

Each member of the panel shall have one vote.

Decisions of the panel shall be taken where at least four members vote in favour.

2. *For the purposes of Article 19, and without prejudice to the role of the committee referred to in Article 9a(6), the Chairperson shall propose a decision to convene an independent panel, to be adopted by the Board of Supervisors. The independent panel shall consist of the Chairperson of the Board of Supervisors and six other members, to be proposed by the Chairperson after consulting the Management Board and following an open call for participation. The six other members shall not be representatives of the competent authorities party to the disagreement and who have neither any interest in the conflict nor direct links to the competent authorities concerned.*

Each member of the panel shall have one vote.

Decisions of the panel shall be taken where at least four members vote in favour.

- 2a. *For the purposes of conducting the inquiry provided for in Article 22(4) first subparagraph, the Chairperson shall be also able to propose a to launch the inquiry and to convene an independent panel, to be adopted by the Board of Supervisors. The independent panel shall consist of the Chairperson of the Board of Supervisors and six other members, to be proposed by the Chairperson after consulting the Management Board and following an open call for participation.*

Each member of the panel shall have one vote.

Decisions of the panel shall be taken where at least four members vote in favour.

3. *The panels referred to in paragraphs 1a and 2 of this Article or the Chairperson shall propose decisions under Article 17, or Article 19, except on matters concerning the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, for final adoption by the Board of Supervisors. A panel referred to in paragraph 2a of this Article shall present the outcome of the inquiry conducted pursuant to Article 22(4) first subparagraph to the Board of Supervisors.*

4. *The Board of Supervisors shall adopt rules of procedure for the panels referred to in this Article.*

Article 42

Independence *of the Board of Supervisors*

1. When carrying out the tasks conferred upon them by this Regulation the █ members of the Board of Supervisors shall act independently and objectively in the sole interest of the Union as a whole and shall neither seek nor take instructions from Union institutions or bodies, from any government █ or from any other public or private body.
2. *Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence the members of the Board of Supervisors in the performance of their tasks.*
3. *Before any meeting which they are to attend, Members of the Board of Supervisors, the Chairperson as well as non-voting representatives and observers participating in Board meetings shall accurately and completely declare the absence or existence of any interest which might be considered prejudicial to their independence in relation to any items on the agenda, and shall abstain from participating in the discussion of and voting upon such points.*
4. *The Board of Supervisors shall lay down, in its rules of procedure, the practical arrangements for the rule on declaration of interest referred to in paragraph 3 and for the prevention and the management of conflict of interest.”;*

(34) Article 43 is amended as follows:

- (a) paragraph 1 is replaced by the following:

“1. The Board of Supervisors shall give guidance to the work of the Authority *and shall be in charge of taking the decisions referred to in Chapter II.* The Board of Supervisors shall adopt the opinions, recommendations, guidelines and decisions of the Authority, and issue

the advice referred to in Chapter II, based on a proposal *of the relevant internal committee, panel, Chairperson, or of the Management Board, as applicable.*”;

(b) paragraphs 2 and 3 are deleted;

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

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

(d) paragraph 5 is replaced by the following

“5. The Board of Supervisors shall adopt, on the basis of a proposal by the *Management Board*, the annual report on the activities of the Authority, including on the performance of the Chairperson’s duties, ■ and shall transmit that report to the European Parliament, the Council, the Commission, the Court of Auditors and the European Economic and Social Committee by 15 June each year. The report shall be made public.”;

(e) *paragraph 8 is replaced by the following:*

“8. *The Board of Supervisors shall exercise disciplinary authority over the Chairperson and the Executive Director. It may remove the Executive Director from office in accordance with Article 51(5).*” ;

(35) *the following Article is inserted:*

“*Article 43a*

Transparency of decisions adopted by the Board of Supervisors

Notwithstanding Article 70, within at most six weeks from the date of a meeting of the Board of Supervisors, the Authority shall, at the minimum, provide the European Parliament with a comprehensive and meaningful record of the proceedings of that meeting of the Board of Supervisors that enables a full

understanding of the discussions, including an annotated list of decisions. The record of the proceedings shall not reflect discussions within the Board of Supervisors relating to individual financial institutions, unless otherwise provided for in Article 75(3) or in the acts referred to in Article 1(2).”;

(36) Article 44 is amended as follows:

(a) *paragraph 1 is replaced by the following:*

“1. *Decisions of the Board of Supervisors shall be taken by a simple majority of its members. Each voting member shall have one vote.*

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

■ The Chairperson shall not vote on *the* decisions *referred to in the previous subparagraph.*

With regard to the composition of the panels in accordance with Article 41(1a), (2) and (2a), and the members of the peer review team referred to in Article 30(1a), the Board of Supervisors, when considering the proposals by the Chairperson, shall strive for consensus. In the absence of consensus, decisions of the Board of Supervisors shall be taken by a majority of three quarters of its voting members. Each voting member shall have one vote.

With regard to decisions adopted under Article 18(3) and (4), and by way of derogation from the first subparagraph of this paragraph, the Board of Supervisors shall take decisions on the basis of a simple majority of its voting members, which shall include a simple majority of its members from competent authorities of participating Member States and a simple majority of its members from competent authorities of non-participating Member States.”;

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

“3a. With regard to the decisions in accordance with Article 30 the Board of Supervisors shall vote on the proposed decisions in a written procedure. The voting members of the Board of Supervisors shall have eight working days to vote. Each voting member shall have one vote. The proposed decision shall be considered adopted unless a simple majority of voting members of the Board of Supervisors objects. Abstentions shall not be counted as approvals or as objections, and shall not be considered when calculating the number of votes cast. If three voting members of the Board of Supervisors object to the written procedure, the draft decision shall be discussed and decided on by the Board of Supervisors in accordance with the procedure set out in paragraph 1.

3b. With regard to decisions in accordance with Articles 17 and 19 the Board of Supervisors shall vote on the proposed decisions in a written procedure. The voting members of the Board of Supervisors shall have

eight working days to vote. Each voting member shall have one vote. The proposed decision shall be considered adopted unless a simple majority of its members from competent authorities of participating Member States or a simple majority of its members from competent authorities of non-participating Member States objects to it. Abstentions shall not be counted as approvals or as objections, and shall not be considered when calculating the number of votes cast. If three voting members of the Board of Supervisors object to the written procedure, the draft decision shall be discussed by the Board of Supervisors and can be adopted by a simple majority of the voting members of the Board of Supervisors, which shall include a simple majority of its members from competent authorities of participating Member States and a simple majority of its members from competent authorities of non-participating Member States.

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

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

The first subparagraph shall not apply to the  European Central Bank representative nominated by its Supervisory Board.

- 4a. *The Authority's Chairperson shall have the prerogative to call a vote at any time. Without prejudice to that power and to the effectiveness of the Authority's decision-making procedures, the Board of Supervisors of the Authority shall strive for consensus when taking its decisions.*”;

I
(37) Article 45 is replaced by the following:

“ Article 45

Composition

1. *The Management Board shall be composed of the Chairperson and six members of the Board of Supervisors, elected by and from the voting members of the Board of Supervisors.*

Other than the Chairperson, each member of the Management Board shall have an alternate, who may replace him if he is prevented from attending.

2. *The term of office of the members elected by the Board of Supervisors shall be two-and-a-half years. That term may be extended once. The composition of the Management Board shall be gender balanced and proportionate and shall reflect the Union as a whole. The Management Board shall include at least two representatives of non-participating Member States. Mandates shall be overlapping and an appropriate rotating arrangement shall apply.”*
3. *Meetings of the Management Board shall be convened by the Chairperson at his own initiative or at the request of at least a third of its members, and shall be chaired by the Chairperson. The Management Board shall meet prior to every meeting of the Board of Supervisors and as often as the Management Board deems necessary. It shall meet at least five times a year.*
4. *The members of the Management Board may, subject to the rules of procedure, be assisted by advisers or experts. The non-voting members, with the exception of the Executive Director, shall not attend any discussions within the Management Board relating to individual financial institutions.”;*

(38) the following *Articles are* inserted:

“Article 45a

Decision-making

1. Decisions by the **Management** Board shall be adopted by simple majority of its members: *whilst striving for consensus*. Each member shall have one vote.
The Chairperson shall be a voting member.
2. *The Executive Director and a representative of the Commission shall participate in meetings of the Management Board without the right to vote. The representative of the Commission shall have the right to vote on matters referred to in Article 63.*
3. The **Management** Board shall adopt and make public its rules of procedure.



Article 45c

Coordination Groups

The Management Board may set up coordination groups on its own initiative or upon the request of a competent authority on defined topics for which there may be a need to coordinate having regard to specific market developments. The Management Board shall set up coordination groups at the request of five members of the Board of Supervisors. All competent authorities shall participate in the coordination groups and shall provide in accordance with article 35 to the coordination groups the information necessary in order to allow the coordination groups to conduct their coordinating tasks in accordance with their mandate.

The work of the coordination groups shall be based on information provided by the competent authorities and any findings identified by the Authority.

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

When monitoring market developments that may be the focus of coordination groups, the Authority may request competent authorities in accordance with article 35 to provide information necessary to allow the Authority to perform its monitoring role.”;

(39) Article 46 is replaced by the following:

“Article 46

Independence *of the Management Board*

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

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

(40) Article 47 is replaced by the following:

“Article 47

Tasks

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

administrative instructions and the publication of notices, to ensure the functioning of the Authority, in accordance with this Regulation.

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

■

(41) Article 48 is amended as follows:

- (a) in paragraph 1, the second subparagraph is replaced by the following:
“The Chairperson shall be responsible for preparing the work of the Board of Supervisors, ***including setting the agenda to be adopted by the Board of Supervisors, convening the meetings and tabling items for decision*** and shall chair the meetings of the Board of Supervisors.

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

The Chairperson may invite the Management Board to consider setting up a coordination group in accordance with Article 45c.”

- (b) paragraph 2 is replaced by the following:

“The Chairperson shall be selected on the basis of merit, skills, knowledge of financial institutions and markets, ***and of experience relevant to financial supervision and regulation***, following an open ***selection procedure which shall respect the principle of gender balance and shall*** be published in the Official Journal of the European Union. The ***Board of Supervisors*** shall ***draw up*** a shortlist of ***qualified*** candidates for the position of the Chairperson, ***with the assistance of the Commission. Based on the shortlist***, the Council shall adopt a decision to appoint the Chairperson, ***after confirmation by the European Parliament.***

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

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

“For the purpose of the evaluation referred to in the first subparagraph, the tasks of the Chairperson shall be carried out by the Vice-Chairperson.

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

(d) *paragraph 5 is replaced by the following:*

“5. The Chairperson may be removed from office only on serious grounds. He or she may only be removed so by the European Parliament following a decision of the Council, adopted following consultation of the Board of Supervisors.”;

(42) *Article 49 is amended as follows:*

(a) *the title is replaced by the following:*

“Independence of the Chairperson”

(b) *paragraph 1 is replaced by the following:*

“Without prejudice to the role of the Board of Supervisors in relation to the tasks of the Chairperson, the Chairperson shall neither seek nor take instructions from the Union institutions or bodies, from any government or from any other public or private body.”;

(43) *in Article 49a, the sole paragraph is replaced by the following:*

“The Chairperson shall make public all meetings held *with external stakeholders within a period of two weeks following the meeting* and any hospitality received. Expenses shall be recorded publicly in accordance with the Staff Regulations.”;

(44) Article 50 is deleted;

■

(45) Article 54 is amended as follows:

(a) *paragraph 2 is amended as follows:*

■

(i) *the introductory part is replaced by the following:*

“2. The Joint Committee shall serve as a forum in which the Authority shall cooperate regularly and closely to ensure cross-sectoral consistency, while considering sectoral specificities, with

the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), in particular regarding:”;

(ii) the first indent is replaced by the following:

“– financial conglomerates and, where required by Union law, prudential consolidation,”;

(iii) the fifth and sixth indents are replaced by the following:

“– cybersecurity,

– information and best practice exchange with the ESRB and the ESAs,”;

(iv) the following indents are added:

“– retail financial services and depositor, consumer and investor protection issues;

– advice by the Committee established in Article 1(6).”;

(b) the following paragraph is inserted:

“The Joint Committee may assist the Commission in assessing the conditions and the technical specifications and procedures for ensuring secure and efficient inter-connection of the centralised automated mechanisms pursuant to the report as referred in article 32a(5) of Directive (EU) 2015/849 as well as in the effective interconnection of the national registers under Directive (EU) 2015/849.”;

(c) paragraph 3 is replaced by the following:

“3. The Joint Committee shall have a dedicated staff provided by the ESAs that shall act as a permanent secretariat. The Authority shall contribute adequate resources to administrative, infrastructure and operational expenses.”;

(46) Article 55 is amended as follows:

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

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

3. *The Chairperson of the Joint Committee shall be appointed on an annual rotational basis from among the Chairpersons of the ESAs. The Chairperson of the Joint Committee shall be the second Vice-Chair of the ESRB.”;*

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

“The Joint Committee shall meet at least once every three months.”;

(c) *the following paragraph is added:*

“4a. The Chairperson of the Authority shall regularly inform the Board of Supervisors on positions taken in the meetings of the Joint Committee.”;

(47) *Articles 56 and Articles 57 are replaced by the following:*

“Article 56

Joint positions and common acts

Within the scope of its tasks in Chapter II, and in particular with respect to the implementation of Directive 2002/87/EC, where relevant, the Authority shall reach joint positions by consensus with the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and with the European Supervisory Authority (European Securities and Markets Authority), as appropriate.

Where required by Union law, measures pursuant to Articles 10 to 16 and decisions pursuant to Article 17, 18 and 19 of this Regulation in relation to the application of Directive 2002/87/EC and of any other Union acts referred to in Article 1(2) that also fall within the area of competence of the European Supervisory Authority (European Insurance and Occupational Pensions

Authority) or the European Supervisory Authority (European Securities and Markets Authority) shall be adopted, in parallel, by the Authority, the European Supervisory Authority (European Insurance and Occupational Pensions Authority), and the European Supervisory Authority (European Securities and Markets Authority).

Article 57

Sub-Committees

- 1. The Joint Committee may establish sub-committees for the purposes of preparing draft joint positions and common acts to the Joint Committee.*
- 2. The Sub-Committee shall be composed of the individuals referred to in Article 55(1), and one high-level representative from the current staff of the relevant competent authority from each Member State.*
- 3. The Sub-Committees shall elect a Chairperson from among representatives of the relevant competent authorities, who shall also be an observer in the Joint Committee.*
- 3a. For the purposes of Article 56, a Sub-Committee on financial conglomerates to the Joint Committee shall be established.*
- 4. The Joint Committee shall make public on its website all established Sub-Committees including their mandates and a list of their members with their respective functions in the Sub-Committee.”;*

(48) Article 58 is amended as follows:

(a) paragraph 1 is replaced by the following:

“1. The Board of Appeal of the European Supervisory Authorities is hereby established.”

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

“2. The Board of Appeal shall be composed of six members and six alternates, who shall be individuals of a high repute with a proven record of relevant knowledge of Union law and of having international professional experience, to a sufficiently high level in the fields of

banking, insurance, occupational pensions, securities markets or other financial services, excluding current staff of the competent authorities or other national or Union institutions involved in the activities of the Authority and members of the Banking Stakeholder Group. Members shall be nationals of a Member State and shall have a thorough knowledge of at least two official languages of the Union. The Board of Appeal shall have sufficient legal expertise to provide expert legal advice on the legality, including proportionality of the Authority's exercise of its powers.”;

(c) paragraph 3 is replaced by the following:

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

After having received the shortlist, the European Parliament may invite candidates for members and alternates to make a statement before it and answer any questions put by its Members before they are appointed.

The European Parliament may invite the members of the Board of Appeal to make a statement before it and answer any questions put by its Members whenever so requested, to the exclusion of statements, questions or answers pertaining to individual cases decided by or pending before the Board of Appeal.”;

(49) in Article 59, *paragraph 2* is replaced by the following:

“2. Members of the Board of Appeal *and staff of the Authority providing operational and secretariat support* shall not *take part in any appeal proceedings in which they have any personal interest, if they have previously been involved as representatives of one of the parties to the proceedings, or if they have participated in the decision under appeal.*”;

(50) in Article 60, paragraph 2 is replaced by the following:

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

2. *The appeal, together with a statement of grounds, shall be filed in writing at the Authority within three months of the date of notification of the decision to the person concerned, or, in the absence of a notification, of the day on which the Authority published its decision.*

The Board of Appeal shall decide upon the appeal within three months after the appeal has been lodged.”;

(51) *the following article is inserted:*

“Article 60a

Any natural or legal person, may send a reasoned advice to the Commission if they are of the opinion that the Authority has exceeded its competence including its proportionality when acting under Articles 16 and 16b, and that is of direct and individual concern to that person.”;

(52) in Article 62(1), the following points are added:

■

“(d) any voluntary contribution from Member States or observers *shall not be accepted if such acceptance would cast doubt on the independence and*

impartiality of the Authority. Voluntary contributions that constitute compensation for the cost of tasks delegated by a competent authority to the Authority shall not be considered to cast doubt on the independence of the latter.

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

■

(53) *Articles 63, 64 and 65 are* replaced by the following:

“Article 63

Establishment of the budget

1. Each year, the *Executive Director* shall draw up a provisional draft single programming document of the Authority for the three following financial years setting out the estimated revenue and expenditure, as well as information on staff, from its annual and multi-annual programming and shall forward it to the *Management* Board and the Board of Supervisors, together with the establishment plan.
- 1a. The Board *of Supervisors* shall, on the basis of the draft which has been approved by *Management* Board adopt the draft single programming document for the three following financial years.

- 1b. The ■ single programming document shall be transmitted by the **Management Board** to the Commission, the European Parliament and the Council **and the European Court of Auditors** by 31 January.
2. **Taking account** of the ■ single programming document, the Commission shall enter in the draft budget of the Union the estimates it deems necessary in respect of the establishment plan and the amount of the balancing contribution to be charged to the general budget of the Union in accordance with Articles 313 and 314 of the Treaty.
3. The budgetary authority shall adopt the establishment plan for the Authority. The budgetary authority shall authorise the appropriations for the balancing contribution to the Authority.
4. The budget of the Authority shall be adopted by the Board of Supervisors. It shall become final after the final adoption of the general budget of the Union. Where necessary, it shall be adjusted accordingly.
5. The **Management Board** shall, without delay, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of its budget, in particular any project relating to property, such as the rental or purchase of buildings.
- 5a. ***Without prejudice to Article 88 of Commission Delegated Regulation (EU) No 1271/2013, the budgetary authority shall authorise any project which may have significant financial or long term implications for the funding of the Authority's budget, in particular any project relating to property, such as the rental or purchase of buildings, including break clauses.***

Article 64

Implementation and control of the budget

1. The **Executive Director** shall act as authorising officer and shall implement the Authority's **annual** budget.
2. The Authority's accounting officer shall send **the** provisional accounts to the Commission's accounting officer and to the Court of Auditors by 1 March of

the following year. **Article 70 shall not preclude the Authority from providing to the European Court of Auditors any information requested by the Court that is within the Court's competence.**

3. The Authority's accounting officer shall send by 1 March of the following year the required accounting information for consolidation purposes to the accounting officer of the Commission, in the manner and format laid down by that accounting officer.
4. The Authority's accounting officer shall also send the report on budgetary and financial management to the members of the Board of Supervisors, the European Parliament, the Council and the Court of Auditors by 31 March of the following year.
5. After receiving the observations of the Court of Auditors on the provisional accounts of the Authority in accordance with Article **246** of the Financial Regulation, the Authority's accounting officer shall draw up the Authority's final accounts. The **Executive Director** shall send them to the Board of Supervisors, which shall deliver an opinion on these accounts.
6. The Authority's accounting officer shall send the final accounts, accompanied by the opinion of the Board of Supervisors, by 1 July of the following year to the accounting officer of the Commission, the European Parliament, the Council and the Court of Auditors.

The Authority's accounting officer shall also send by **15 June**, a reporting package to the Commission's accounting officer, in a standardised format as laid down by the Commission's accounting officer for consolidation purposes.

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

8. The **Executive Director** shall send the Court of Auditors a reply to the latter's observations by 30 September. He shall also send a copy of that reply to the **Management** Board and the Commission.
9. The **Executive Director** shall submit to the European Parliament, at the latter's request and as provided for in Article 165(3) of the Financial Regulation, any information necessary for the smooth application of the discharge procedure for the financial year in question.
10. The European Parliament, following a recommendation from the Council acting by qualified majority, shall, before 15 May of the year N + 2, grant a discharge to the Authority for the implementation of the budget for the financial year N.

10a. The Authority shall provide a reasoned opinion on the position of the European Parliament and on any other observations made by the European Parliament provided in the discharge procedure.

Article 65

Financial rules

The financial rules applicable to the Authority shall be adopted by the **Management** Board after consulting the Commission. Those rules may not depart from Commission Delegated Regulation (EU) No 1271/2013¹ for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 unless the specific operational needs for the functioning of the Authority so require and only with the prior agreement of the Commission.”;

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

¹ Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 328, 7.12.2013, p. 42).

“1. For the purposes of combating fraud, corruption and any other illegal activity, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council¹ shall apply to the Authority without any restriction.”;

(55) Article 68 is amended as follows:

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

- “1. The Staff Regulations, the Conditions of Employment of Other Servants and the rules adopted jointly by the Union institutions for the purpose of applying them shall apply to the staff of the Authority, including the full time members of *the Management* Board and its Chairperson.
2. The *Management* Board, in agreement with the Commission, shall adopt the necessary implementing measures, in accordance with the arrangements provided for in Article 110 of the Staff Regulations.”;

(b) paragraph 4 is replaced by the following

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

(56) Article 70 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

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

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

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

(c) the following paragraph is inserted:

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

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

(d) *paragraphs 3 and 4 are* replaced by the following:

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

That information shall be subject to the conditions of professional secrecy referred to in paragraphs 1 and 2. The Authority shall lay down in its internal rules of procedure the practical arrangements for implementing the confidentiality rules referred to in paragraphs 1 and 2.

4. *The Authority shall apply Commission Decision (EU, Euratom) 2015/444.”*

(57) *in* Article 71, *the sole paragraph* is replaced by the following:

“This Regulation shall be without prejudice to the obligations of Member States relating to their processing of personal data under Regulation (EU) 2016/679 or the obligations of the Authority relating to its processing of personal data under Regulation (EU) *No 2018/1725* (Data Protection Regulation for EU institutions and Bodies) when fulfilling its responsibilities.”

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

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

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

“2. The *Management* Board shall decide on the internal language arrangements for the Authority.”;

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

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

■

(61) Article 76 is replaced by the following:

“Article 76
Relationship with the CEBS

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

■

(62) *Article 81 is amended as follows:*

(a) *paragraph 1 is amended as follows:*

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

“1. By ... [24 months after the date of entry into force of this amending Regulation], and every 3 years thereafter, the Commission shall publish a general report on the experience acquired as a result of the operation of the Authority and the procedures laid down in this Regulation. That report shall evaluate, inter alia:”;

(ii) *in point (a), the the introductory sentence and point (i) are replaced by the following*

“(a) the effectiveness and convergence in supervisory practices reached by competent authorities:

(i) *the ■ independence of the competent authorities and convergence in standards equivalent to corporate governance;”;*

(iii) *the following points are inserted:*

“(fa) the functioning of the Joint Committee;

(fb) the obstacles or impact to prudential consolidation pursuant to Article 8;

(b) the following paragraphs are inserted:

“2a. As part of the general report referred to in paragraph 1 the Commission shall, after consulting all relevant authorities and stakeholders, conduct a comprehensive assessment on the application of Article 9c of this Regulation.

2c. The Commission shall, after consulting all relevant competent authorities and stakeholders, conduct a comprehensive assessment on the implementation, functioning and effectiveness of the specific tasks related to preventing and countering money laundering and terrorist financing and conferred to the Authority pursuant to Articles 1(2), 4(1), 8(1)(l), 9a, 9b, 17 and 19 of this Regulation. As part of its assessment, the Commission shall analyse the interaction between those tasks and the tasks conferred on the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority, as well as the legal practicality of the powers of the Authority to the extent they allow the Authority to base action on national law that transposes Directives or exercise options. In addition, the Commission shall, based on a comprehensive cost and benefit analysis as well as following the objective of ensuring consistency, efficiency and effectiveness, thoroughly investigate the possibility of conferring specific tasks with regard to the prevention and countering of money-laundering and terrorist financing to an existing or new dedicated EU-wide agency.”

Article 2

Amendments to Regulation (EU) No 1094/2010

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

(1) Article 1 is amended as follows:

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

“2. The Authority shall act within the powers conferred by this Regulation and within the scope of Directive 2009/138/EC with the exception of Title IV thereof, of Directives 2002/92/EC, 2003/41/EC, 2002/87/EC, and, to the extent that those acts apply to insurance undertakings, reinsurance undertakings, institutions for occupational retirement provision and insurance intermediaries, within the relevant parts of Directive 2002/65/EC, including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority.

The Authority shall contribute to the work of the European Banking Authority established by Regulation (EU) No 1093/2010 related to the prevention of the use of the financial system for the purpose of money laundering or terrorist financing in accordance with Directive (EU) 2015/849 and Regulation (EU) No 1093/2010. The Authority shall decide on its agreement in accordance with Article 9a(8) of Regulation (EU) No 1093/2010.

3. *The Authority shall also act in the field of activities of insurance undertakings, reinsurance undertakings, financial conglomerates, institutions for occupational retirement provision and insurance intermediaries, in relation to issues not directly covered in the acts referred to in paragraph 2, including matters of corporate governance, auditing and financial reporting, taking into account sustainable business models and the integration of environmental, social and governance related factors, provided that such actions by the Authority are necessary to ensure the effective and consistent application of those acts.”;*

(b) paragraph 6 is amended as follows:

(i) the introductory part of the first subparagraph is replaced by the following:

“6. The objective of the Authority shall be to protect the public interest by contributing to the short, medium and long-term stability and effectiveness of the financial system, for the Union economy, its citizens and businesses. The Authority shall, within its respective competences, contribute to:”;

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

“(e) ensuring the taking of risks related to insurance, reinsurance and occupational pensions activities is appropriately regulated and supervised; █

(f) enhancing customer and consumer protection;”;

(iii) in the first subparagraph, the following point is added: _

“(fa) enhancing supervisory convergence across the internal market.”;

(iv) the second subparagraph is replaced by the following:

“For those purposes, the Authority shall contribute to ensuring the consistent, efficient and effective application of the acts referred to in paragraph 2, foster supervisory convergence, and provide opinions in accordance with Article 16a to the European Parliament, the Council, and the Commission █ .”;

(v) the fourth subparagraph is replaced by the following:

“When carrying out its tasks, the Authority shall act independently, objectively and in a non-discriminatory and transparent manner, in the interests of the Union as a whole and shall respect, wherever relevant, the principle of proportionality. The Authority shall be accountable and act with integrity and shall ensure that all stakeholders are treated fairly.”

(vi) the following subparagraphs are added:

“The content and form of the Authority’s actions and measures, in particular guidelines, recommendations, opinions, questions and answers, draft regulatory standards and draft implementing standards, shall fully respect the applicable legal provisions of this Regulation and of the acts referred to in paragraph 2. To the extent permitted and relevant under those provisions, such action shall, in accordance with the principle of proportionality, take due account of the nature, scale and complexity of the risks inherent in the business of an institution, undertaking, other subject or financial activity, that is affected by the Authority's action.

The Authority shall establish, as an integral part of the Authority, a Committee advising the Authority as to how, in full compliance with applicable rules, measures should take account of specific differences prevailing in the sector, pertaining to the nature, scale and complexity of risks, to business models and practice as well as to the size of financial institutions and markets to the extent that such factors are relevant under the rules considered.”;

(2) *Article 2 is amended as follows:*

(a) *paragraph 1 is replaced by the following:*

“1. The Authority shall form part of a European System of Financial Supervision (ESFS). The main objective of the ESFS shall be to ensure that the rules applicable to the financial sector are adequately implemented to preserve financial stability and to ensure confidence in the financial system as a whole and effective and sufficient protection for the customers of financial services.”;

(b) *paragraph 4 is replaced by the following:*

“4. In accordance with the principle of sincere cooperation pursuant to Article 4(3) of the Treaty on European Union, the parties to the ESFS shall cooperate with trust and full mutual respect, in particular in

ensuring the flow of appropriate and reliable information among them and from the Authority to the European Parliament, the Council and the Commission.”;

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

“References ■ in this Regulation *to supervision* include *all relevant* activities, *without prejudice to national competences*, of all competent authorities to be carried out pursuant to the legislative acts referred to in Article 1(2).”;

(3) *Article 3 is replaced by the following:*

“Article 3

Accountability of the Authorities

- 1. The Authorities referred to in Article 2(2)(a) to (d) shall be accountable to the European Parliament and the Council.*
- 2. In accordance with Article 226 TFEU, the Authority shall fully cooperate with the European Parliament during any investigations carried out under that Article.*
- 3. The Board of Supervisors shall adopt an annual report on the activities of the Authority, including on the performance of the Chairperson’s duties, and shall transmit that report to the European Parliament, the Council, the Commission, the Court of Auditors and the European Economic and Social Committee by 15 June each year. The report shall be made public.*
- 4. At the request of the European Parliament, the Chairperson shall participate in a hearing before the European Parliament on the performance of the Authority. A hearing shall take place at least annually. The Chairperson shall make a statement before the European Parliament and answer any questions put by its members, whenever so requested.*

5. *The Chairperson shall report in writing on the activities of the Authority to the European Parliament when requested and at least 15 days before making the statement referred to in paragraph 4.*
6. *In addition to the information referred to in Articles 11 to 18 and Articles 20 and 33, the report shall also include any relevant information requested by the European Parliament on an ad hoc basis.*
7. *The Authority shall reply orally or in writing to questions addressed to it by the European Parliament or by the Council within five weeks of receipt of a question.*
8. *Upon request, the Chairperson shall hold confidential oral discussions behind closed doors with the Chair, Vice-Chairs and Coordinators of the competent committee of the European Parliament. All participants shall respect requirements of professional secrecy.*
10. *Without prejudice to its confidentiality obligations stemming from participation in international fora, the Authority shall inform the European Parliament upon request about its contribution to a united, common, consistent and effective representation of the Union's interests in such international fora.”;*

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

“(ii) with regard to *Directive* 2002/65/EC **■**, the authorities competent for ensuring compliance with the requirements of those Directives by financial institutions **■**”;

■

(5) *Article 7 is replaced by the following:*

“1. The Authority shall have its seat in Frankfurt am Main.

1a. The location of the seat of the Authority shall not affect the Authority's execution of its tasks and powers, the organisation of its governance structure, the operation of its main organisation, or the main financing

of its activities, while allowing, where applicable, for the sharing with Union agencies of administrative support services and facility management services which are not related to the core activities of the Authority”;

(6) Article 8 is amended as follows:

(a) paragraph 1 is amended as follows:

i) *point (a) is replaced by the following:*

“(a) based on the legislative acts referred to in Article 1(2), to contribute to the establishment of high-quality common regulatory and supervisory standards and practices, in particular by ■ developing ■ draft regulatory and implementing technical standards, guidelines, recommendations, and other measures, including opinions;”;

ii) *the following point is inserted:*

“(aa) to develop and maintain an up-to-date Union supervisory handbook on the supervision of financial institutions in the Union which sets out supervisory best practices and high quality methodologies and processes and takes into account, inter alia, changing business practices and business models and the size of financial institutions and markets;”;

iii) *point (b) is replaced by the following:*

“(b) to contribute to the consistent application of legally binding Union acts, in particular by contributing to a common supervisory culture, ensuring consistent, efficient and effective application of the acts referred to in Article 1(2), preventing regulatory arbitrage, fostering and monitoring supervisory independence, mediating and settling disagreements between competent authorities, ensuring

effective and consistent supervision of financial institutions, ensuring a coherent functioning of colleges of supervisors and taking actions, inter alia, in emergency situations;”;

iv) points (e) *to (h)* are replaced by the following:

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

(f) to monitor and assess market developments in the area of its competence including where relevant, developments relating to trends in *insurance, reinsurance and occupational pensions*, in particular, to households and SMEs and in innovative financial services *duly considering developments relating to environmental, social and governance related factors*;

(g) *to undertake market analyses ■ to inform the discharge of the Authority’s functions*;

(h) to foster, *where relevant*, the protection of policyholders, *pension* scheme members and beneficiaries, consumers and investors, *in particular with regards to short-comings in a cross-border context and taking related risks into account*,”;

v) *the following point is inserted after point (i)*:

“(ia) *to contribute to the establishment of a common Union financial data strategy*,”;

vi) *the following point is inserted after point (k)*:

“(ka) *to publish on its website, and to update regularly, all regulatory technical standards, implementing technical standards, guidelines, recommendations and Q&As for*

each legislative act referred to in Article 1(2), including overviews that concern the state of play of ongoing work and the planned timing of the adoption of draft regulatory technical standards and draft implementing technical standards. “;

vii) point (l) is deleted;

(b) *the following paragraph* is inserted :

“1a. When carrying out its tasks in accordance with this Regulation, the authority shall **l** :

(a) *use the full powers available to it;*

(b) *with due regard to the objective to ensure the safety and soundness of financial institutions, take fully into account the different types, business models and sizes of financial institutions;*

(c) *take account of technological innovation, innovative and sustainable business models **such as cooperatives and mutuals**, and the integration of environmental, social and governance related factors.”;*

(c) paragraph 2 *is* amended *as follows*:

i) *the following* point is inserted:

“(ca) issue recommendations as laid down in Articles 29a **l** .”;

ii) the following point is inserted:

“(da) *issue warnings in accordance with Article 9(3);*”;

iii) *point (g) is replaced by the following*:

“(g) *issue opinions to the European Parliament, the Council, or the Commission as provided for in Article 16a;*”;

iv) *the following points are inserted:*

“(ga) issue answers to questions, as laid down in Article 16b;

(gb) take action in accordance with Article 9a;”;

■

(d) the following paragraph ■ is added:

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

The open public consultations referred to in Articles 10, 15, 16 and 16a shall be conducted as widely as possible to ensure an inclusive approach towards all interested parties and shall allow reasonable time for stakeholders to respond. The Authority shall publish a summary of the input received from stakeholders and an overview on how information and views gathered from the consultation were used in a draft regulatory technical standard and a draft implementing technical standard.”;

(7) Article 9 is amended as follows:

(a) *paragraph 1 is amended as follows:*

(i) *point (a) is replaced by the following:*

“(a) collecting, analysing and reporting on consumer trends, such as the development of costs and charges of retail financial services and products in Member States;”;

(ii) the following points are inserted:

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

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

■

(iii) the following points are added:

“(da) contributing to a level playing field in the single market where consumers and other users of financial services have fair access to financial services and products;

(dc) coordinating mystery shopping activities of competent authorities, if applicable.”;

(b) paragraph 2 is replaced by the following

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

(c) paragraphs 4 and 5 are replaced by the following:

“4. The Authority shall establish, as an integral part of the Authority, a Committee on **consumer protection and** financial innovation, which brings together all relevant competent ■ authorities and authorities responsible for consumer protection with a view to **enhancing consumer protection and** achieving a coordinated approach to the regulatory and supervisory treatment of new or innovative financial activities and providing advice for the Authority to present to the European Parliament, the Council and the Commission. **The Authority shall closely cooperate with the European Data Protection Board to avoid duplication, inconsistencies and legal uncertainty in the sphere of data protection.**

The Authority may also *invite* national data protection authorities as *observers in* the Committee.

5. *The Authority may temporarily prohibit or restrict the marketing, distribution or sale of certain financial products, instruments or activities that have the potential to cause significant financial damage to customers or consumers or threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union in the cases specified and under the conditions laid down in the legislative acts referred to in Article 1(2) or, if so required, in the case of an emergency situation in accordance with and under the conditions laid down in Article 18.*

The Authority shall review the decision referred to in the first subparagraph at appropriate intervals and at least every 6 months. Following at least two consecutive renewals and based on proper analysis in order to assess the impact on the consumer, the Authority may decide on the annual renewal of the prohibition.

A Member State may request the Authority to reconsider its decision. In that case, the Authority shall decide, in accordance with the procedure set out in the second subparagraph of Article 44(1), whether it maintains its decision.

The Authority may also assess the need to prohibit or restrict certain types of financial activity or practice and, where there is such a need, inform the Commission and the competent authorities in order to facilitate the adoption of any such prohibition or restriction.”;

- (8) *the following article is inserted:*

“Article 9a

No action letters

1. *The Authority shall take the measures referred to in paragraph 2 only in exceptional circumstances when it considers that the application of one of*

the acts referred to in Article 1(2) or of any delegated or implementing acts based on those acts is liable to raise significant issues, for one of the following reasons:

- (a) the Authority considers that provisions contained in such act may directly conflict with another relevant act,*
- (b) where the act is one of the acts referred to in Article 1(2), the absence of delegated or implementing acts that would complement or specify the act in question would raise legitimate doubts concerning the legal consequences flowing from the act or its proper application,*
- (c) the absence of guidelines and recommendations as referred to in Article 16 would raise practical difficulties concerning the application of the relevant act.*

- 2. In the cases referred to in paragraph 1, the Authority shall address to the competent authorities and the Commission by letter a detailed account of the issues it considers to exist.*

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

In the case referred to in point (c) of paragraph 1, the Authority shall evaluate as soon as possible the need to adopt relevant guidelines or recommendations under Article 16.

The Authority shall act expeditiously, notably with a view to contributing to the prevention of issues as referred to in paragraph 1, whenever possible.

- 3. Where necessary in the cases referred to in paragraph 1, and pending the adoption and application of new measures following the steps referred to in paragraph 2, the Authority shall issue opinions regarding specific provisions of the acts referred to in paragraph 1 with a view to furthering consistent,*

efficient and effective supervisory and enforcement practices, and common, uniform and consistent application of Union law.

4. *Where, on the basis of information received, notably from competent authorities, the Authority considers that acts referred to in Article 1(2) or any delegated or implementing acts based on those acts raises significant exceptional issues pertaining to*

- *market confidence,*
- *customer or investor protection,*
- *the orderly functioning and integrity of financial markets or commodity markets, or*
- *the stability of the whole or part of the financial system in the Union,*

it shall immediately address to the competent authorities and the Commission by letter a detailed account of the issues it considers to exist. The Authority may provide the Commission with an opinion on any action it considers appropriate, in form of new legislation or new delegated or implementing acts, and on the urgency that, in the Authority's judgment, is attached to the issue. The Authority shall make its opinion public.”;

(9) *Article 10 is amended as follows:*

(a) *paragraph 1 is amended as follows:*

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

“1. *Where the European Parliament and the Council delegate power to the Commission to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU in order to ensure consistent harmonisation in the areas specifically set out in the legislative acts referred to in Article 1(2), the Authority may develop draft regulatory technical standards. The Authority shall submit its draft regulatory technical standards to the Commission for endorsement. At the same time, the Authority*

shall forward those draft regulatory technical standards for information to the European Parliament and to the Council.”;

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

“Before submitting them to the Commission, the Authority shall conduct open public consultations on draft regulatory technical standards and analyse the potential related costs and benefits, unless such consultations and analyses are strongly disproportionate in relation to the scope and impact of the draft regulatory technical standards concerned or in relation to the particular urgency of the matter. The Authority shall also request the advice of the the relevant Stakeholder Group referred to in Article 37.”;

(iii) the fourth subparagraph is deleted;

(iv) the fifth and the sixth subparagraphs are replaced by the following:

“Within 3 months of receipt of a draft regulatory technical standard, the Commission shall decide whether to endorse it. The Commission shall inform the European Parliament and the Council in due time that the decision regarding endorsement cannot be taken within the 3 months period. The Commission may endorse the draft regulatory technical standards in part only, or with amendments, where the Union’s interests so require.

Where the Commission intends not to endorse a draft regulatory technical standard or to endorse it in part or with amendments, it shall send the draft regulatory technical standard back to the Authority, explaining why it does not endorse it, or, as the case may be, explaining the reasons for its amendments, and shall send a copy of its letter to the European Parliament and to the Council. Within a period of 6 weeks, the Authority may amend the draft regulatory technical standard on the basis of the Commission’s proposed amendments and resubmit it in the form of a formal opinion to the Commission. The Authority shall send

a copy of its formal opinion to the European Parliament and to the Council.”;

(b) paragraph 2 is replaced by the following:

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

(c) in paragraph 3, the second subparagraph is replaced by the following:

“The Commission shall conduct open public consultations on draft regulatory technical standards and analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft regulatory technical standards concerned or in relation to the particular urgency of the matter. The Commission shall also request the advice of the relevant Stakeholder Group referred to in Article 37.”;

(d) paragraph 4 is replaced by the following:

“4. The regulatory technical standards shall be adopted by means of regulations or decisions. The words ‘regulatory technical standard’ shall appear in their title. They shall be published in the Official Journal of the European Union and shall enter into force on the date stated therein.”;

(10) in Article 13(1), the second subparagraph is deleted;

(11) Article 15 is amended as follows:

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

“1. Where the European Parliament and the Council confer implementing powers on the Commission to adopt implementing technical standards by means of implementing acts pursuant to Article 291 TFEU, in the areas specifically set out in the legislative acts referred to in Article 1(2), the Authority may develop draft implementing technical

standards. Implementing technical standards shall be technical, shall not imply strategic decisions or policy choices and their content shall be to determine the conditions of application of those acts. The Authority shall submit its draft implementing technical standards to the Commission for endorsement. At the same time, the Authority shall forward those technical standards for information to the European Parliament and to the Council.

Before submitting draft implementing technical standards to the Commission, the Authority shall conduct open public consultations and shall analyse the potential, related costs and benefits, unless such consultations and analyses are strongly disproportionate in relation to the scope and impact of the draft implementing technical standards concerned or in relation to the particular urgency of the matter. The Authority shall also request the advice of the relevant Stakeholder Group referred to in Article 37.

Within 3 months of receipt of a draft implementing technical standard, the Commission shall decide whether to endorse it. The Commission may extend that period by 1 month. The Commission shall inform the European Parliament and the Council in due time that the decision regarding endorsement cannot be taken within the 3 months period. The Commission may endorse the draft implementing technical standard in part only, or with amendments, where the Union's interests so require.

Where the Commission intends not to endorse a draft implementing technical standard or intends to endorse it in part or with amendments, it shall send it back to the Authority explaining why it does not intend to endorse it, or, as the case may be, explaining the reasons for its amendments and shall send a copy of its letter to the European Parliament and to the Council. Within a period of 6 weeks, the Authority may amend the draft implementing technical standard on the basis of the Commission's proposed amendments and resubmit it in the form of a formal opinion to the Commission. The Authority shall send

a copy of its formal opinion to the European Parliament and to the Council.

If, on the expiry of the six-week period referred to in the fifth subparagraph, the Authority has not submitted an amended draft implementing technical standard, or has submitted a draft implementing technical standard that is not amended in a way consistent with the Commission's proposed amendments, the Commission may adopt the implementing technical standard with the amendments it considers relevant or reject it.

The Commission shall not change the content of a draft implementing technical standard prepared by the Authority without prior coordination with the Authority, as set out in this Article.

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

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

*“The Commission shall conduct open public consultations on draft implementing technical standards and analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft implementing technical standards concerned or in relation to the particular urgency of the matter. The Commission shall also request the **■** advice of the relevant Stakeholder Group referred to in Article 37.”;*

(c) paragraph 4 is replaced by the following:

“4. The implementing technical standards shall be adopted by means of regulations or decisions. The words ‘implementing technical standard’ shall appear in their title. They shall be published in the Official

Journal of the European Union and shall enter into force on the date stated therein.”;

(12) Article 16 is amended as follows:

(a) *paragraph 1 is replaced by the following:*

“1. The Authority shall, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of Union law, issue guidelines ■ addressed to all competent authorities or all financial institutions and issue recommendations to one or more competent authorities or to one or more financial institutions.

Guidelines and recommendations shall be in accordance with the empowerments conferred in the legislative acts referred to in Article 1(2) or in this Article.”;

(b) *paragraph 2 is replaced by the following:*

“2. The Authority shall, *where appropriate*, conduct open public consultations regarding the guidelines and recommendations which it issues and analyse the related potential costs and benefits of issuing such guidelines and recommendations. Those consultations and analyses shall be proportionate in relation to the scope, nature and impact of the guidelines or recommendations. The Authority shall, *where appropriate*, also request ■ advice from the Insurance and Reinsurance Stakeholder Group and of the Occupational Pensions Stakeholder Group *referred to in Article 37. Where the Authority does not conduct open public consultations or does not request advice from the Insurance and Reinsurance Stakeholder Group and of the Occupational Pensions Stakeholder Group, the Authority shall provide reasons.”;*

(c) *the following paragraph is inserted:*

“2c. Guidelines and recommendations shall not merely refer to, or reproduce, elements of legislative acts. Before issuing a new guideline

or recommendation, the Authority shall first review existing guidelines and recommendations, in order to avoid any duplication.”;

(d) paragraph 4 is replaced by the following:

“4. In the report referred to in Article 43(5) the Authority shall inform the European Parliament, the Council and the Commission of the guidelines and recommendations that have been issued.”;

I

(13) the following articles are inserted:

“Article 16a

Opinions

- 1. The Authority may, upon a request from the European Parliament, the Council or the Commission, or on its own initiative, provide opinions to the European Parliament, the Council and the Commission on all issues related to its area of competence.*
- 2. The request referred to in paragraph 1 may include a public consultation or a technical analysis.*
- 3. With regard to prudential assessment of mergers and acquisitions falling within the scope of Directive 2009/138/EC and which, according to that Directive, require consultation between competent authorities from two or more Member States, the Authority may, on application of one of the competent authorities concerned, issue and publish an opinion on a prudential assessment, except in relation to the criteria in Article 59(1)(e) of Directive 2009/138/EC. The opinion shall be issued promptly and in any event before the end of the assessment period in accordance with Directive 2009/138/EC.*
- 4. The Authority may, upon a request from the European Parliament, the Council or the Commission provide technical advice to the European*

Parliament, the Council and the Commission in the areas set out in the legislative acts referred to in Article 1(2).

Article 16b

Questions and answers

- 1. Without prejudice to paragraph 5, questions relating to the practical application or implementation of the provisions of legislative acts referred to in Article 1(2), associated delegated and implementing acts, and guidelines and recommendations, adopted under these legislative acts, may be submitted by any natural or legal person, including competent authorities and EU institutions, to the Authority in any official language of the Union.*

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

Before publishing answers to admissible questions, the Authority may seek further clarification on questions asked by the natural or legal person referred to in paragraph 1.

- 2. Answers by the Authority to questions referred to in paragraph 1 are non-binding. The answer shall be made available at least in the language it was submitted in.*
- 3. The Authority shall establish and maintain a web based tool available on its website for the submission of questions and the timely publication of all questions upon receipt as well as all answers to all admissible questions pursuant to paragraph 1, unless such publication is in conflict with the legitimate interest of those persons or would involve risks to the stability of the financial system. The Authority may reject questions it does not intend to answer. Rejected questions shall be published by the Authority on its website for a period of two months.*
- 4. Three voting members of the Board of Supervisors may request the Board of Supervisors to decide pursuant to Article 44 whether to address the issue of the admissible question referred to in paragraph 1 in guidelines pursuant to in Article 16, to request opinions or advice from the Stakeholder Group*

referred to in Article 37, to review questions and answers at appropriate intervals, to conduct open public consultations or to analyse potential related costs and benefits. Such consultations and analyses shall be proportionate in relation to the scope, nature and impact of the draft questions and answers concerned or in relation to the particular urgency of the matter. When involving the Stakeholder Group referred to in Article 37, due care of confidentiality shall be guaranteed.

5. *The Authority shall forward questions that require the interpretation of Union law to the European Commission. The Authority shall publish any answers provided by the European Commission.”;*

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

- (a) *in paragraph 2, the first subparagraph is replaced by the following:*

“2. Upon a request from one or more competent authorities, the European Parliament, the Council, the Commission, the relevant Stakeholder Group, or on its own initiative, including when this is based on well substantiated information from natural or legal persons, and after having informed the competent authority concerned, the Authority shall respond to the request by outlining how it intends to proceed with the case and if appropriate, investigate the alleged breach or non-application of Union law.”;

- (b) *in paragraph 2 ■ , the following subparagraphs are added:*

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

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

■

(c) *the following paragraph is inserted:*

“2a. Without prejudice to powers under this Regulation and before issuing a recommendation as set out in paragraph 3, where it deems this to be appropriate to resolve a breach of Union law, the Authority shall engage with the competent authority concerned in an attempt to reach agreement on actions necessary for the competent authority to comply with Union law.”;

(d) *paragraph 6 is replaced by the following:*

“6. Without prejudice to the powers of the Commission pursuant to Article 258 TFEU, where a competent authority does not comply with the formal opinion referred to in paragraph 4 within the period of time specified therein, and where it is necessary to remedy in a timely manner such non compliance in order to maintain or restore neutral conditions of competition in the market or ensure the orderly functioning and integrity of the financial system, the Authority may, where the relevant requirements of the acts referred to in Article 1(2) are directly applicable to financial institutions, adopt an individual decision addressed to a financial institution requiring the necessary action to comply with its obligations under Union law including the cessation of any practice.”;

(15) *the following article is inserted:*

“Article 17a

Protection of reporting persons

1. The Authority shall have in place dedicated reporting channels for receiving and handling information provided by a natural or legal person reporting on actual or potential breaches, abuse of law, or non-application of Union law.

2. *The natural or legal persons reporting through those channels shall be protected against retaliation in accordance with Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law, where applicable [COM/2018/218/final].*
3. *The Authority shall ensure that all information may be submitted anonymously or confidentially, and safely. Where the Authority deems that the submitted information contains evidence or significant indications of material breaches, it shall provide feedback to the reporting person.”;*

(16) in Article 18, paragraph 3 is replaced by the following:

- “3. *Where the Council has adopted a decision pursuant to paragraph 2, and in exceptional circumstances where coordinated action by competent authorities is necessary to respond to adverse developments which may seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union or customer and consumer protection, the Authority may adopt individual decisions requiring competent authorities to take the necessary action in accordance with the legislation referred to in Article 1(2) to address any such developments by ensuring that financial institutions and competent authorities satisfy the requirements laid down in that legislation.”;*

(17) Article 19 is amended as follows:

- (a) paragraph 1 is replaced by the following:

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

- (a) at the request of one or more of the competent authorities concerned where a competent authority disagrees with the procedure or content of an action, proposed action, or inactivity of another competent authority;
- (b) *in cases where the acts referred to in Article 1(2) provide that the Authority may assist* on its own initiative where on the basis of objective *reasons*, disagreement can be determined between competent authorities.

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

- (b) the following paragraphs **■** are inserted:

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

- (a) where a time limit for reaching an agreement between competent authorities has been provided for in the Union acts, referred to in Article 1(2), and the earlier of the following occurs:
 - (i) the time limit has expired; *or*
 - (ii) *at least two* competent authorities concerned conclude that a disagreement exists, on the basis of objective *reasons*;
- (b) where no time limit for reaching an agreement between competent authorities has been provided in the Union acts referred to in Article 1(2), and the earlier of the following occurs:
 - (i) *at least two* competent authorities concerned *conclude* that a disagreement exists on the basis of objective *reasons*; or
 - (ii) two months have elapsed from the date of receipt by a competent authority of a request from another competent authority to take certain action in order to comply with *those* Union *acts* and the requested authority has not yet adopted a decision that satisfies the request.

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

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

(c) paragraph 3 is replaced by the following:

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

(d) the following paragraph is inserted:

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

(e) paragraph 4 is replaced by the following:

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

(18) Article 21 is amended as follows:

(a) paragraph 1 is replaced by the following:

“1. The Authority shall promote and monitor, *within the scope of its powers*, the efficient, effective and consistent functioning of the colleges of supervisors *where established by legislative acts* referred to in *Article 1(2)* and foster *consistency* and coherence of the application of Union law among the colleges of supervisors. With the objective of converging supervisory best practices, *the Authority shall promote joint supervisory*

plans and joint examinations, and staff from the Authority shall have full participation rights in the colleges of supervisors and, as such, shall be able to participate in the activities of the colleges of supervisors, including on-site examinations, carried out jointly by two or more competent authorities.”;

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

“2. *The Authority shall lead in ensuring a consistent and coherent functioning of colleges of supervisors for cross-border institutions across the Union, taking account of the systemic risk posed by financial institutions referred to in Article 23, and shall, where appropriate, convene a meeting of a college.”;*

(c) *in the third subparagraph of paragraph 2 , point (b) is replaced by the following:*

“(b) *initiate and coordinate Union-wide stress tests in accordance with Article 32 to assess the resilience of financial institutions, in particular the systemic risk posed by financial institutions as referred to in Article 23, to adverse market developments, and evaluate the potential for systemic risk to increase in situations of stress, ensuring that a consistent methodology is applied at the national level to such tests and, where appropriate, address a recommendation to the competent authority to correct issues identified in the stress test, including to conduct specific assessments. It may request competent authorities to carry out on-site inspections, and may participate in such on-site inspections, in order to ensure comparability and reliability of methods, practices and results of Union-wide assessment;”;*

(d) *paragraph 3 is replaced by the following:*

“3. *The Authority may develop draft regulatory and implementing technical standards in accordance with the empowerments laid down in the legislative acts referred to in Article 1(2) and in accordance with*

the procedure laid down in Articles 10 to 15 to ensure uniform conditions of application with respect to the provisions regarding the operational functioning of colleges of supervisors and issue guidelines and recommendations adopted under Article 16 to promote convergence in supervisory functioning and best practices adopted by the colleges of supervisors.”;

■

(19) Article 22 is amended as follows:

(a) *the title is replaced by the following:*

“General provisions on systemic risks”;

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

“2. The Authority shall, in collaboration with the ESRB, and in accordance with Article 23, develop a common approach to the identification and measurement of systemic importance, including quantitative and qualitative indicators as appropriate.”;

(c) *paragraph 4 is replaced by the following:*

“4. Upon a request from one or more competent authorities, the European Parliament, the Council or the Commission, or on its own initiative, the Authority may conduct an inquiry into a particular type of financial institution or type of product or type of conduct in order to assess potential threats to the stability of the financial system or to the protection of customers or consumers.

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

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

(20) *in Article 23, paragraph 1 is replaced by the following:*

“1. The Authority shall, in consultation with the ESRB, develop criteria for the identification and measurement of systemic risk and an adequate stress-testing regime which includes an evaluation of the potential for systemic risk posed by or to financial market participants to increase in situations of stress, including potential environmental-related systemic risk. The financial market participants that may pose a systemic risk shall be subject to strengthened supervision, and where necessary, the recovery and resolution procedures referred to in Article 25.”;

(21) Article 29 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the following ***points are*** inserted:

“(aa) establishing Union Strategic Supervisory priorities in accordance with Article 29a;

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

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

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

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

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

(iv) the following point is added:

“(ea) putting in place a monitoring system to assess material environmental, social and governance-related risks, taking into account the COP 21 Paris agreement;”;

(b) paragraph 2 is replaced by the following:

“2. The Authority may, as appropriate, develop new practical instruments and convergence tools to promote common supervisory approaches and practices.

For the purpose of establishing a common supervisory culture, the Authority shall develop and maintain an up-to-date Union supervisory handbook on the supervision of financial institutions in the Union, taking ***duly*** into account ***nature, scale and complexity of risks***, █ business practices, █ business models ***and size*** of financial institutions. The Union supervisory handbook shall set out █ best practices and shall specify high quality methodologies and processes.

The Authority shall, where appropriate, conduct open public consultations regarding tools and instruments referred to in paragraph 2 and analyse the related potential costs and benefits. The Authority shall, where appropriate, also request advice from the relevant Stakeholder Group.”;

(22) the following Article **■** is inserted:

“Article 29a

Union Strategic Supervisory Priorities

At least every three years and by 31 March following a debate in the Board of Supervisors and taking into account contributions received from competent authorities, existing work by the EU Institutions and analysis, warnings and recommendations published by the ESRB, the Authority shall identify up to two priorities of Union wide relevance which shall reflect future developments and trends. Competent authorities shall take the priorities highlighted by the Authority into account when drawing up their work programmes and shall notify accordingly. The Authority shall discuss the relevant activities by the competent authorities in the following year and draw conclusions. The Authority shall discuss possible follow up which may include inter alia guidelines, recommendations to competent authorities and peer reviews in the respective area.

The priorities of Union wide relevance identified by the Authority shall not prevent national competent authorities from applying national best practices, acting on additional national priorities and developments, and shall consider national specificities.”;

(23) Article 30 is replaced by the following:

“Article 30

Peer reviews of competent authorities

■

1. The Authority shall periodically conduct *peer* reviews of some or all of the activities of competent authorities, to further strengthen consistency *and*

effectiveness in supervisory outcomes. To that end, the Authority shall develop methods to allow for objective assessment and comparison between the competent authorities reviewed. When ***planning and*** conducting *peer* reviews, existing information and evaluations already made with regard to the competent authority concerned, including ***any relevant*** information provided to the Authority in accordance with Article 35, and any ***relevant*** information from stakeholders shall be taken into account.

■

- 1a. For the purposes of this Article, the Authority shall establish ***ad hoc peer review committees, which shall be*** composed of staff from the Authority ***and members of the competent authorities. The peer review committees shall be chaired by a staff member from the Authority. The Chairperson, after consulting the Management Board and following an open call for participation, shall propose the chair and the members of a peer review team, which shall be approved by the Board of Supervisors. The proposal shall be considered adopted unless the Board of Supervisors adopts a decision to reject it within 10 days.***
2. The *peer* review shall include an assessment of, but shall not be limited to:
 - (a) the adequacy of resources, the degree of independence, and governance arrangements of the competent authority, with particular regard to the effective application of the Union acts referred to in Article 1(2) and the capacity to respond to market developments;
 - (b) ***the effectiveness and the degree of convergence reached in the application of Union law and in supervisory practice, including regulatory technical standards and implementing technical standards, guidelines and recommendations adopted pursuant to Articles 10 to 16, and the extent to which the supervisory practice achieves the objectives set out in Union law;***

- (c) *the application of best practices developed by some competent authorities which might be of benefit for other competent authorities to adopt;*
- (d) *the effectiveness and the degree of convergence reached with regard to the enforcement of the provisions adopted in the implementation of Union law, including the administrative measures and sanctions imposed against persons responsible where those provisions have not been complied with.*

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

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

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

█

- 3a. The Authority shall submit an opinion to the Commission where, having regard to the outcome of the *peer* review or to any other information acquired by the

Authority in carrying out its tasks, it considers that further harmonisation of *Union* rules applicable to financial institutions or competent authorities would be necessary *from the Union perspective*.

- 3b.** *The Authority shall undertake a follow up report after two years of the publication of the peer review report. The follow up report shall be prepared by the peer review committee and adopted by the Board of Supervisors in accordance with Article 44(4). When drafting that report, the peer review committee shall consult the Management Board in order to maintain consistency with other follow up reports. The follow up report shall include an assessment of, but shall not be limited to, the adequacy and effectiveness of the actions undertaken by the competent authorities that are subject to the peer review in response to the follow up measures of the peer review report.*
- 4.** *The peer review committee shall after consulting the competent authorities subject to the peer review, identify the reasoned main findings of the peer review. The Authority shall publish the reasoned main findings of the peer review and of the follow-up report referred to in paragraph 3b. Where the reasoned main findings of the Authority differ from those identified by the review committee, the Authority shall transmit, on a confidential basis, the review committee's findings to the European Parliament, the Council and the Commission. Where a competent authority that is subject to the review is concerned that the publication of the Authority's main findings would pose risks to the stability of the financial system, it shall have the possibility to refer the matter to the Board of Supervisors. The Board of Supervisors may decide not to publish those extracts.*
- 5.** *For the purposes of this Article, the Management Board shall make a proposal for a peer review work plan for the coming two years, which shall inter alia reflect the lessons learnt from the past peer review processes and the discussions of the coordination group referred to in Art 29(1)aa. The peer review work plan shall constitute a separate part of the annual and multiannual working programme. It shall be made public. In case of urgency or unforeseen events, the Authority may decide to carry out additional peer reviews.”;*

(24) Article 31 is amended as follows:

(a) *the first paragraph is replaced by the following:*

“1. The Authority shall fulfil a general coordination role between competent authorities, in particular in situations where adverse developments could potentially jeopardise the orderly functioning and integrity of financial markets or the stability of the financial system or in situations of cross-border business potentially affecting the protection of policyholders, pension scheme members and beneficiaries in the Union.”;

(b) *the second paragraph is amended as follows:*

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

“2. The Authority shall promote a coordinated Union response, inter alia, by:”

(ii) *point (e) is replaced by the following:*

“(e) taking appropriate measures in case of developments which may jeopardise the functioning of the financial markets with a view to the coordination of actions undertaken by relevant competent authorities;”;

(iii) *the following point is inserted:*

“(ea) taking appropriate measures to coordinate actions undertaken by relevant competent authorities with a view to facilitating the entry into the market of actors or products relying on technological innovation;”;

(c) *the following paragraph is added:*

“3. In order to contribute to the establishment of a common European approach towards technological innovation the Authority shall promote supervisory convergence, with the support, where relevant, of the

Committee on consumer protection and financial innovation, facilitating entry into the market of actors or products relying on technological innovation, in particular through the exchange of information and best practices. Where appropriate, the Authority may adopt guidelines or recommendations in accordance with Article 16.”;

■

(25) *the following Article is inserted:*

“Article 31b

Information exchange on fitness and propriety

The Authority shall, together with EBA and EIOPA, establish a system for the exchange of information relevant to the assessment of the fitness and propriety of holders of qualifying holdings, directors and key function holders of financial institutions by competent authorities in accordance with the acts referred to in Article 1(2).”;

(26) Article 32 is amended as follows:

(a) *the title is replaced by the following:*

“Assessment of market developments, including stress tests”;

(b) *paragraph 1 is replaced by the following:*

“1. The Authority shall monitor and assess market developments in the area of its competence and, where necessary, inform the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Securities and Markets Authority), the ESRB and the European Parliament, the Council and the Commission about the relevant micro-prudential trends, potential risks and vulnerabilities. The Authority shall include in its assessments an ■ analysis in which financial institutions operate and an assessment of the impact of potential market developments on such institutions.”

(c) *paragraph 2 is amended as follows:*

(i) *the introductory part is replaced by the following:*

“2. The Authority shall initiate and coordinate Union-wide assessments of the resilience of financial institutions to adverse market developments. To that end it shall develop the following :”;

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

“(a) common methodologies for assessing the effect of economic scenarios on an institution's financial position taking into account inter alia risks stemming from adverse environmental developments;”;

(iii) *the following point is inserted:*

“(aa) common methodologies for identifying financial institutions to be included in Union-wide assessments;”;

(iv) *the following point is added:*

“(ca) common methodologies for assessing the effect of environmental risks on the financial stability of financial institutions.”;

(v) *the following subparagraph is added:*

“For the purposes of this paragraph, the Authority shall cooperate with the ESRB.”;

■

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

“3. Without prejudice to the tasks of the ESRB set out in Regulation (EU) No 1092/2010, the Authority shall, once a year, and more frequently where necessary, provide assessments to the European Parliament, the Council, the Commission and the ESRB of trends, potential risks and vulnerabilities in its area of competence, in combination with the indicators referred to in Article 22(2).”;

(27) Article 33 is *replaced by the following*:

“Article 33

International relations including equivalence

1. ***Without prejudice to the respective competences of the Member States and the Union institutions, the Authority may develop contacts and enter into administrative arrangements with regulatory and supervisory authorities, international organisations and the administrations of third countries. Those arrangements shall not create legal obligations in respect of the Union and its Member States nor shall they prevent Member States and their competent authorities from concluding bilateral or multilateral arrangements with those third countries.***

Where a third country, in accordance with a delegated act in force adopted by the Commission pursuant to Article 9 of Directive (EU) 2015/849 of the European Parliament and of the Council, is on the list of jurisdictions which have strategic deficiencies in their national anti-money laundering and countering the financing of terrorism regimes that pose significant threats to the financial system of the Union, the Authority shall not conclude administrative arrangements with the regulatory and supervisory authorities of that third country. This shall not preclude other forms of cooperation between the Authority and the respective third country authorities with a view to reduce threats to the financial system of the Union.

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

- 2a. The Authority shall, ***on an ongoing basis***, monitor ***with a particular focus on their implications for financial stability, market integrity, policy holder protection and the functioning of the internal market***, relevant regulatory and supervisory developments and enforcement practices and market developments

in third countries for which equivalence decisions have been adopted by the Commission pursuant to the acts referred to in Article 1(2). ■

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

The Authority may liaise with relevant authorities in third countries. The Authority shall submit a confidential report to the European Parliament, the Council, the Commission and the EBA and ESMA summarising its findings of its monitoring activities of all equivalent third countries. The report shall focus in particular on implications for financial stability, market integrity, policy holder protection or the functioning of the internal market.

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

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

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

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

■

2ca. The Authority may develop model administrative arrangements, with a view to establishing consistent, efficient and effective supervisory practices within the Union and to strengthening international supervisory coordination. **■** The competent authorities shall make every effort to follow such model arrangements.

In the report referred to in Article 43(5), the Authority shall include information on the administrative arrangements agreed upon with supervisory authorities, international organisations or administrations in third countries, the assistance provided by the Authority to the Commission in preparing

equivalence decisions and the monitoring activity pursued by the Authority in accordance with paragraph 2a.

- 3a. *The Authority shall, within its powers pursuant to this Regulation and to the legislative acts referred to in Article 1(2), contribute to the united, common, consistent and effective representation of the Union's interests in the international fora.*"

■

(28) ■ Article 36 *is amended as follows:*

- (a) *paragraph 3 is deleted;*
(b) *paragraphs 4 and 5 are replaced by the following:*

“4. *On receipt of a warning or recommendation from the ESRB addressed to the Authority, the ■ Authority shall discuss that warning or recommendation at the next meeting of the Board of Supervisors or, where appropriate, earlier, in order to assess the implications of, and possible follow-up to, such a warning or recommendation for the fulfilment of its tasks.*

It shall decide, by the relevant decision-making procedure, on any actions to be taken in accordance with the powers conferred upon it by this Regulation for addressing the issues identified in the warnings and recommendations.

If the Authority does not act on a warning or recommendation, it shall explain to the ESRB its reasons for not doing so. The ESRB shall inform the European Parliament thereof in accordance with Article 19(5) of Regulation (EU) No 1092/2010. The ESRB shall also inform the Council thereof.

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

Where the addressee intends not to follow the recommendation of the ESRB, it shall inform and discuss with the Board of Supervisors its reasons for not acting.

Where the competent authority, in accordance with Article 17(1) of Regulation (EU) No 1092/2010, informs the European Parliament, the Council, the Commission and the ESRB of the actions it has undertaken in response to a recommendation of the ESRB, it shall take due account of the views of the Board of Supervisors.”

(c) *paragraph 6 is deleted;*

(29) Article 37 is amended as follows:

(a) *paragraphs 2, 3 and 4 are replaced by the following:*

“2. The Insurance and Reinsurance Stakeholder Group shall be composed of 30 members, 13 members representing in balanced proportions insurance and reinsurance undertakings and insurance intermediaries operating in the Union, three of whom shall represent cooperative and mutual insurers or reinsurers, 13 members representing their employees’ representatives, as well as consumers, users of insurance and reinsurance services, representatives of SMEs and representatives of relevant professional associations and four of its members shall be independent top-ranking academics. █

3. The Occupational Pensions Stakeholder Group shall be composed of 30 members, 13 members representing in balanced proportions institutions for occupational retirement provision operating in the Union, 13 members representing representatives of employees, representatives of beneficiaries, representatives of SMEs and representatives of relevant professional associations and four of its members shall be independent top-ranking academics.

4. The members of the Stakeholder Groups shall be appointed by the Board of Supervisors, following an open and transparent selection procedure. In making its decision, the Board of Supervisors shall, to the extent possible, ensure an appropriate reflection of diversity of the

insurance, reinsurance and occupational pensions sectors, geographical and gender balance and representation of stakeholders across the Union. Members of the Stakeholder Groups shall be selected according to their qualifications, skills, relevant knowledge and proven expertise. ”;

(b) the following paragraph is inserted:

“4a. Members of the relevant Stakeholder Group shall elect the Chair of that Group from among its Members. The position of Chair shall be held for a period of two years.

The European Parliament may invite the Chair of any Stakeholder Group to make a statement before it and answer any questions put by its Members whenever so requested.”;

(c) in paragraphs 5, the first subparagraph is replaced by the following:

“5. The Authority shall provide all necessary information subject to professional secrecy as set out in Article 70 and ensure adequate secretarial support for the Stakeholder Groups. Adequate compensation shall be provided to members of the Stakeholder Groups representing non-profit organisations, excluding industry representatives. This compensation shall take into account the members' preparatory and follow-up work and shall be at least equivalent to the reimbursement rates of officials pursuant to Title V, Chapter 1, Section 2 of the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 (Staff Regulations). The Stakeholder Groups may establish working groups on technical issues. Members of the Insurance and Reinsurance Stakeholder Group and of the Occupational Pensions Stakeholder Group shall serve for a period of four years, following which a new selection procedure shall take place.”;

(d) paragraph 6 is replaced by the following:

“6. The Stakeholder Groups may submit opinions and advice to the Authority on any issue related to the tasks of the Authority with

particular focus on the tasks set out in Articles 10 to 16, and Articles 29, 30 and 32.

Where members of the *Stakeholder Groups* cannot *agree on* advice, *one third of its members or the members* representing one group of stakeholders shall be permitted to issue a **■** separate advice.

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

(e) paragraph 8 is replaced by the following:

7. The Authority shall make public the advice of the Stakeholder Groups, the separate advice of its Members, and the results of its consultations as well as an overview on how information and views gathered from the consultations have been taken into account.”;

(30) Article 39 is replaced by the following:

“Article 39

Decision-making procedures

“1. The Authority shall act in accordance with paragraphs 2 to 6 when adopting decisions *pursuant to* Articles 17, 18 and 19.

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

(31) Article 40 is amended as follows

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

“(a) the Chairperson **■ ;”;**

(b) the following paragraph is added:

“6. Where the national public authority referred to in paragraph 1(b) is not responsible for the enforcement of consumer protection rules, the member of the Board of Supervisors referred to in that point may decide to invite a representative from the Member State’s consumer protection

authority, who shall be non-voting. In the case where the responsibility for consumer protection is shared by several authorities in a Member State, those authorities shall agree on a common representative.”;

(32) *Articles 41 and 42* are replaced by the following:

“Article 41

Internal committees

1. The Board of Supervisors *on its own initiative or at the request from the Chairperson* may establish internal committees for specific tasks attributed to it. *Upon request from the Management Board or from the Chairperson, the Board of Supervisors may establish internal committees for specific tasks attributed to the Management Board.* The Board of Supervisors may provide for the delegation of certain clearly defined tasks and decisions to internal committees, to the *Management* Board or to the Chairperson.

1a. *For the purposes of Article 17, the Chairperson shall propose a decision to convene an independent panel, to be adopted by the Board of Supervisors. The independent panel shall consist of the Chairperson of the Board of Supervisors and six other members, to be proposed by the Chairperson after consulting the Management Board and following an open call for participation. The six other members shall not be representatives of the competent authority alleged to have breached Union law and shall have neither any interest in the matter nor direct links to the competent authority concerned.*

Each member of the panel shall have one vote.

Decisions of the panel shall be taken where at least four members vote in favour.

2. *For the purposes of Article 19 the Chairperson shall propose a decision to convene an independent panel, to be adopted by the Board of Supervisors. The independent panel shall consist of the Chairperson of the Board of Supervisors and six other members, to be proposed by the Chairperson after consulting the Management Board and following an open call for participation. The six other members shall not be representatives of the*

competent authorities party to the disagreement and who have neither any interest in the conflict nor direct links to the competent authorities concerned.

Each member of the panel shall have one vote.

Decisions of the panel shall be taken where at least four members vote in favour.

- 2a. For the purposes of conducting the inquiry provided for in Article 22(4) first subparagraph, the Chairperson shall be also able to propose a decision to launch the inquiry and to convene an independent panel, to be adopted by the Board of Supervisors. The independent panel shall consist of the Chairperson of the Board of Supervisors and six other members, to be proposed by the Chairperson after consulting the Management Board and following an open call for participation.*

Each member of the panel shall have one vote.

Decisions of the panel shall be taken where at least four members vote in favour.

- 3. The panels referred to in paragraphs 1a and 2 of this Article or the Chairperson shall propose decisions under Article 17, or Article 19, for final adoption by the Board of Supervisors. A panel referred to in paragraph 2a of this Article shall present the outcome of the inquiry conducted pursuant to Article 22(4) first subparagraph to the Board of Supervisors.”*
- 4. The Board of Supervisors shall adopt rules of procedure for the panels referred to in this Article.*

Article 42

Independence of the Board of Supervisors

- 1. When carrying out the tasks conferred upon them by this Regulation the █ members of the Board of Supervisors █ shall act independently and objectively in the sole interest of the Union as a whole and shall neither seek*

nor take instructions from Union institutions or bodies, from any government or from any other public or private body.

2. *Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence the members of the Board of Supervisors in the performance of their tasks.*
3. *Before any meeting which they are to attend, Members of the Board of Supervisors, the Chairperson as well as non-voting representatives and observers participating in Board meetings shall accurately and completely declare the absence or existence of any interest which might be considered prejudicial to their independence in relation to any items on the agenda, and shall abstain from participating in the discussion of and voting upon such points.*
4. *The Board of Supervisors shall lay down, in its rules of procedure, the practical arrangements for the rule on declaration of interest referred to in paragraph 3 and for the prevention and the management of conflict of interest.”;*

(33) Article 43 is amended as follows:

(a) paragraph 1 is replaced by the following:

“1. The Board of Supervisors shall give guidance to the work of the Authority *and shall be in charge of taking the decisions referred to in Chapter II. The Board of Supervisors shall adopt the opinions, recommendations, guidelines and decisions of the Authority, and issue the advice referred to in Chapter II, based on a proposal of the relevant internal committee, panel, Chairperson, or of the Management Board, as applicable.”;*

(b) paragraphs 2 and 3 are deleted;

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

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

(d) paragraph 5 is replaced by the following

“5. The Board of Supervisors shall adopt, on the basis of a proposal by the **Management** Board, the annual report on the activities of the Authority, including on the performance of the Chairperson’s duties, ■ and shall transmit that report to the European Parliament, the Council, the Commission, the Court of Auditors and the European Economic and Social Committee by 15 June each year. The report shall be made public.”;

(e) paragraph 8 *is replaced by the following:*

“8. ***The Board of Supervisors shall exercise disciplinary authority over the Chairperson and the Executive Director. It may remove the Executive Director from office in accordance with Article 51(5).***” ;

(34) *the following Article is inserted:*

Article 43a

Transparency of decisions adopted by the Board of Supervisors

Notwithstanding Article 70, within at most six weeks from the date of a meeting of the Board of Supervisors, the Authority shall, at the minimum, provide the European Parliament with a comprehensive and meaningful record of the proceedings of that meeting of the Board of Supervisors that enables a full understanding of the discussions, including an annotated list of decisions. The record of the proceedings shall not reflect discussions within the Board of Supervisors relating to individual financial institutions, unless otherwise provided for in Article 75(3) or in the acts referred to in Article 1(2).”;

(35) Article 44 is amended as follows:

(a) *paragraph 1 is replaced by the following:*

“1. Decisions of the Board of Supervisors shall be taken by a simple majority of its members. Each **voting** member shall have one vote.

With regard to the acts specified in Articles 10 to 16 and measures and decisions adopted under the third subparagraph of Article 9(5) and Chapter VI and by way of derogation from the first subparagraph of this paragraph, the Board of Supervisors shall take decisions on the basis of a qualified majority of its members, as defined in Article 16(4) of the Treaty on European Union and in Article 3 of the Protocol (No 36) on transitional provisions.

The Chairperson shall not vote on the decisions referred to in the previous subparagraph.

With regard to the composition of the panels in accordance with Article 41(1a), (2) and (2a), and the members of the peer review team referred to in Article 30(1a), the Board of Supervisors, when considering the proposals by the Chairperson, shall strive for consensus. In the absence of consensus, decisions of the Board of Supervisors shall be taken by a majority of three quarters of its voting members. Each voting member shall have one vote.

With regard to decisions adopted under Article 18(3) and (4), and by way of derogation from the first subparagraph of this paragraph, the Board of Supervisors shall take decisions on the basis of a simple majority of its voting members, which shall include a simple majority of its members from competent authorities of participating Member States and a simple majority of its members from competent authorities of non-participating Member States.”

b) *paragraph 4 is replaced by the following:*

“4. *With regard to the decisions in accordance with Article 17, Article 19 and Article 30 the Board of Supervisors shall vote on the proposed decisions in a written procedure. The voting members of the Board of*

Supervisors shall have eight working days to vote. Each voting member shall have one vote. The proposed decision shall be considered adopted unless a simple majority of voting members of the Board of Supervisors objects. Abstentions shall not be counted as approvals or as objections, and shall not be considered when calculating the number of votes cast. If three voting members of the Board of Supervisors object to the written procedure, the draft decision shall be discussed and decided on by the Board of Supervisors in accordance with the procedure set out in paragraph 1.

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

c) *the following paragraph is added:*

“4a. The Authority's Chairperson shall have the prerogative to call a vote at any time. Without prejudice to that power and to the effectiveness of the Authority's decision-making procedures, the Board of Supervisors of the Authority shall strive for consensus when taking its decisions.”;

■

(36) Article 45 is replaced by the following:

“ Article 45

Composition

1. The *Management* Board shall be composed of the Chairperson and *six* members *of the Board of Supervisors, elected by and from the voting members of the Board of Supervisors.*

Other than the Chairperson, each member of the Management Board shall have an alternate, who may replace him if he is prevented from attending.

2. *The term of office of the members elected by the Board of Supervisors shall be two-and-a-half years. That term may be extended once. The composition*

of the Management Board shall be gender balanced and proportionate and shall reflect the Union as a whole. Mandates shall be overlapping and an appropriate rotating arrangement shall apply.

3. *Meetings of the Management Board shall be convened by the Chairperson at his own initiative or at the request of at least a third of its members, and shall be chaired by the Chairperson. The Management Board shall meet prior to every meeting of the Board of Supervisors and as often as the Management Board deems necessary. It shall meet at least five times a year.*
4. *The members of the Management Board may, subject to the rules of procedure, be assisted by advisers or experts. The non-voting members, with the exception of the Executive Director, shall not attend any discussions within the Management Board relating to individual financial institutions.”;*

(37) the following *Articles are* inserted:

“Article 45a

Decision-making

1. Decisions by the *Management* Board shall be adopted by simple majority of its members *whilst striving for consensus*. Each member shall have one vote. *The Chairperson shall be a voting member.*

The Executive Director and a representative of the Commission shall participate in meetings of the Management Board without the right to vote. The representative of the Commission shall have the right to vote on matters referred to in Article 63.

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

Article 45c

Coordination Groups

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

the request of five members of the Board of Supervisors. All competent authorities shall participate in the coordination groups and shall provide in accordance with article 35 to the coordination groups the information necessary in order to allow the coordination groups to conduct their coordinating tasks in accordance with their mandate.

The work of the coordination groups shall be based on information provided by the competent authorities and any findings identified by the Authority.

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

When monitoring market developments that may be the focus of coordination groups, the Authority may request competent authorities in accordance with article 35 to provide information necessary to allow the Authority to perform its monitoring role.”;

(38) Article 46 is replaced by the following:

“Article 46

Independence of the Management Board

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

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

(39) Article 47 is replaced by the following:

“Article 47

Tasks

1. The **Management** Board shall ensure that the Authority carries out its mission and performs the tasks assigned to it in accordance with this Regulation. It shall take all necessary measures, notably the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Authority, in accordance with this Regulation.
2. The **Management** Board shall propose, for adoption by the Board of Supervisors, an annual and multi-annual work programme ■ .
3. The **Management** Board shall exercise its budgetary powers in accordance with Articles 63 and 64.

■

- 3a. The **Management Board may** examine, give an opinion and **make** proposals on all matters ■ .

4. The **Management** Board shall adopt the Authority's staff policy plan and, pursuant to Article 68(2), the necessary implementing measures of the Staff Regulations of Officials of the European Communities ('the Staff Regulations').
5. The **Management** Board shall adopt the special provisions on right of access to the documents of the Authority, in accordance with Article 72.
6. The **Management** Board shall propose an annual report on the activities of the Authority, including on the Chairperson's duties, ■ to the Board of Supervisors for approval.
7. The **Management** Board shall appoint and remove the members of the Board of Appeal in accordance with Article 58(3) and (5), ***taking duly into account a proposal by the Board of Supervisors.***
8. The members of the **Management** Board shall make public all meetings held and hospitality received. Expenses shall be recorded publicly in accordance with the Staff Regulations.”;

■

(40) Article 48 is amended as follows:

- (a) in paragraph 1, the second subparagraph is replaced by the following:
“The Chairperson shall be responsible for preparing the work of the Board of Supervisors, ***including setting the agenda to be adopted by the Board of Supervisors, convening the meetings and tabling items for decision*** and shall chair the meetings of the Board of Supervisors.

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

The Chairperson may invite the Management Board to consider setting up a coordination group in accordance with Article 45c.”;

- (b) paragraph 2 is replaced by the following:

“2. The Chairperson shall be selected on the basis of merit, skills, knowledge of financial institutions and markets, ***and of experience relevant to financial supervision and regulation***, following an open ***selection procedure which shall respect the principle of gender balance and shall be published in the Official Journal of the European Union***. The ***Board of Supervisors*** shall ***draw up*** a shortlist of ***qualified*** candidates for the position of the Chairperson, ***with the assistance of the Commission***. ***Based on the shortlist, the Council shall adopt a decision to appoint the Chairperson, after confirmation by the European Parliament***.

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

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

“For the purpose of the evaluation referred to in the first subparagraph, the tasks of the Chairperson shall be carried out by the Vice-Chairperson.

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

(d) paragraph 5 is replaced by the following:

“5. The Chairperson may be removed from office only on serious grounds. He or she may only be removed so by the European Parliament following a decision of the Council, adopted following consultation of the Board of Supervisors.”;

(41) Article 49 is amended as follows:

(a) the title is replaced by the following:

“Independence of the Chairperson”;

(b) *paragraph 1 is replaced by the following:*

“Without prejudice to the role of the Board of Supervisors in relation to the tasks of the Chairperson, the Chairperson shall neither seek nor take instructions from the Union institutions or bodies, from any government or from any other public or private body.”;

(42) the following article is inserted:

“Article 49a

Expenses

The Chairperson shall make public all meetings held *with external stakeholders within a period of two weeks following the meeting* and any hospitality received. Expenses shall be recorded publicly in accordance with the Staff Regulations.”;

(43) *Article 50 is deleted;*

█

(44) Article 54 is amended as follows:

(a) paragraph 2 *is amended as follows:*

(i) *the introductory part is replaced by the following:*

“2. The Joint Committee shall serve as a forum in which the Authority shall cooperate regularly and closely to ensure cross-sectoral consistency, while considering sectoral specificities, with the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Securities and Markets Authority), in particular regarding:”;

(ii) *the first indent is replaced by the following:*

– *financial conglomerates and, where required by Union law, prudential consolidation,*

(iii) *the fifth indent shall be replaced by the following:*

“– *cybersecurity*,”;

(iv) *the sixth indent is replaced by the following:*

“– *information and best practice exchange with the ESRB and the ESAs*,”;

(v) *the following indents are added:*

“– *retail financial services and consumer and investor protection issues*;

– *advice by the Committee established in Article 1(6).*”;

(b) *the following paragraph is inserted:*

“2a. The Joint Committee *may assist the Commission in assessing the conditions and the technical specifications and procedures for ensuring secure and efficient inter-connection of the centralised automated mechanisms pursuant to the report as referred in article 32a(5) of Directive (EU) 2015/849 as well as in the effective interconnection of the national registers under Directive (EU) 2015/849.*”;

(c) *paragraph 3 is replaced by the following:*

“3. *The Joint Committee shall have a dedicated staff provided by the ESAs that shall act as a permanent secretariat. The Authority shall contribute adequate resources to administrative, infrastructure and operational expenses.*”;

(45) *Article 55 is amended as follows:*

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

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

3. *The Chairperson of the Joint Committee shall be appointed on an annual rotational basis from among the Chairpersons of the ESAs. The*

Chairperson of the Joint Committee shall be the second Vice-Chair of the ESRB.”;

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

“The Joint Committee shall meet at least once every three months.”;

(c) the following paragraph is added:

“4a. The Chairperson of the Authority shall regularly consult and inform the Board of Supervisors on any position taken in the meetings of the Joint Committee.”;

(46) Articles 56 and Articles 57 are replaced by the following:

“Article 56

Joint positions and common acts

Within the scope of its tasks in Chapter II, and in particular with respect to the implementation of Directive 2002/87/EC, where relevant, the Authority shall reach joint positions by consensus with the European Supervisory Authority (European Banking Authority) and with the European Supervisory Authority (European Securities and Markets Authority), as appropriate.

Where required by Union law, measures pursuant to Articles 10 to 16 and decisions pursuant to Articles 17, 18 and 19 of this Regulation in relation to the application of Directive 2002/87/EC and of any other Union acts referred to in Article 1(2) that also fall within the area of competence of the European Supervisory Authority (European Banking Authority) or the European Supervisory Authority (European Securities and Markets Authority) shall be adopted, in parallel, by the Authority, the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Securities and Markets Authority), as appropriate.

Article 57

Sub-Committees

1. The Joint Committee may establish sub-committees for the purposes of preparing draft joint positions and common acts to the Joint Committee.

2. *The Sub-Committee shall be composed of the individuals referred to in Article 55(1), and one high-level representative from the current staff of the relevant competent authority from each Member State.*
3. *The Sub-Committee shall elect a Chairperson from among representatives of the relevant competent authorities, who shall also be an observer in the Joint Committee.*
- 3a. *For the purposes of Article 56, a Sub-Committee on financial conglomerates to the Joint Committee shall be established.*
4. *The Joint Committee shall make public on its website all established Sub-Committees including their mandates and a list of their members with their respective functions in the Sub-Committee.”;*

(47) Article 58 is amended as follows:

(a) *paragraph 1 is replaced by the following:*

“1. The Board of Appeal of the European Supervisory Authorities is hereby established.”;

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

“2. The Board of Appeal shall be composed of six members and six alternates, who shall be individuals of a high repute with a proven record of relevant knowledge of Union law and of having international professional experience, to a sufficiently high level in the fields of banking, insurance, occupational pensions, securities markets or other financial services, excluding current staff of the competent authorities or other national or Union institutions involved in the activities of the Authority and members of the Insurance and Reinsurance Stakeholder Group and members of the Occupational Pensions Stakeholder Group. Members shall be nationals of a Member State and shall have a thorough knowledge of at least two official languages of the Union. The Board of Appeal shall have sufficient legal expertise to provide expert legal advice on the legality, including proportionality of the Authority’s exercise of its powers”;

(c) paragraph 3 is replaced by the following:

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

After having received the shortlist, the European Parliament may invite candidates for members and alternates to make a statement before it and answer any questions put by its Members before they are appointed.

The European Parliament may invite the members of the Board of Appeal to make a statement before it and answer any questions put by its Members whenever so requested, to the exclusion of statements, questions or answers pertaining to individual cases decided by or pending before the Board of Appeal.”;

(48) in Article 59, *paragraph 2* is replaced by the following:

“2. **Members of the Board of Appeal and staff of the Authority providing operational and secretariat support** shall not *take part in any appeal proceedings in which they have any personal interest, if they have previously been involved as representatives of one of the parties to the proceedings, or if they have participated in the decision under appeal.*”;

(49) in Article 60, *paragraphs 1 and 2* are replaced by the following:

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

2. *The appeal, together with a statement of grounds, shall be filed in writing at the Authority within three months of the date of notification of the decision*

to the person concerned, or, in the absence of a notification, of the day on which the Authority published its decision.

The Board of Appeal shall decide upon the appeal within three months after the appeal has been lodged.”;

(50) *the following article is inserted:*

“Article 60a

Any natural or legal person, may send a reasoned advice to the Commission if they are of the opinion that the Authority has exceeded its competence including its proportionality when acting under Articles 16 and 16b, and that is of direct and individual concern to that person.”;

(51) *in Article 62(1), the following points are added:*

■

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

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

■

(52) *Articles 63, 64 and 65 are replaced by the following:*

“Article 63

Establishment of the budget

1. Each year, the *Executive Director* shall draw up a provisional draft single programming document of the Authority for the three following financial years

setting out the estimated revenue and expenditure, as well as information on staff, from its annual and multi-annual programming and shall forward it to the **Management** Board and the Board of Supervisors, together with the establishment plan.

- 1a. The █ Board **of Supervisors** shall, on the basis of the draft which has been approved by the █ **Management Board**, adopt the draft single programming document for the three following financial years.
- 1b. The █ single programming document shall be transmitted by the **Management** Board to the Commission, the European Parliament and the Council **and the European Court of Auditors** by 31 January.
2. **Taking account** of the █ single programming document, the Commission shall enter in the draft budget of the Union the estimates it deems necessary in respect of the establishment plan and the amount of the balancing contribution to be charged to the general budget of the Union in accordance with Articles 313 and 314 of the Treaty.
3. The budgetary authority shall adopt the establishment plan for the Authority. The budgetary authority shall authorise the appropriations for the balancing contribution to the Authority.
4. The budget of the Authority shall be adopted by the Board of Supervisors. It shall become final after the final adoption of the general budget of the Union. Where necessary, it shall be adjusted accordingly.
5. The **Management** Board shall, without delay, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of its budget, in particular any project relating to property, such as the rental or purchase of buildings.

5a. Without prejudice to Article 88 of Commission Delegated Regulation (EU) No 1271/2013, the budgetary authority shall authorise any project which may have significant financial or long term implications for the funding of the Authority's budget, in particular any project relating to property, such as the rental or purchase of buildings, including break clauses.

Article 64

Implementation and control of the budget

1. The **Executive Director** shall act as authorising officer and shall implement the Authority's **annual** budget.
2. The Authority's accounting officer shall send **the** provisional accounts to the Commission's accounting officer and to the Court of Auditors by 1 March of the following year. **Article 70 shall not preclude the Authority from providing to the European Court of Auditors any information requested by the Court that is within the Court's competence.**
3. The Authority's accounting officer shall send by 1 March of the following year the required accounting information for consolidation purposes to the accounting officer of the Commission, in the manner and format laid down by that accounting officer.
4. The Authority's accounting officer shall send the report on budgetary and financial management to the members of the Board of Supervisors, the European Parliament, the Council and the Court of Auditors by 31 March of the following year.
5. After receiving the observations of the Court of Auditors on the provisional accounts of the Authority in accordance with Article **246** of the Financial Regulation, the Authority's accounting officer shall draw up the Authority's final accounts. The **Executive Director** shall send them to the Board of Supervisors, which shall deliver an opinion on these accounts.
6. The Authority's accounting officer shall send the final accounts, accompanied by the opinion of the Board of Supervisors, by 1 July of the following year, to

the accounting officer of the Commission, the European Parliament, the Council and the Court of Auditors.

The Authority's accounting officer shall also send by **15 June**, a reporting package to the Commission's accounting officer, in a standardised format as laid down by the Commission's accounting officer for consolidation purposes.

7. The final accounts shall be published in the Official Journal of the European Union by 15 November of the following year.
8. The **Executive Director** shall send the Court of Auditors a reply to the latter's observations by 30 September. He shall also send a copy of that reply to the **Management** Board and the Commission.
9. The **Executive Director** shall submit to the European Parliament, at the latter's request and as provided for in Article 165(3) of the Financial Regulation, any information necessary for the smooth application of the discharge procedure for the financial year in question.
10. The European Parliament, following a recommendation from the Council acting by qualified majority, shall, before 15 May of the year N + 2, grant a discharge to the Authority for the implementation of the budget for the financial year N.

10a. The Authority shall provide a reasoned opinion on the position of the European Parliament and on any other observations made by the European Parliament provided in the discharge procedure.

Article 65

Financial rules

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

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

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

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

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

(54) Article 68 is amended as follows:

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

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

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

(b) paragraph 4 is replaced by the following

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

(55) Article 70 is amended as follows:

(a) █ paragraph 1 is replaced by the following:

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

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

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

(c) the following paragraph is inserted:

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

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

(d) *paragraphs 3 and 4 are* replaced by the following:

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

That information shall be subject to the conditions of professional secrecy referred to in paragraphs 1 and 2. The Authority shall lay down in its internal rules of procedure the practical arrangements for implementing the confidentiality rules referred to in paragraphs 1 and 2.

4. *The Authority shall apply Commission Decision (EU, Euratom) 2015/444.”;*

(56) in Article 71, *the sole paragraph* is replaced by the following:

“This Regulation shall be without prejudice to the obligations of Member States relating to their processing of personal data under Regulation (EU) 2016/679 or the obligations of the Authority relating to its processing of personal data under Regulation (EU) **No 2018/1725** (Data Protection Regulation for EU institutions and Bodies) when fulfilling its responsibilities.”;

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

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

■

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

“The necessary arrangements concerning the accommodation to be provided for the Authority in the Member State where its seat is located and the facilities to be made

available by that Member State, as well as the specific rules applicable in that Member State to the staff of the Authority and members of their families shall be laid down in a Headquarters Agreement between the Authority and that Member State concluded after obtaining the approval of the *Management* Board.”;

■

(59) Article 76 is replaced by the following:

“Article 76

Relationship with the CEIOPS

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

■

(60) *Article 81 is amended as follows:*

(a) *paragraph 1 is amended as follows:*

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

“1. By ... [24 months after the date of entry into force of this Regulation], and every 3 years thereafter, the Commission shall publish a general report on the experience acquired as a result of the operation of the Authority and the procedures laid down in this Regulation. That report shall evaluate, inter alia:”;

(ii) *in point (a), the the introductory sentence and point (i) are replaced by the following:*

“(a) the effectiveness and convergence in supervisory practices reached by competent authorities:

(i) the independence of the competent authorities and convergence in standards equivalent to corporate governance;”;

(iii) the following point is inserted:

“(fa) the functioning of the Joint Committee.”;

(b) the following paragraph is inserted:

“2a. As part of the general report referred to in paragraph 1 the Commission shall, after consulting all relevant authorities and stakeholders, conduct a comprehensive assessment on the application of Article 9a of this Regulation.”.

Article 3

Amendments to Regulation (EU) No 1095/2010

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

(1) Article 1 is amended as follows:

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

“2. The Authority shall act within the powers conferred by this Regulation and within the scope of Directive 97/9/EC, Directive 98/26/EC, Directive 2001/34/EC, Directive 2002/47/EC, Directive 2003/71/EC, Directive 2004/39/EC, Directive 2004/109/EC, Directive 2009/65/EC, Directive 2011/61/EU of the European Parliament and of the Council¹, and Regulation (EC) No 1060/2009 and, to the extent that these acts apply to firms providing investment services or to collective investment

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

undertakings marketing their units or shares and the competent authorities that supervise them, within the relevant parts of, Directive 2002/87/EC, Directive 2002/65/EC, including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority.

The Authority shall contribute to the work of the European Banking Authority established by Regulation (EU) No 1093/2010 related to the prevention of the use of the financial system for the purpose of money laundering or terrorist financing in accordance with Directive (EU) 2015/849 and Regulation (EU) No 1093/2010. The Authority shall decide on its agreement in accordance with Article 9a(8) of Regulation (EU) No 1093/2010.

3. *The Authority shall also act in the field of activities of market participants in relation to issues not directly covered in the acts referred to in paragraph 2, including matters of corporate governance, auditing and financial reporting, taking into account sustainable business models and the integration of environmental, social and governance related factors, provided that such actions by the Authority are necessary to ensure the effective and consistent application of those acts. The Authority shall also take appropriate action in the context of take-over bids, clearing and settlement and derivative issues.”;*

- (b) the following paragraph is inserted:

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

- (c) *in paragraph 5, the introductory part of the first subparagraph is replaced by the following:*

“5. *The objective of the Authority shall be to protect the public interest by contributing to the short, medium and long-term stability and effectiveness of the financial system, for the Union economy, its*

citizens and businesses. The Authority shall, within its respective competences, contribute to:”;

(d) in the first subparagraph of paragraph 5, points (e) and (f) are replaced by the following:

“(e) ensuring the taking of investment and other risks are appropriately regulated and supervised; █

(f) enhancing customer and investor protection;”;

(e) in the first subparagraph of paragraph 5, the following point is added: _

“(fa) enhancing supervisory convergence across the internal market.”;

(f) in paragraph 5, the second subparagraph is replaced by the following:

“For those purposes, the Authority shall contribute to ensuring the consistent, efficient and effective application of the acts referred to in paragraph 2, foster supervisory convergence, and provide opinions in accordance with Article 16a to the European Parliament, the Council, and the Commission █ .”;

(g) in paragraph 5, the fourth subparagraph is replaced by the following:

“When carrying out its tasks, the Authority shall act independently, objectively and in a non-discriminatory and transparent manner, in the interests of the Union as a whole and shall respect, wherever relevant, the principle of proportionality. The Authority shall be accountable and act with integrity and shall ensure that all stakeholders are treated fairly.”;

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

“The content and form of the Authority’s actions and measures, in particular guidelines, recommendations, opinions, questions and answers, draft regulatory standards and draft implementing standards, shall fully respect the applicable legal provisions of this Regulation and of the acts referred to in paragraph 2. To the extent permitted and relevant under those provisions,

such action shall, in accordance with the principle of proportionality, take due account of the nature, scale and complexity of the risks inherent in the business of an institution, undertaking, other subject or financial activity, that is affected by the Authority's action.”;

(i) paragraph 6 is added:

“6. The Authority shall establish, as an integral part of the Authority, a Committee advising the Authority as to how, in full compliance with applicable rules, measures should take account of specific differences prevailing in the sector, pertaining to the nature, scale and complexity of risks, to business models and practice as well as to the size of financial institutions and markets to the extent that such factors are relevant under the rules considered.

”;

(2) Article 2 is amended as follows:

(a) paragraph 1 is replaced by the following:

“1. The Authority shall form part of a European System of Financial Supervision (ESFS). The main objective of the ESFS shall be to ensure that the rules applicable to the financial sector are adequately implemented to preserve financial stability and to ensure confidence in the financial system as a whole and effective and sufficient protection for the customers of financial services.”;

(b) paragraph 4 is replaced by the following:

“4. In accordance with the principle of sincere cooperation pursuant to Article 4(3) of the Treaty on European Union, the parties to the ESFS shall cooperate with trust and full mutual respect, in particular in ensuring the flow of appropriate and reliable information among them and from the Authority to the European Parliament, the Council and the Commission.”;

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

“References in this Regulation to supervision include all relevant activities, without prejudice to national competences, of all competent authorities to be carried out pursuant to the legislative acts referred to in Article 1(2).”;

(3) *Article 3 is replaced by the following:*

“Article 3

Accountability of the Authorities

- 1. The Authorities referred to in Article 2(2)(a) to (d) shall be accountable to the European Parliament and the Council.*
- 2. In accordance with Article 226 TFEU, the Authority shall fully cooperate with the European Parliament during any investigations carried out by under that Article.*
- 3. The Board of Supervisors shall adopt an annual report on the activities of the Authority, including on the performance of the Chairperson’s duties, and shall transmit that report to the European Parliament, the Council, the Commission, the Court of Auditors and the European Economic and Social Committee by 15 June each year. The report shall be made public.*
- 4. At the request of the European Parliament, the Chairperson shall participate in a hearing before the European Parliament on the performance of the Authority. A hearing shall take place at least annually. The Chairperson shall make a statement before the European Parliament and answer any questions put by its members, whenever so requested.*
- 5. The Chairperson shall report in writing on the activities of the Authority to the European Parliament when requested and at least 15 days before making the statement referred to in paragraph 4.*
- 6. In addition to the information referred to in Articles 11 to 18 and Articles 20 and 33, the report shall also include any relevant information requested by the European Parliament on an ad hoc basis.*

7. *The Authority shall reply orally or in writing to questions addressed to it by the European Parliament or by the Council within five weeks of receipt of a question.*
8. *Upon request, the Chairperson shall hold confidential oral discussions behind closed doors with the Chair, Vice-Chairs and Coordinators of the competent committee of the European Parliament. All participants shall respect requirements of professional secrecy.*
10. *Without prejudice to its confidentiality obligations stemming from participation in international fora, the Authority shall inform the European Parliament upon request about its contribution to a united, common, consistent and effective representation of the Union's interests in such international fora.”;*

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

“(ii) with regard to Directive 2002/65/EC, the authorities competent for ensuring compliance with the requirements of that Directive by firms providing investment services and by collective investment undertakings marketing their units or shares;”;

■

(5) *in Article 7, the following paragraph is added:*

“The location of the seat of the Authority shall not affect the Authority’s execution of its tasks and powers, the organisation of its governance structure, the operation of its main organisation, or the main financing of its activities, while allowing, where applicable, for the sharing with Union agencies of administrative support services and facility management services which are not related to the core activities of the Authority.”;

(6) Article 8 is amended as follows:

(a) paragraph 1 is amended as follows:

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

*“(a) based on the legislative acts referred to in Article 1(2), to contribute to the establishment of high-quality common regulatory and supervisory standards and practices, in particular **■** by developing **■** draft regulatory and implementing technical standards, guidelines, recommendations, and other measures, including opinions;”;*

ii) the following point is inserted:

*“(aa) to develop and maintain an up-to-date Union supervisory handbook on the supervision of financial market participants in the Union **which sets out supervisory best practices and high quality methodologies and processes and takes into account, inter alia, changing business practices and business models and the size of financial market participants and markets;**”;*

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

“(b) to contribute to the consistent application of legally binding Union acts, in particular by contributing to a common supervisory culture, ensuring consistent, efficient and effective application of the acts referred to in Article 1(2), preventing regulatory arbitrage, fostering and monitoring supervisory independence, mediating and settling disagreements between competent authorities, ensuring effective and consistent supervision of financial market participants, ensuring a coherent functioning of colleges of supervisors and taking actions, inter alia, in emergency situations;”;

iv) points (e) to (h) are replaced by the following:

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

(f) to monitor and assess market developments in the area of its competence including where relevant, developments relating to trends in innovative financial services *duly considering developments relating to environmental, social and governance related factors*;

(g) *to undertake market analyses* ■ *to inform the discharge of the Authority’s functions*;

(h) to foster, *where relevant*, consumer and investor protection, *in particular with regards to short-comings in a cross-border context and taking related risks into account*”;

v) *the following point is inserted after point (i):*

“(ib) *to contribute to the establishment of a common Union financial data strategy*”;

vi) *the following point is inserted after point (k):*

“(ka) *to publish on its website, and to update regularly, all regulatory technical standards, implementing technical standards, guidelines, recommendations and Q&As for each legislative act referred to in Article 1(2), including overviews that concern the state of play of ongoing work and the planned timing of the adoption of draft regulatory technical standards and draft implementing technical standards.*”;

vii) *point (l) is deleted:*

(b) *the following paragraph* is inserted :

“1a. When carrying out its tasks in accordance with this Regulation, the *Authority* shall:

(a) *use the full powers available to it; and*

(b) *with due regard to the objective to ensure the safety and soundness of financial market participants, take fully into account the different types, business models and sizes of financial market participants;*

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

(c) paragraph 2 *is amended as follows:*

i) *the following point* is inserted:

“(ca) *issue recommendations as laid down in Article 29a* █ *”;*

ii) *the following point* is inserted:

“(da) *issue warnings in accordance with Article 9(3);”;*

iii) *point (g)* is replaced by the following:

“(g) *issue opinions to the European Parliament, the Council, or the Commission as provided for in Article 16a;”;*

iv) *the following points* are inserted:

“(ga) *issue answers to questions, as laid down in Article 16b;*

(gb) *take-action in accordance with Article 9a;”*

█

(d) the following paragraph is added:

“3. When carrying out the tasks referred to in paragraph 1 and exercising the powers referred to in paragraph 2, the Authority *shall act based on and*

*within the limits of the legislative framework and shall have due regard to the principles of **proportionality, wherever relevant**, and better regulation, including the results of cost-benefit analyses produced in accordance with this Regulation.*

The open public consultations referred to in Articles 10, 15, 16 and 16a shall be conducted as widely as possible to ensure an inclusive approach towards all interested parties and shall allow reasonable time for stakeholders to respond. The Authority shall publish a summary of the input received from stakeholders and an overview on how information and views gathered from the consultations were used in a draft regulatory technical standard and a draft implementing technical standard.”;

(7) Article 9 is amended as follows:

(a) *paragraph 1 is amended as follows:*

(i) *point (a) is replaced by the following:*

“(a) collecting, analysing and reporting on consumer trends, such as the development of costs and charges of retail financial services and products in Member States;”;

(ii) the following points are inserted:

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

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

(iii) *the following points are added:*

“(da) contributing to a level playing field in the single market where consumers and other users of financial services have fair access to financial services and products;

(dc) coordinating mystery shopping activities of competent authorities, if applicable.”;

(b) paragraph 2 is replaced by the following

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

(c) **paragraphs 4 and 5** are replaced by the following:

“4. The Authority shall establish, as an integral part of the Authority, a Committee on **consumer protection and** financial innovation, which brings together all relevant competent **■** authorities and authorities responsible for consumer protection with a view to **enhancing consumer protection and** achieving a coordinated approach to the regulatory and supervisory treatment of new or innovative financial activities and providing advice for the Authority to present to the European Parliament, the Council and the Commission. **The Authority shall closely cooperate with the European Data Protection Board to avoid duplication, inconsistencies and legal uncertainty in the sphere of data protection.** The Authority may also **invite** national data protection authorities as **observers in** the Committee.

5. **The Authority may temporarily prohibit or restrict the marketing, distribution or sale of certain financial products, instruments or activities that have the potential to cause significant financial damage to customers or threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union in the cases specified and under the conditions laid down in the legislative acts referred to in Article 1(2) or, if so required, in the case of an emergency situation in accordance with and under the conditions laid down in Article 18.**

The Authority shall review the decision referred to in the first subparagraph at appropriate intervals and at least every 6 months. Following at least two consecutive renewals and based on proper analysis in order to assess the impact on the consumer, the Authority may decide on the annual renewal of the prohibition.

A Member State may request the Authority to reconsider its decision. In that case, the Authority shall decide, in accordance with the procedure set out in the second subparagraph of Article 44(1), whether it maintains its decision.

The Authority may also assess the need to prohibit or restrict certain types of financial activity or practice and, where there is such a need, inform the Commission and the competent authorities in order to facilitate the adoption of any such prohibition or restriction.”;

(8) *the following article is inserted:*

“Article 9a

No action letters

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

(a) the Authority considers that provisions contained in such act may directly conflict with another relevant act,

- (b) where the act is one of the acts referred to in Article 1(2), the absence of delegated or implementing acts that would complement or specify the act in question would raise legitimate doubts concerning the legal consequences flowing from the act or its proper application,*
- (c) the absence of guidelines and recommendations as referred to in Article 16 would raise practical difficulties concerning the application of the relevant act.*

- 2. In the cases referred to in paragraph 1, the Authority shall address to the competent authorities and the Commission by letter a detailed account of the issues it considers to exist.*

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

In the case referred to in point (c) of paragraph 1, the Authority shall evaluate as soon as possible the need to adopt relevant guidelines or recommendations under Article 16.

The Authority shall act expeditiously, notably with a view to contributing to the prevention of issues as referred to in paragraph 1, whenever possible.

- 3. Where necessary in the cases referred to in paragraph 1, and pending the adoption and application of new measures following the steps referred to in paragraph 2, the Authority shall issue opinions regarding specific provisions of the acts referred to in paragraph 1 with a view to furthering consistent, efficient and effective supervisory and enforcement practices, and common, uniform and consistent application of Union law.*

4. *Where, on the basis of information received, notably from competent authorities, the Authority considers that acts referred to in Article 1(2) or any delegated or implementing acts based on those acts raises significant exceptional issues pertaining to*

- *market confidence,*
- *customer or investor protection,*
- *the orderly functioning and integrity of financial markets or commodity markets, or*
- *the stability of the whole or part of the financial system in the Union,*

it shall immediately address to the competent authorities and the Commission by letter a detailed account of the issues it considers to exist. The Authority may provide the Commission with an opinion on any action it considers appropriate, in form of new legislation or new delegated or implementing acts, and on the urgency that, in the Authority's judgment, is attached to the issue. The Authority shall make its opinion public.”;

(9) *Article 10 is amended as follows:*

(a) *paragraph 1 is amended as follows:*

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

“1. Where the European Parliament and the Council delegate power to the Commission to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU in order to ensure consistent harmonisation in the areas specifically set out in the legislative acts referred to in Article 1(2), the Authority may develop draft regulatory technical standards. The Authority shall submit its draft regulatory technical standards to the Commission for endorsement. At the same time, the Authority shall forward those draft regulatory technical standards for information to the European Parliament and to the Council.”;

(ii) *the third subparagraph is replaced by the following:*

“Before submitting them to the Commission, the Authority shall conduct open public consultations on draft regulatory technical standards and analyse the potential related costs and benefits, unless such consultations and analyses are strongly disproportionate in relation to the scope and impact of the draft regulatory technical standards concerned or in relation to the particular urgency of the matter. The Authority shall also request the advice of the Securities and Markets Stakeholder Group referred to in Article 37.”;

(iii) the fourth subparagraph is deleted;

(iv) the fifth and the sixth subparagraphs are replaced by the following:

“Within 3 months of receipt of a draft regulatory technical standard, the Commission shall decide whether to endorse it. The Commission shall inform the European Parliament and the Council in due time that the decision regarding endorsement cannot be taken within the 3 months period. The Commission may endorse the draft regulatory technical standards in part only, or with amendments, where the Union’s interests so require.

Where the Commission intends not to endorse a draft regulatory technical standard or to endorse it in part or with amendments, it shall send the draft regulatory technical standard back to the Authority, explaining why it does not endorse it, or, as the case may be, explaining the reasons for its amendments, and shall send a copy of its letter to the European Parliament and to the Council. Within a period of 6 weeks, the Authority may amend the draft regulatory technical standard on the basis of the Commission’s proposed amendments and resubmit it in the form of a formal opinion to the Commission. The Authority shall send a copy of its formal opinion to the European Parliament and to the Council.”;

(b) paragraph 2 is replaced by the following:

“2. Where the Authority has not submitted a draft regulatory technical standard within the time limit set out in the legislative acts referred to in Article 1(2), the Commission may request such a draft within a new

time limit. The Authority shall inform the European Parliament, the Council and the Commission in due time that it will not comply with the time limit.”;

*(c) in paragraph 3, the second subparagraph is replaced by the following:
“The Commission shall conduct open public consultations on draft regulatory technical standards and analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft regulatory technical standards concerned or in relation to the particular urgency of the matter. The Commission shall also request the advice of the Securities and Markets Stakeholder Group referred to in Article 37.”;*

(d) paragraph 4 is replaced by the following:

“4. The regulatory technical standards shall be adopted by means of regulations or decisions. The words ‘regulatory technical standard’ shall appear in their title. They shall be published in the Official Journal of the European Union and shall enter into force on the date stated therein.”;

(10) in Article 13(1), the second subparagraph is deleted.

(11) Article 15 is amended as follows:

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

“1. Where the European Parliament and the Council confer implementing powers on the Commission to adopt implementing technical standards by means of implementing acts pursuant to Article 291 TFEU, in the areas specifically set out in the legislative acts referred to in Article 1(2), the Authority may develop draft implementing technical standards. Implementing technical standards shall be technical, shall not imply strategic decisions or policy choices and their content shall be to determine the conditions of application of those acts. The Authority shall submit its draft implementing technical standards to the Commission for endorsement. At the same time, the Authority shall

forward those technical standards for information to the European Parliament and to the Council.

Before submitting draft implementing technical standards to the Commission, the Authority shall conduct open public consultations and shall analyse the potential, related costs and benefits, unless such consultations and analyses are strongly disproportionate in relation to the scope and impact of the draft implementing technical standards concerned or in relation to the particular urgency of the matter. The Authority shall also request the advice of the Securities and Markets Stakeholder Group referred to in Article 37.

Within 3 months of receipt of a draft implementing technical standard, the Commission shall decide whether to endorse it. The Commission may extend that period by 1 month. The Commission shall inform the European Parliament and the Council in due time that the decision regarding endorsement cannot be taken within the 3 months period. The Commission may endorse the draft implementing technical standard in part only, or with amendments, where the Union's interests so require.

Where the Commission intends not to endorse a draft implementing technical standard or intends to endorse it in part or with amendments, it shall send it back to the Authority explaining why it does not intend to endorse it, or, as the case may be, explaining the reasons for its amendments and shall send a copy of its letter to the European Parliament and to the Council. Within a period of 6 weeks, the Authority may amend the draft implementing technical standard on the basis of the Commission's proposed amendments and resubmit it in the form of a formal opinion to the Commission. The Authority shall send a copy of its formal opinion to the European Parliament and to the Council.

If, on the expiry of the six-week period referred to in the fifth subparagraph, the Authority has not submitted an amended draft

implementing technical standard, or has submitted a draft implementing technical standard that is not amended in a way consistent with the Commission's proposed amendments, the Commission may adopt the implementing technical standard with the amendments it considers relevant or reject it.

The Commission shall not change the content of a draft implementing technical standard prepared by the Authority without prior coordination with the Authority, as set out in this Article.

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

(b) in paragraph 3, subparagraph 2 is replaced by the following:

“The Commission shall conduct open public consultations on draft implementing technical standards and analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft implementing technical standards concerned or in relation to the particular urgency of the matter. The Commission shall also request the  advice of the Securities and Markets Stakeholder Group referred to in Article 37.”;

(c) paragraph 4 is replaced by the following:

“4. The implementing technical standards shall be adopted by means of regulations or decisions. The words ‘implementing technical standard’ shall appear in their title. They shall be published in the Official Journal of the European Union and shall enter into force on the date stated therein.”;

(12) Article 16 is amended as follows:

(a) paragraph 1 is replaced by the following:

“1. The Authority *shall, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of Union law, issue guidelines* ■ *addressed to all competent authorities or all financial institutions and issue recommendations to one or more competent authorities or to one or more financial institutions.*

Guidelines and recommendations shall be in accordance with the empowerments conferred in the legislative acts referred to in Article 1(2) or in this Article.”;

(b) paragraph 2 is replaced by the following:

“2. The Authority shall, *where appropriate*, open public consultations regarding the guidelines and recommendations which it issues and analyse the related potential costs and benefits of issuing such guidelines and recommendations. Those consultations and analyses shall be proportionate in relation to the scope, nature and impact of the guidelines or recommendations. The Authority shall, *where appropriate*, also request ■ advice from the Securities and Markets Stakeholder Group referred to in Article 37. *Where the Authority does not conduct open public consultations or does not request advice from the Securities and Markets Stakeholder Group, the Authority shall provide reasons.”;*

(c) *the following paragraph is inserted:*

“2c. *Guidelines and recommendations shall not merely refer to, or reproduce, elements of legislative acts. Before issuing a new guideline or recommendation, the Authority shall first review existing guidelines and recommendations, in order to avoid any duplication.”;*

(d) paragraph 4 is replaced by the following:

“4. *In the report referred to in Article 43(5) the Authority shall inform the European Parliament, the Council and the Commission of the guidelines and recommendations that have been issued.”;*

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(13) *the following articles are inserted:*

“Article 16a

Opinions

1. *The Authority may, upon a request from the European Parliament, the Council or the Commission, or on its own initiative, provide opinions to the European Parliament, the Council and the Commission on all issues related to its area of competence.*
2. *The request referred to in paragraph 1 may include a public consultation or a technical analysis.*
3. *With regard to prudential assessments of mergers and acquisitions falling within the scope of Directive 2004/39/EC, as amended by Directive 2007/44/EC, and which according to that Directive require consultation between competent authorities from two or more Member States, the Authority may, on application of one of the competent authorities concerned, issue and publish an opinion on a prudential assessment, except in relation to the criteria in Article 10b(e) of Directive 2004/39/EC. The opinion shall be issued promptly and in any event before the end of the assessment period in accordance with Directive 2004/39/EC, as amended by Directive 2007/44/EC. Article 35 shall apply to the areas in respect of which the Authority may issue an opinion.*
4. *The Authority may, upon a request from the European Parliament, the Council or the Commission provide technical advice to the European Parliament, the Council and the Commission in the areas set out in the legislative acts referred to in Article 1(2).*

Article 16b

Questions and answers

1. *Without prejudice to paragraph 5, questions relating to the practical application or implementation of the provisions of legislative acts referred to*

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

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

Before publishing answers to admissible questions, the Authority may seek further clarification on questions asked by the natural or legal person referred to in paragraph 1.

- 2. Answers by the Authority to questions referred to in paragraph 1 are non-binding. The answer shall be made available at least in the language it was submitted in.*
- 3. The Authority shall establish and maintain a web based tool available on its website for the submission of questions and the timely publication of all questions upon receipt as well as all answers to all admissible questions pursuant to paragraph 1, unless such publication is in conflict with the legitimate interest of those persons or would involve risks to the stability of the financial system. The Authority may reject questions it does not intend to answer. Rejected questions shall be published by the Authority on its website for a period of two months.*
- 4. Three voting members of the Board of Supervisors may request the Board of Supervisors to decide pursuant to Article 44 whether to address the issue of the admissible question referred to in paragraph 1 in guidelines pursuant to in Article 16, to request opinions or advice from the Stakeholder Group referred to in Article 37, to review questions and answers at appropriate intervals, to conduct open public consultations or to analyse potential related costs and benefits. Such consultations and analyses shall be proportionate in relation to the scope, nature and impact of the draft questions and answers concerned or in relation to the particular urgency of the matter. When*

involving the Stakeholder Group referred to in Article 37, due care of confidentiality shall be guaranteed.

5. *The Authority shall forward questions that require the interpretation of Union law to the European Commission. The Authority shall publish any answers provided by the European Commission .”;*

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

- (a) *in paragraph 2, the first subparagraph is replaced by the following:*

“2. Upon a request from one or more competent authorities, the European Parliament, the Council, the Commission, the Securities and Markets Stakeholder Group, or on its own initiative, including when this is based on well substantiated information from natural or legal persons, and after having informed the competent authority concerned, the Authority shall respond to the request by outlining how it intends to proceed with the case and if appropriate, investigate the alleged breach or non-application of Union law.”;

- (b) *in paragraph 2, the following subparagraphs are added:*

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

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

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(c) *the following paragraph is inserted:*

“2a. Without prejudice to powers under this Regulation and before issuing a recommendation as set out in paragraph 3, where it deems this to be appropriate to resolve a breach of Union law, the Authority shall engage with the competent authority concerned in an attempt to reach agreement on actions necessary for the competent authority to comply with Union law.”;

(d) *paragraph 6 is replaced by the following:*

“6. Without prejudice to the powers of the Commission pursuant to Article 258 TFEU, where a competent authority does not comply with the formal opinion referred to in paragraph 4 within the period of time specified therein, and where it is necessary to remedy in a timely manner such non compliance in order to maintain or restore neutral conditions of competition in the market or ensure the orderly functioning and integrity of the financial system, the Authority may, where the relevant requirements of the acts referred to in Article 1(2) are directly applicable to financial market participants, adopt an individual decision addressed to a financial market participant requiring the necessary action to comply with its obligations under Union law including the cessation of any practice.”;

(15) *the following article is inserted:*

“Article 17a

Protection of reporting persons

- 1. The Authority shall have in place dedicated reporting channels for receiving and handling information provided by a natural or legal person reporting on actual or potential breaches, abuse of law, or non-application of Union law.*
- 2. The natural or legal persons reporting through those channels shall be protected against retaliation in accordance with Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law, where applicable [COM/2018/218/final].*

3. *The Authority shall ensure that all information may be submitted anonymously or confidentially, and safely. Where the Authority deems that the submitted information contains evidence or significant indications of material breaches, it shall provide feedback to the reporting person.”;*

(16) *in Article 18, paragraph 3 is replaced by the following:*

- “3. *Where the Council has adopted a decision pursuant to paragraph 2, and in exceptional circumstances where coordinated action by competent authorities is necessary to respond to adverse developments which may seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union or customer and investor protection, the Authority may adopt individual decisions requiring competent authorities to take the necessary action in accordance with the legislation referred to in Article 1(2) to address any such developments by ensuring that financial market participants and competent authorities satisfy the requirements laid down in that legislation.”;*

(17) Article 19 is amended as follows:

“(a) paragraph 1 is replaced by the following:

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

- (a) at the request of one or more of the competent authorities concerned where a competent authority disagrees with the procedure or content of an action, proposed action, or inactivity of another competent authority;
- (b) ***in cases where the acts referred to in Art 1(2) provide that the Authority may assist*** on its own initiative where on the basis of objective ***reasons***, disagreement can be determined between competent authorities.

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

- (b) the following paragraphs are inserted:

- “1a. The competent authorities concerned shall in the following cases notify the Authority without delay that an agreement has not been reached:
- (a) where a time limit for reaching an agreement between competent authorities has been provided for in the Union acts, referred to in Article 1(2), and the earlier of the following occurs:
 - (i) the time limit has expired; *or*
 - (ii) *at least two* competent authorities concerned conclude that a disagreement exists, on the basis of objective *reasons*;
 - (b) where no time limit for reaching an agreement between competent authorities has been provided in the Union acts referred to in Article 1(2), and the earlier of the following occurs:
 - (i) *at least two* competent authorities concerned *conclude* that a disagreement exists on the basis of objective *reasons*; or
 - (ii) two months have elapsed from the date of receipt by a competent authority of a request from another competent authority to take certain action in order to comply with those Union acts and the requested authority has not yet adopted a decision that satisfies the request.
- 1b. The Chairperson shall assess whether the Authority should act in accordance with paragraph 1. Where the intervention is at the Authority’s own initiative, the Authority shall notify the competent authorities concerned of its decision regarding the intervention.

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

(c) paragraph 3 is replaced by the following:

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

(d) the following paragraph is inserted:

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

(e) paragraph 4 is replaced by the following:

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

(18) Article 21 is amended as follows:

(a) paragraph 1 is replaced by the following:

“1. The Authority shall promote and monitor, within the scope of its powers, the efficient, effective and consistent functioning of the colleges of supervisors where established by legislative acts referred to in Article 1(2) and foster the coherence and consistency of the application of Union law among the colleges of supervisors. With the

objective of converging supervisory best practices, the Authority shall promote joint supervisory plans and joint examinations, and staff from the Authority shall have full participation rights in the colleges of supervisors and, as such, shall be able to participate in the activities of the colleges of supervisors, including on-site examinations, carried out jointly by two or more competent authorities.”;

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

“2. The Authority shall lead in ensuring a consistent and coherent functioning of colleges of supervisors for cross-border institutions across the Union, taking account of the systemic risk posed by financial market participants referred to in Article 23, and shall, where appropriate, convene a meeting of a college.”;

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

“(b) initiate and coordinate Union-wide stress tests in accordance with Article 32 to assess the resilience of financial market participants, in particular the systemic risk posed by financial market participants as referred to in Article 23, to adverse market developments, and evaluate the potential for systemic risk posed by key financial market participants to increase in situations of stress, ensuring that a consistent methodology is applied at the national level to such tests and, where appropriate, address a recommendation to the competent authority to correct issues identified in the stress test, including to conduct specific assessments. It may recommend competent authorities to carry out on-site inspections, and may participate in such on-site inspections, in order to ensure comparability and reliability of methods, practices and results of Union-wide assessments;”;

(d) paragraph 3 is replaced by the following:

“3. The Authority may develop draft regulatory and implementing technical standards in accordance with the empowerments laid down in

the legislative acts referred to in Article 1(2) and in accordance with the procedure laid down in Articles 10 to 15 to ensure uniform conditions of application with respect to the provisions regarding the operational functioning of colleges of supervisors and issue guidelines and recommendations adopted under Article 16 to promote convergence in supervisory functioning and best practices adopted by the colleges of supervisors.”;

(19) *Article 22 is amended as follows:*

(a) *the title is replaced by the following:*

“General provisions on systemic risks”;

(b) *paragraph 4 is replaced by the following:*

“4. Upon a request from one or more competent authorities, the European Parliament, the Council or the Commission, or on its own initiative, the Authority may conduct an inquiry into a particular type of financial activity or type of product or type of conduct in order to assess potential threats to the integrity of the financial markets or the stability of the financial system or to the protection of customers or investors and make appropriate recommendations for action to the competent authorities concerned.

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

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

(20) *in Article 23, paragraph 1 is replaced by the following:*

“1. The Authority shall, in consultation with the ESRB, develop criteria for the identification and measurement of systemic risk and an adequate stress-testing regime which includes an evaluation of the potential for systemic risk

posed by or to financial market participants to increase in situations of stress, including potential environmental-related systemic risk. The financial market participants that may pose a systemic risk shall be subject to strengthened supervision, and where necessary, the recovery and resolution procedures referred to in Article 25.”;

(21) Article 29 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the following *points are* inserted:

“(aa) *establishing Union Strategic Supervisory priorities* in accordance with Article 29a;

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

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

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

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

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

(iv) the following point is added:

“(ea) putting in place a monitoring system to assess material environmental, social and governance-related risks, taking into account the COP 21 Paris agreement;”;

(b) paragraph 2 *is replaced by the following:*

“2. The Authority may, as appropriate, develop new practical instruments and convergence tools to promote common supervisory approaches and practices.

For the purpose of establishing a common supervisory culture, the Authority shall develop and maintain an up-to-date Union supervisory handbook on the supervision of financial markets participants in the Union, taking *duly* into account *nature, scale and complexity of risks, business practices, business models and size* of financial institutions, including *changes* due to technological innovation, of financial market participants *and markets*. The Union supervisory handbook shall set out best practices and high quality methodologies and processes.

The Authority shall, where appropriate, conduct open public consultations regarding the opinions referred to in point (a) of paragraph 1, and tools and instruments referred to in paragraph 2 and analyse the related potential costs and benefits. Such consultations and analyses shall be proportionate in relation to the scope, nature and impact of the opinions or tools and instruments. The Authority shall, where appropriate, also request advice from the Securities and Markets Stakeholder Group.”;

(22) the following Article is inserted:

“Article 29a

Union Strategic Supervisory Priorities

At least every three years and by 31 March following a debate in the Board of Supervisors and taking into account contributions received from competent authorities, existing work by the EU Institutions and analysis, warnings and recommendations published by the ESRB, the Authority shall identify up to two priorities of Union wide relevance which shall reflect future developments and trends. Competent authorities shall take the priorities highlighted by the Authority into account when drawing up their work programmes and shall notify accordingly. The Authority shall discuss the relevant activities by the competent authorities in the following year and draw conclusions. The Authority shall discuss

possible follow up which may include inter alia guidelines, recommendations to competent authorities and peer reviews in the respective area.

The priorities of Union wide relevance identified by the Authority shall not prevent national competent authorities from applying national best practices, acting on additional national priorities and developments, and shall consider national specificities.”;

(23) Article 30 is *replaced by the following*:

“Article 30

Peer reviews of competent authorities

1. The Authority shall periodically conduct *peer* reviews of some or all of the activities of competent authorities, to further strengthen consistency *and effectiveness* in supervisory outcomes. To that end, the Authority shall develop methods to allow for objective assessment and comparison between the competent authorities reviewed. When *planning and* conducting *peer* reviews, existing information and evaluations already made with regard to the competent authority concerned, including *any relevant* information provided to the Authority in accordance with Article 35, and any *relevant* information from stakeholders shall be taken into account.
 - 1a. For the purposes of this Article, the Authority shall establish ad hoc peer review committees, which shall be composed of staff from the Authority and members of the competent authorities. *The peer review committees shall be chaired by a staff member from the Authority. The Chairperson, after consulting the Management Board and following an open call for participation, shall propose the chair and the members of a peer review team, which shall be approved by the Board of Supervisors. The proposal shall be considered adopted unless the Board of Supervisors adopts a decision to reject it within 10 days.*
2. The *peer* review shall include an assessment of, but shall not be limited to:

- (a) the adequacy of resources, the degree of independence, and governance arrangements of the competent authority, with particular regard to the effective application of the Union acts referred to in Article 1(2) and the capacity to respond to market developments;
 - (b) *the effectiveness and the degree of convergence reached in the application of Union law and in supervisory practice, including regulatory technical standards and implementing technical standards, guidelines and recommendations adopted pursuant to Articles 10 to 16, and the extent to which the supervisory practice achieves the objectives set out in Union law;*
 - (c) *the application of best practices developed by some competent authorities which might be of benefit for other competent authorities to adopt;*
 - (d) *the effectiveness and the degree of convergence reached with regard to the enforcement of the provisions adopted in the implementation of Union law, including the administrative measures and sanctions imposed against persons responsible where those provisions have not been complied with.*
3. The Authority shall produce a report setting out the results of the *peer* review *which shall be prepared by the peer review committee and adopted by the Board of Supervisors in accordance with Article 44(4). When drafting that report, the peer review committee shall consult the Management Board in order to maintain consistency with other peer review reports and to ensure a level playing field. The Management Board shall assess in particular whether the methodology has been applied in the same manner. The report shall explain and indicate the follow-up measures that are **deemed appropriate, proportionate and necessary** as a result of the *peer* review. Those follow-up measures may be adopted in the form of guidelines and recommendations pursuant to Article 16 and opinions pursuant to Article 29(1)(a).*

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

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

- 3a. The Authority shall submit an opinion to the Commission where, having regard to the outcome of the *peer* review or to any other information acquired by the Authority in carrying out its tasks, it considers that further harmonisation of *Union* rules applicable to financial market participants or competent authorities would be necessary *from the Union perspective*.
- 3b. *The Authority shall undertake a follow up report after two years of the publication of the peer review report. The follow up report shall be prepared by the peer review committee and adopted by the Board of Supervisors in accordance with Article 44(4). When drafting that report, the peer review committee shall consult the Management Board in order to maintain consistency with other follow up reports. The follow up report shall include an assessment of, but shall not be limited to, the adequacy and effectiveness of the actions undertaken by the competent authorities that are subject to the peer review in response to the follow up measures of the peer review report.*
4. *The peer review committee shall after consulting the competent authorities subject to the peer review, identify the reasoned main findings of the peer review. The Authority shall publish the reasoned main findings of the peer review and of the follow-up report referred to in paragraph 3b. Where the reasoned main findings of the Authority differ from those identified by the review committee, the Authority shall transmit, on a confidential basis, the review committee's findings to the European Parliament, the Council and the Commission. Where a competent authority that is subject to the review is concerned that the publication of the Authority's main findings would pose*

risks to the stability of the financial system, it shall have the possibility to refer the matter to the Board of Supervisors. The Board of Supervisors may decide not to publish those extracts.

5. *For the purposes of this Article the Management Board shall make a proposal for a peer review work plan for the coming two years, which shall inter alia reflect the lessons learnt from the past peer re-view processes and the discussions of the coordination group referred to in Art 29(1)aa. The peer review work plan shall constitute a separate part of the annual and multiannual working programme. It shall be made public. In case of urgency or unforeseen events, the Authority may decide to carry out additional peer reviews.”;*

(24) *Article 31 is amended as follows:*

- (a) *the first paragraph is replaced by the following:*

“1. The Authority shall fulfil a general coordination role between competent authorities, in particular in situations where adverse developments could potentially jeopardise the orderly functioning and integrity of financial markets or the stability of the financial system in the Union.”;

- (b) *the second paragraph is amended as follows:*

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

“2. The Authority shall promote a coordinated Union response, inter alia, by:”;

- (ii) *point (e) is replaced by the following:*

“(e) taking appropriate measures in case of developments which may jeopardise the functioning of the financial markets with a view to the coordination of actions undertaken by relevant competent authorities;”;

- (iii) *the following point is inserted:*

“(ea) taking appropriate measures to coordinate actions undertaken by relevant competent authorities with a view to facilitating the entry into the market of actors or products relying on technological innovation;”

(c) *the following* paragraph is added:

“3. In order to contribute to the establishment of a common European approach towards technological innovation the Authority shall promote supervisory convergence, with the support, where relevant, of the Committee on consumer protection and financial innovation, facilitating entry into the market of actors or products relying on technological innovation, in particular through the exchange of information and best practices. Where appropriate, the Authority may adopt guidelines or recommendations in accordance with Article 16.”

(25) *the following Articles* are inserted:

“Article 31aa

Information exchange on fitness and propriety

The Authority shall, together with EBA and EIOPA, establish a system for the exchange of information relevant to the assessment of the fitness and propriety of holders of qualifying holdings, directors and key function holders of financial institutions by competent authorities in accordance with the acts referred to in Article 1(2).

Article 31b

Coordination function in relation to orders, transactions and activities with significant cross-border effects

Where a competent authority has evidence or clear indications from several different sources to suspect that orders, transactions or any other activity with significant cross-border effects threaten the orderly functioning and integrity of financial markets or the financial stability in the Union, it shall promptly notify the

Authority and provide the relevant information. The Authority may *issue an opinion on appropriate follow-up to* the competent authorities of the Member States where the suspected activity has occurred **■**.”;

(26) *Article 32 is amended as follows:*

(a) *the title is replaced by the following:*

“Assessment of market developments, including stress tests”;

(b) *paragraph 1 is replaced by the following:*

*“1. The Authority shall monitor and assess market developments in the area of its competence and, where necessary, inform the European Supervisory Authority (European Banking Authority), and the European Supervisory Authority (European Insurance and Occupational Pensions Authority), the ESRB and the European Parliament, the Council and the Commission about the relevant micro-prudential trends, potential risks and vulnerabilities. The Authority shall include in its assessments an **■** analysis of the markets in which financial market participants operate and an assessment of the impact of potential market developments on such financial market participants.”;*

(c) *paragraph 2 is amended as follows:*

(i) *the introductory part is replaced by the following:*

*“2. The Authority shall **■** initiate and coordinate Union-wide assessments of the resilience of financial market participants to adverse market developments. To that end it shall develop the following **■** :”;*

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

“(a) common methodologies for assessing the effect of economic scenarios on the financial position of a financial market participant, taking into account inter alia risks stemming from adverse environmental developments;”;

(iii) the following point is inserted:

“(aa) common methodologies for identifying financial market participants to be included in Union-wide assessments;”;

(iv) the following point is added:

“(ca) common methodologies for assessing the effect of environmental risks on the financial stability of financial market participants.”;

(v) the following subparagraph is added:

“For the purposes of this paragraph, the Authority shall cooperate with the ESRB.”;

I

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

“3. Without prejudice to the tasks of the ESRB set out in Regulation (EU) No 1092/2010, the Authority shall, once a year, and more frequently where necessary, provide assessments to the European Parliament, the Council, the Commission and the ESRB of trends, potential risks and vulnerabilities in its area of competence, in combination with the indicators referred to in Article 22(2).”;

(27) Article 33 is replaced by the following:

“Article 33

International relations including equivalence

1. Without prejudice to the respective competences of the Member States and the Union institutions, the Authority may develop contacts and enter into administrative arrangements with regulatory and supervisory authorities, international organisations and the administrations of third countries. Those arrangements shall not create legal obligations in respect of the Union and its Member States nor shall they prevent Member States and their competent

authorities from concluding bilateral or multilateral arrangements with those third countries.

Where a third country, in accordance with a delegated act in force adopted by the Commission pursuant to Article 9 of Directive (EU) 2015/849 of the European Parliament and of the Council, is on the list of jurisdictions which have strategic deficiencies in their national anti-money laundering and countering the financing of terrorism regimes that pose significant threats to the financial system of the Union, the Authority shall not conclude administrative arrangements with the regulatory and supervisory authorities of that third country. This shall not preclude other forms of cooperation between the Authority and the respective third country authorities with a view to reduce threats to the financial system of the Union.

2. The Authority shall assist the Commission in preparing equivalence decisions pertaining to regulatory and supervisory regimes in third countries following a specific request for advice from the Commission or where required to do so by the acts referred to in Article 1(2).
- 2a. The Authority shall monitor *with a particular focus on their implications for financial stability, market integrity, investor protection and the functioning of the internal market, relevant* regulatory and supervisory developments and enforcement practices and **█** market developments in third countries for which equivalence decisions have been adopted by the Commission pursuant to the acts referred to in Article 1(2). **█**

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

The Authority may liaise with relevant authorities in third countries. The Authority shall submit a confidential report to the European Parliament, the Council, the Commission and the EBA and EIOPA summarising its findings of its monitoring activities of all equivalent third countries. The report shall focus in particular on implications for financial stability, market integrity, investor protection or the functioning of the internal market.

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

- 2b.** Without prejudice to specific requirements set out in the *legislative* acts referred to in Article 1(2) and subject to the conditions set out in the second sentence of paragraph 1, the Authority shall cooperate *where possible* with the relevant competent authorities, of third countries whose *regulatory* and supervisory regimes have been recognised as equivalent. *In principle, that* cooperation shall be pursued on the basis of administrative arrangements concluded with the relevant authorities of those third countries. When negotiating such administrative arrangements, the Authority shall include provisions on the following:
- (a) the mechanisms which would allow the Authority to obtain relevant information, including information on the regulatory regime, as well as the supervisory approach, relevant market developments and any changes that may affect the decision on equivalence;
 - (b) to the extent necessary for the follow-up of such decisions *on equivalence*, the procedures concerning the coordination of supervisory activities including, where necessary, on-site inspections

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

- 2ca.** The Authority may develop model administrative arrangements, with a view to establishing consistent, efficient and effective supervisory practices within the Union and to strengthening international supervisory coordination. ■ The competent authorities shall make every effort to follow such model arrangements.

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

3. *The Authority shall, within its powers pursuant to this Regulation and to the legislative acts referred to in Article 1(2), contribute to the united, common, consistent and effective representation of the Union's interests in the international fora.”;*

■

(28) *Article 36 is amended as follows:*

- (a) paragraph 3 is deleted;*
- (b) paragraphs 4 and 5 are replaced by the following:*

“4. On receipt of a warning or recommendation from the ESRB addressed to the Authority, the Authority shall discuss that warning or recommendation at the next meeting of the Board of Supervisors or, where appropriate, earlier, in order to assess the implications of, and possible follow-up to, such a warning or recommendation for the fulfilment of its tasks.

It shall decide, by the relevant decision-making procedure, on any actions to be taken in accordance with the powers conferred upon it by this Regulation for addressing the issues identified in the warnings and recommendations.

If the Authority does not act on a warning or recommendation, it shall explain to the ESRB its reasons for not doing so. The ESRB shall inform the European Parliament thereof in accordance with Article 19(5) of Regulation (EU) No 1092/2010. The ESRB shall also inform the Council thereof.

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

Where the addressee intends not to follow the recommendation of the ESRB, it shall inform and discuss with the Board of Supervisors its reasons for not acting.

Where the competent authority, in accordance with Article 17(1) of Regulation (EU) No 1092/2010, informs the European Parliament, the Council, the Commission and the ESRB of the actions it has undertaken in response to a recommendation of the ESRB, it shall take due account of the views of the Board of Supervisors.”;

(c) paragraph 6 is deleted;

(29) Article 37 is amended as follows:

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

“2. The Securities and Markets Stakeholder Group shall be composed of 30 members, 13 members representing in balanced proportions financial market participants operating in the Union, 13 members representing their employees’ representatives consumers, users of financial services and representatives of SMEs and four of its members shall be independent top-ranking academics. █

3. The members of the Securities and Markets Stakeholder Group shall be appointed by the Board of Supervisors, following an open and transparent selection procedure. In making its decision, the Board of Supervisors shall, to the extent possible, ensure an appropriate reflection of diversity of the securities and markets sector, geographical and gender balance and representation of stakeholders across the Union. Members of the Securities and Markets Stakeholder Group shall be selected according to their qualifications, skills, relevant knowledge and proven expertise.”;

(b) the following paragraph is inserted:

“3a. Members of the Securities and Markets Stakeholder Group shall elect the Chair of that Group from among its Members. The position of Chair shall be held for a period of two years.

The European Parliament may invite the Chair of the Securities and Markets Stakeholder Group to make a statement before it and answer any questions put by its Members whenever so requested.”;

(c) in paragraphs 4, the first subparagraph is replaced by the following:

“4. The Authority shall provide all necessary information, subject to professional secrecy, as set out in Article 70, and ensure adequate secretarial support for the Securities and Markets Stakeholder Group. Adequate compensation shall be provided to members of the Securities and Markets Stakeholder Group that are representing non-profit organisations, excluding industry representatives. This compensation shall take into account the members' preparatory and follow-up work and shall be at least equivalent to the reimbursement rates of officials pursuant to Title V, Chapter 1, Section 2 of the Staff Regulations of

Officials of the European Union and the Conditions of Employment of Other Servants of the European Union laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68(Staff Regulations). The Securities and Markets Stakeholder Group may establish working groups on technical issues. Members of the Securities and Markets Stakeholder Group shall serve for a period of four years, following which a new selection procedure shall take place.”;

(d) paragraph 5 is replaced by the following:

“5. The Securities and Markets Stakeholder Group may submit █ advice to the Authority on any issue related to the tasks of the Authority with particular focus on the tasks set out in Articles 10 to 16 and Articles 29, 30 and 32.

Where members of the Securities and Markets Stakeholder Group cannot agree on advice, one third of its members or the members representing one group of stakeholders shall be permitted to issue a separate advice.

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

(e) paragraph 7 is replaced by the following:

“7. The Authority shall make public the █ advice of the Securities and Markets Stakeholder Group, the separate advice of its Members, and the results of its consultations as well as how information and views gathered from the consultations have been taken into account.”;

(30) Article 39 is replaced by the following:

“Article 39

Decision-making procedures

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

(31) Article 40 is amended as follows

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

“(a) *the Chairperson* █;”;

(b) the following paragraph is added:

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

(32) *Articles 41 and 42 are replaced by the following:*

“Article 41

Internal committees

1. The Board of Supervisors *on its own initiative or at the request from the Chairperson* may establish internal committees for specific tasks attributed to it. *Upon request from the Management Board or from the Chairperson, the Board of Supervisors may establish internal committees for specific tasks attributed to the Management Board.* The Board of Supervisors may provide for the delegation of certain clearly defined tasks and decisions to internal committees, to the *Management* Board or to the Chairperson.

1a. *For the purposes of Article 17, the Chairperson shall propose a decision to convene an independent panel, to be adopted by the Board of Supervisors. The independent panel shall consist of the Chairperson of the Board of Supervisors and six other members, to be proposed by the Chairperson after consulting the Management Board and following an open call for participation. The six other members shall not be representatives of the competent authority alleged to have breached Union law and shall have neither any interest in the matter nor direct links to the competent authority concerned.*

Each member of the panel shall have one vote.

Decisions of the panel shall be taken where at least four members vote in favour.

2. *For the purposes of Article 19 the Chairperson shall propose a decision to convene an independent panel, to be adopted by the Board of Supervisors. The independent panel shall consist of the Chairperson of the Board of Supervisors and six other members, to be proposed by the Chairperson after consulting the Management Board and following an open call for participation. The six other members shall not be representatives of the competent authorities party to the disagreement and who have neither any interest in the conflict nor direct links to the competent authorities concerned.*

Each member of the panel shall have one vote.

Decisions of the panel shall be taken where at least four members vote in favour.

- 2a. *For the purposes of conducting the inquiry provided for in Article 22(4) first subparagraph, the Chairperson shall be also able to propose a decision to launch the inquiry and to convene an independent panel, to be adopted by the Board of Supervisors. The independent panel shall consist of the Chairperson of the Board of Supervisors and six other members, to be proposed by the Chairperson after consulting the Management Board and following an open call for participation.*

Each member of the panel shall have one vote.

Decisions of the panel shall be taken where at least four members vote in favour.

3. *The panels referred to in paragraphs 1a and 2 of this Article or the Chairperson shall propose decisions under Article 17, or Article 19, for final adoption by the Board of Supervisors. A panel referred to in paragraph 2a of this Article shall present the outcome of the inquiry conducted pursuant to Article 22(4) first subparagraph to the Board of Supervisors.”*
4. *The Board of Supervisors shall adopt rules of procedure for the panels referred to in this Article.*

Article 42

Independence of the Board of Supervisors

1. When carrying out the tasks conferred upon them by this Regulation, the ■ members of the Board of Supervisors ■ shall act independently and objectively in the sole interest of the Union as a whole and shall neither seek nor take instructions from Union institutions or bodies, from any government ■ or from any other public or private body.
2. *Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence the members of the Board of Supervisors in the performance of their tasks.*
3. *Before any meeting which they are to attend, Members of the Board of Supervisors, the Chairperson as well as non-voting representatives and observers participating in Board meetings shall accurately and completely declare the absence or existence of any interest which might be considered prejudicial to their independence in relation to any items on the agenda, and shall abstain from participating in the discussion of and voting upon such points.*
4. *The Board of Supervisors shall lay down, in its rules of procedure, the practical arrangements for the rule on declaration of interest referred to in paragraph 3 and for the prevention and the management of conflict of interest.”;*

(33) Article 43 is amended as follows:

(a) paragraph 1 is replaced by the following:

“1. The Board of Supervisors shall give guidance to the work of the Authority *and shall be in charge of taking the decisions referred to in Chapter II. The Board of Supervisors shall adopt the opinions, recommendations, guidelines and decisions of the Authority, and issue the advice referred to in Chapter II, based on a proposal of the relevant internal committee, panel, Chairperson, or of the Management Board, as applicable.”;*

(b) paragraphs 2 and 3 are deleted;

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

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

(d) paragraph 5 is replaced by the following

“5. The Board of Supervisors shall adopt, on the basis of a proposal by the *Management* Board, the annual report on the activities of the Authority, including on the performance of the Chairperson’s duties, ■ and shall transmit that report to the European Parliament, the Council, the Commission, the Court of Auditors and the European Economic and Social Committee by 15 June each year. The report shall be made public.”;

(e) paragraph 8 is *replaced by the following*:

“8. *The Board of Supervisors shall exercise disciplinary authority over the Chairperson and the Executive Director. It may remove the Executive Director from office in accordance with Article 51(5).*” ;

(34) *the following article is inserted:*

“*Article 43a*

Transparency of decisions adopted by the Board of Supervisors

Notwithstanding Article 70, within at most six weeks from the date of a meeting of the Board of Supervisors, the Authority shall, at the minimum, provide the European Parliament with a comprehensive and meaningful record of the proceedings of that meeting of the Board of Supervisors that enables a full understanding of the discussions, including an annotated list of decisions. The record of the proceedings shall not reflect discussions within the Board of

Supervisors relating to individual financial institutions, unless otherwise provided for in Article 75(3) or in the acts referred to in Article 1(2).”;

(35) Article 44 is amended as follows:

(a) *paragraph 1 is replaced by the following:*

“1. Decisions of the Board of Supervisors shall be taken by a simple majority of its members. Each voting member shall have one vote.

With regard to the acts specified in Articles 10 to 16 and measures and decisions adopted under the third subparagraph of Article 9(5) and Chapter VI and by way of derogation from the first subparagraph of this paragraph, the Board of Supervisors shall take decisions on the basis of a qualified majority of its members, as defined in Article 16(4) of the Treaty on European Union and in Article 3 of the Protocol (No 36) on transitional provisions.

The Chairperson shall not vote on the decisions referred to in the previous subparagraph.

With regard to the composition of the panels in accordance with Article 41(1a), (2) and (2a), and the members of the peer review team referred to in Article 30(1a), the Board of Supervisors, when considering the proposals by the Chairperson, shall strive for consensus. In the absence of consensus, decisions of the Board of Supervisors shall be taken by a majority of three quarters of its voting members. Each voting member shall have one vote.”;

b) *paragraph 4 is replaced by the following:*

“4. With regard to the decisions in accordance with Articles 17, 19 and 30 the Board of Supervisors shall vote on the proposed decisions in a written procedure. The voting members of the Board of Supervisors shall have eight working days to vote. Each voting member shall have one vote. The proposed decision shall be considered adopted unless a simple majority of voting members of the Board of Supervisors objects.

Abstentions shall not be counted as approvals or as objections, and shall not be considered when calculating the number of votes cast. If three voting members of the Board of Supervisors object to the written procedure, the draft decision shall be discussed and decided on by the Board of Supervisors in accordance with the procedure set out in paragraph 1.

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

■
c) *the following paragraph is added:*

“4a. The Authority's Chairperson shall have the prerogative to call a vote at any time. Without prejudice to that power and to the effectiveness of the Authority's decision-making procedures, the Board of Supervisors of the Authority shall strive for consensus when taking its decisions.”;

(36) Article 45 is replaced by the following:

“ Article 45

Composition

“1. The *Management* Board shall be composed of the Chairperson and *six* members *of the Board of Supervisors, elected by and from the voting members of the Board of Supervisors.*

Other than the Chairperson, each member of the Management Board shall have an alternate, who may replace him if he is prevented from attending.

- 1a. *The term of office of the members elected by the Board of Supervisors shall be two-and-a-half years. That term may be extended once. The composition of the Management Board shall be gender balanced and proportionate and shall reflect the Union as a whole. Mandates shall be overlapping and an appropriate rotating arrangement shall apply.*

3. *Meetings of the Management Board shall be convened by the Chairperson at his own initiative or at the request of at least a third of its members, and shall be chaired by the Chairperson. The Management Board shall meet prior to every meeting of the Board of Supervisors and as often as the Management Board deems necessary. It shall meet at least five times a year.*

4. *The members of the Management Board may, subject to the rules of procedure, be assisted by advisers or experts. The non-voting members, with the exception of the Executive Director, shall not attend any discussions within the Management Board relating to individual financial institutions.”;*

(37) the following articles are inserted:

“Article 45a

Decision-making

1. Decisions by the *Management* Board shall be adopted by simple majority of its members *whilst striving for consensus*. Each member shall have one vote. *The Chairperson shall be a voting member.*

The Executive Director and a representative of the Commission shall participate in meetings of the Management Board without the right to vote. The representative of the Commission shall have the right to vote on matters referred to in Article 63.

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

█

Article 45c

Coordination Groups

The Management Board may set up coordination groups on its own initiative or upon the request of a competent authority on defined topics for which there may be a need to coordinate having regard to specific market developments. The Management Board shall set up coordination groups at the request of five members of the Board of Supervisors. All competent authorities shall participate in the coordination groups and shall provide in accordance with article 35 to the coordination groups the information necessary in order to allow the coordination groups to conduct their coordinating tasks in accordance with their mandate.

The work of the coordination groups shall be based on information provided by the competent authorities and any findings identified by the Authority.

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

When monitoring market developments that may be the focus of coordination groups, the Authority may request competent authorities in accordance with Article 35 to provide information necessary to allow the Authority to perform its monitoring role.”;

(38) Article 46 is replaced by the following:

“Article 46

Independence *of the Management Board*

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

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

(39) Article 47 is replaced by the following:

“Article 47

Tasks

1. The **Management** Board shall ensure that the Authority carries out its mission and performs the tasks assigned to it in accordance with this Regulation. It shall take all necessary measures, notably the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Authority, in accordance with this Regulation.
2. The **Management** Board shall propose, for adoption by the Board of Supervisors, an annual and multi-annual work programme ■ .
3. The **Management** Board shall exercise its budgetary powers in accordance with Articles 63 and 64.
- 3a. The **Management** Board *may* examine, give an opinion and make *proposals* on all matters to be decided by the Board of Supervisors *after discussion at the relevant internal committee, save for peer reviews according to Article 30*.

4. The **Management** Board shall adopt the Authority's staff policy plan and, pursuant to Article 68(2), the necessary implementing measures of the Staff Regulations of Officials of the European Communities ('the Staff Regulations').
5. The **Management** Board shall adopt the special provisions on right of access to the documents of the Authority, in accordance with Article 72.
6. The **Management** Board shall propose an annual report on the activities of the Authority, including on the Chairperson's duties, ■ to the Board of Supervisors for approval.
7. The **Management** Board shall appoint and remove the members of the Board of Appeal in accordance with Article 58(3) and (5), ***taking duly into account a proposal by the Board of Supervisors.***
8. The members of the **Management** Board shall make public all meetings held and hospitality received. Expenses shall be recorded publicly in accordance with the Staff Regulations.”;

■

(40) Article 48 is amended as follows:

- (a) in paragraph 1, the second subparagraph is replaced by the following:
“The Chairperson shall be responsible for preparing the work of the Board of Supervisors, ***including setting the agenda to be adopted by the Board of Supervisors, convening the meetings and tabling items for decision*** and shall chair the meetings of the Board of Supervisors.

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

The Chairperson may invite the Management Board to consider setting up a coordination group in accordance with Article 45c.”

- (b) paragraph 2 is replaced by the following:

“2. The Chairperson shall be selected on the basis of merit, skills, knowledge of financial market participants and markets, **and of experience relevant to financial supervision and regulation**, following an open **selection procedure which shall respect the principle of gender balance and shall be published in the Official Journal of the European Union**. The **Board of Supervisors** shall **draw up** a shortlist of **qualified** candidates for the position of the Chairperson, **with the assistance of the Commission**. **Based on the shortlist** the Council shall adopt a decision to appoint the Chairperson, **after confirmation by the European Parliament**.”

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

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

“For the purpose of the evaluation referred to in the first subparagraph, the tasks of the Chairperson shall be carried out by the Vice-Chairperson.

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

(d) **paragraph 5 is replaced by the following:**

“5. The Chairperson may be removed from office only on serious grounds. He or she may only be removed so by the European Parliament following a decision of the Council, adopted following consultation of the Board of Supervisors.”;

(41) **Article 49 is amended as follows:**

(a) **the title is replaced by the following:**

“Independence of the Chairperson”;

(b) *paragraph 1 is replaced by the following:*

“Without prejudice to the role of the Board of Supervisors in relation to the tasks of the Chairperson, the Chairperson shall neither seek nor take instructions from the Union institutions or bodies, from any government or from any other public or private body.”;

(42) the following article is inserted:

“Article 49a

Expenses

The Chairperson shall make public all meetings held *with external stakeholders within a period of two weeks following the meeting* and any hospitality received. Expenses shall be recorded publicly in accordance with the Staff Regulations.”;

(43) *Article 50 is deleted;*

■

(44) Article 54 is amended as follows:

(a) paragraph 2 *is amended as follows:*

(i) *the introductory part is replaced by the following:*

“2. The Joint Committee shall serve as a forum in which the Authority shall cooperate regularly and closely to ensure cross-sectoral consistency, while considering sectoral specificities, with the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Insurance and Occupational Pensions Authority), in particular regarding:”;

(ii) *the first indent is replaced by the following:*

“– financial conglomerates and where required by Union law prudential consolidation,”

(iii) *the fifth indent is replaced by the following:*

“– *cybersecurity*,”;

(iv) *the sixth indent is replaced by the following:*

“– *information and best practice exchange with the ESRB and the ESAs*,”;

(v) *the following indents are added:*

“– *retail financial services and consumer and investor protection issues*;

– *advice by the Committee established in Article 1(6).*”;

(b) the following paragraph is inserted:

“2a. The Joint Committee *may assist the Commission in assessing the conditions and the technical specifications and procedures for ensuring secure and efficient inter-connection of the centralised automated mechanisms pursuant to the report as referred in article 32a(5) of Directive (EU) 2015/849 as well as in the effective interconnection of the national registers under Directive (EU) 2015/849.*”;

(c) *paragraph 3 is replaced by the following:*

“3. *The Joint Committee shall have a dedicated staff provided by the ESAs that shall act as a permanent secretariat. The Authority shall contribute adequate resources to administrative, infrastructure and operational expenses.*”;

(45) Article 55 *is amended as follows:*

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

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

3. *The Chairperson of the Joint Committee shall be appointed on an annual rotational basis from among the Chairpersons of the ESAs. The*

Chairperson of the Joint Committee shall be the second Vice-Chair of the ESRB.”;

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

“The Joint Committee shall meet at least once every three months.”;

(c) the following paragraph is added:

“4a. The Chairperson of the Authority shall regularly consult and inform the Board of Supervisors on any position taken in the meetings of the Joint Committee.”;

(46) Articles 56 and Articles 57 are replaced by the following:

“Article 56

Joint positions and common acts

Within the scope of its tasks in Chapter II, and, in particular with respect to the implementation of Directive 2002/87/EC, where relevant, the Authority shall reach joint positions by consensus with the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and with the European Supervisory Authority (European Banking Authority), as appropriate.

Where required by Union law, measures pursuant to Articles 10 to 16 and decisions pursuant to Articles 17, 18 and 19 of this Regulation in relation to the application of Directive 2002/87/EC and of any other Union acts referred to in Article 1(2) that also fall within the area of competence of the European Supervisory Authority (European Banking Authority) or the European Supervisory Authority (European Insurance and Occupational Pensions Authority) shall be adopted, in parallel, by the Authority, the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Insurance and Occupational Pensions Authority), as appropriate.

Article 57

Sub-Committees

- 1. The Joint Committee may establish sub-committees for the purposes of preparing draft joint positions and common acts to the Joint Committee.*
- 2. The Sub-Committee shall be composed of the individuals referred to in Article 55(1), and one high-level representative from the current staff of the relevant competent authority from each Member State.*
- 3. The Sub-Committee shall elect a Chairperson from among representatives of the relevant competent authorities, who shall also be an observer in the Joint Committee.*
- 3a. For the purposes of Article 56, a Sub-Committee on financial conglomerates to the Joint Committee shall be established.*
- 4. The Joint Committee shall make public on its website all established Sub-Committees including their mandates and a list of their members with their respective functions in the Sub-Committee.”;*

(47) Article 58 is amended as follows:

(a) paragraph 1 is replaced by the following:

“1. The Board of Appeal of the European Supervisory Authorities is hereby established.”;

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

“2. The Board of Appeal shall be composed of six members and six alternates, who shall be individuals of a high repute with a proven record of relevant knowledge of Union law and of having international professional experience, to a sufficiently high level in the fields of banking, insurance, occupational pensions, securities markets or other financial services, excluding current staff of the competent authorities or other national or Union institutions involved in the activities of the Authority and members of the Securities and Markets Stakeholder Group. Members shall be nationals of a Member State and shall have a thorough knowledge of at least two official languages of the Union. The Board of Appeal shall have sufficient legal expertise to provide expert legal advice on the legality, including proportionality of the Authority’s exercise of its powers.”;

(c) *paragraph 3 is replaced by the following:*

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

After having received the shortlist, the European Parliament may invite candidates for members and alternates to make a statement before it and answer any questions put by its Members before they are appointed.

The European Parliament may invite the members of the Board of Appeal to make a statement before it and answer any questions put by its Members whenever so requested, to the exclusion of statements, questions or answers pertaining to individual cases decided by or pending before the Board of Appeal.”;

(d) paragraph 5 is replaced by the following:

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

(48) in Article 59, *paragraphs 1 and 2 are* replaced by the following:

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

2. *Members of the Board of Appeal and staff of the Authority providing operational and secretariat support shall not take part in any appeal proceedings in which they have any personal interest, if they have previously been involved as representatives of one of the parties to the proceedings, or if they have participated in the decision under appeal.”;*

(49) in Article 60, *paragraphs 1 and 2 are* replaced by the following:

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

2. *The appeal, together with a statement of grounds, shall be filed in writing at the Authority within three months of the date of notification of the decision to the person concerned, or, in the absence of a notification, of the day on which the Authority published its decision.*

The Board of Appeal shall decide upon the appeal within three months after the appeal has been lodged.”;

- (50) *the following article is inserted:*

“Article 60a

Any natural or legal person, may send a reasoned advice to the Commission if they are of the opinion that the Authority has exceeded its competence including its proportionality when acting under Articles 16 and 16b, and that is of direct and individual concern to that person.”;

- (51) *in Article 62(1), the following points are added:*

■

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

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

■

- (52) *Articles 63, 64 and 65 are replaced by the following:*

“Article 63

Establishment of the budget

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

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

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

- 1a. The ■ **Board of Supervisors** shall, on the basis of the draft which has been approved by the ■ **Management Board**, adopt the draft single programming document for the three following financial years.
- 1b. The ■ single programming document shall be transmitted by the **Management Board** to the Commission, the European Parliament and the Council **and the European Court of Auditors** by 31 January.
2. **Taking account** of the ■ single programming document, the Commission shall enter in the draft budget of the Union the estimates it deems necessary in respect of the establishment plan and the amount of the balancing contribution to be charged to the general budget of the Union in accordance with Articles 313 and 314 of the Treaty.
3. The budgetary authority shall adopt the establishment plan for the Authority. The budgetary authority shall authorise the appropriations for the balancing contribution to the Authority.

4. The budget of the Authority shall be adopted by the Board of Supervisors. It shall become final after the final adoption of the general budget of the Union. Where necessary, it shall be adjusted accordingly.
5. The **Management** Board shall, without delay, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of its budget, in particular any project relating to property, such as the rental or purchase of buildings.
- 5a. ***Without prejudice to Article 88 of Commission Delegated Regulation (EU) No 1271/2013, the budgetary authority shall authorise any project which may have significant financial or long term implications for the funding of the Authority's budget, in particular any project relating to property, such as the rental or purchase of buildings, including break clauses.***

Article 64

Implementation and control of the budget

1. The ***Executive Director*** shall act as authorising officer and shall implement the Authority's ***annual*** budget.
2. The Authority's accounting officer shall send ***the*** provisional accounts to the Commission's accounting officer and to the Court of Auditors by 1 March of the following year. ***Article 70 shall not preclude the Authority from providing to the European Court of Auditors any information requested by the Court that is within the Court's competence.***
3. The Authority's accounting officer shall send by 1 March of the following year the required accounting information for consolidation purposes to the accounting officer of the Commission, in the manner and format laid down by that accounting officer.
4. The Authority's accounting officer shall send the report on budgetary and financial management to the members of the Board of Supervisors, the European Parliament, the Council and the Court of Auditors by 31 March of the following year.
5. After receiving the observations of the Court of Auditors on the provisional accounts of the Authority in accordance with Article ***246*** of the Financial Regulation, the Authority's accounting officer shall draw up the Authority's final accounts. The ***Executive Director*** shall send them to the Board of Supervisors, which shall deliver an opinion on these accounts.
6. The Authority's accounting officer shall send the final accounts, accompanied by the opinion of the Board of Supervisors, by 1 July of the following year, to the accounting officer of the Commission, the European Parliament, the Council and the Court of Auditors.

The Authority's accounting officer shall also send by ***15 June***, a reporting package to the Commission's accounting officer, in a standardised format as laid down by the Commission's accounting officer for consolidation purposes.

7. The final accounts shall be published in the Official Journal of the European Union by 15 November of the following year.
8. The **Executive Director** shall send the Court of Auditors a reply to the latter's observations by 30 September. He shall also send a copy of that reply to the **Management** Board and the Commission.
9. The **Executive Director** shall submit to the European Parliament, at the latter's request and as provided for in Article 165(3) of the Financial Regulation, any information necessary for the smooth application of the discharge procedure for the financial year in question.
10. The European Parliament, following a recommendation from the Council acting by qualified majority, shall, before 15 May of the year N + 2, grant a discharge to the Authority for the implementation of the budget for the financial year N.

10a. The Authority shall provide a reasoned opinion on the position of the European Parliament and on any other observations made by the European Parliament provided in the discharge procedure.

Article 65

Financial rules

The financial rules applicable to the Authority shall be adopted by the **Management** Board after consulting the Commission. Those rules may not depart from Commission Delegated Regulation (EU) No 1271/2013¹ for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 unless the specific operational needs for the functioning of the Authority so require and only with the prior agreement of the Commission.”;

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

¹ Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 328, 7.12.2013, p. 42).

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

(54) Article 68 is amended as follows:

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

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

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

(b) paragraph 4 is replaced by the following

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

(55) Article 70 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

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

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

(c) the following paragraph is inserted:

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

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

(d) *paragraphs 3 and 4 are* replaced by the following:

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

That information shall be subject to the conditions of professional secrecy referred to in paragraphs 1 and 2. The Authority shall lay down in its internal rules of procedure the practical arrangements for

implementing the confidentiality rules referred to in paragraphs 1 and 2.

4. *The Authority shall apply Commission Decision (EU, Euratom) 2015/444.*”;

(56) in Article 71, *the sole paragraph* is replaced by the following:

“This Regulation shall be without prejudice to the obligations of Member States relating to their processing of personal data under Regulation (EU) 2016/679 or the obligations of the Authority relating to its processing of personal data under Regulation (EU) *No 2018/1725* (Data Protection Regulation for EU institutions and Bodies) when fulfilling its responsibilities.”;

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

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

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

“2. The *Management* Board shall decide on the internal language arrangements for the Authority.”;

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

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

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(60) Article 76 is replaced by the following:

“Article 76

Relationship with the CESR

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

(61) Article 81 is amended as follows:

(a) paragraph 1 is amended as follows:

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

“1. By ... [24 months after the date of entry into force of this Regulation], and every 3 years thereafter, the Commission shall publish a general report on the experience acquired as a result of the operation of the Authority and the procedures laid down in this Regulation. That report shall evaluate, inter alia:”;

(ii) in point (a), the the introductory sentence and point (i) are replaced by the following:

“(a) the effectiveness and convergence in supervisory practices reached by competent authorities:

(i) the independence of the competent authorities and convergence in standards equivalent to corporate governance;”;

(iii) the following point is inserted:

“(fa) the functioning of the Joint Committee.”;

(b) the following paragraphs are inserted:

“2a. As part of the general report referred to in paragraph 1 the Commission shall, after consulting all relevant authorities and

stakeholders, conduct a comprehensive assessment on the application of Article 9a of this Regulation.

- 2b. As part of the general report referred to in paragraph 1 of the Commission shall, after consulting all relevant authorities and stakeholders, conduct a comprehensive assessment on the potential supervision of third-country trading venues by ESMA exploring aspects such as recognition based on systemic importance, organisational requirements, ongoing compliance, fines and periodic penalty payments as well as staff and resources. In its assessment, the Commission shall take into account the effects on liquidity, including the availability of best price for investors, best execution for EU clients, access barriers and economic benefits for EU counterparties to trade globally as well as the development of the Capital Markets Union.*
- 2c. As part of the general report referred to in paragraph 1 of the Commission shall, after consulting all relevant authorities and stakeholders, conduct a comprehensive assessment on the potential supervision of third-county CSDs by ESMA exploring aspects such as recognition based on systemic importance, organisational requirements, ongoing compliance, fines and periodic penalty payments as well as staff and resources.*
- 2d. The Commission shall submit the assessments referred to in paragraphs 2b and 2c, together with legislative proposals, if appropriate, to the European Parliament and the Council by [18 months after the date of entry into force of this Regulation].”.*

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Article 6

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

Regulation (EU) No **600/2014** is amended as follows:

(1) Article 1 is amended as follows:

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

“(g) the authorisation and supervision of data reporting service providers”;

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(2) Article 2(1) is amended as follows:

(a) points **(18)**, (34), (35) and (36) are replaced by the following:

(18) *‘competent authority’ means a competent authority as defined in point (26) of Article 4(1) of Directive 2014/65/EU and, for the authorisation and supervision of data reporting service providers, ESMA with the exception of those ARMs and APAs with a derogation in accordance with Article 2(1) point 36b;*

- “(34) ‘approved publication arrangement’ or ‘APA’ means a person authorised under this Regulation to provide the service of publishing trade reports on behalf of investment firms pursuant to Articles 20 and 21;
- (35) ‘consolidated tape provider’ or ‘CTP’ means a person authorised under this Regulation to provide the service of collecting trade reports for financial instruments listed in Articles 6, 7, 10, 12 and 13, 20 and 21 from regulated markets, MTFs, OTFs and APAs and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument;
- (36) ‘approved reporting mechanism’ or ‘ARM’ means a person authorised under this Regulation to provide the service of reporting details of transactions to competent authorities or to ESMA on behalf of investment firms;”;

(b) *the following points* are inserted:

“(36a) ‘data reporting service providers’ means the persons referred to in points (34) to (36) and persons referred to in Article 27a(2);

(36b) *The Commission shall be empowered to adopt a delegated act, specifying criteria to identify those ARMs and APAs that, by derogation from Regulation (EU) No 600/2014 on account of their limited relevance for the internal market, are subject to authorisation and supervision by a national competent authority. When adopting the delegated act, the Commission shall take into account one or more of the following elements:*

- *The extent to which the services are provided to investment firms authorised in one Member State only*
- *The number of trade reports or transactions*
- *Whether the ARM or APA is part of a group of financial market participants operating cross border.*

Where an entity is supervised by ESMA for any services provided as a data reporting service provider under this Regulation, none of its activities as an ARM or an APA shall be excluded from

ESMA supervision under the delegated act adopted pursuant to this point.”;

(3) Article 22 is replaced by the following:

“Article 22

Providing information for the purposes of transparency and other calculations

1. In order to carry out calculations for determining the requirements for the pre-trade and post-trade transparency and the trading obligation regimes referred to in Articles 3 to 11, Articles 14 to 21 and Article 32, which are applicable to financial instruments and for determining whether an investment firm is a systematic internaliser, ESMA and competent authorities may require information from:
 - (a) trading venues;
 - (b) APAs; and
 - (c) CTPs.
2. Trading venues, APAs and CTPs shall store the necessary data for a sufficient period of time.
3. ESMA shall develop draft regulatory technical standards to specify the content and frequency of data requests and the formats and the timeframe in which trading venues, APAs and CTPs are to respond to data requests referred to in paragraph 1, the type of data that is to be stored, and the minimum period of time for which trading venues, APAs and CTPs are to store data in order to be able to respond to data requests in accordance with paragraph 2.

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

(4) *in* Article 26(1), *the third subparagraph* is replaced by the following:

“*The competent authorities* shall *without delay* make available to *ESMA* any information reported in accordance with this Article.”

■ ;

(5) Article 27 is replaced by the following:

'Article 27

Obligation to supply financial instrument reference data

1. With regard to financial instruments admitted to trading on regulated markets or traded on MTFs or OTFs, trading venues shall provide ESMA with identifying reference data for the purposes of transaction reporting under Article 26.

With regard to other financial instruments covered by Article 26(2) traded on its system, each systematic internaliser shall provide ESMA with reference data relating to those financial instruments.

Identifying reference data shall be made ready for submission to ESMA in an electronic and standardised format before trading commences in the financial instrument that it refers to. The financial instrument reference data shall be updated whenever there are changes to the data with respect to a financial instrument. ESMA shall publish those reference data immediately on its website. ESMA shall give competent authorities access without delay to those reference data.

2. In order to allow competent authorities to monitor, pursuant to Article 26, the activities of investment firms to ensure that they act honestly, fairly and professionally and in a manner which promotes the integrity of the market, ESMA shall, after consultation with the competent authorities, establish the necessary arrangements in order to ensure that:
 - (a) ESMA effectively receives the financial instrument reference data pursuant to paragraph 1;
 - (b) the quality of the data so received is appropriate for the purpose of transaction reporting under Article 26;

- (c) the financial instrument reference data received pursuant to paragraph 1 is efficiently and without delay transmitted to the relevant competent authorities.
 - (d) there are effective mechanisms in place between ESMA and the competent authorities to resolve data delivery or data quality issues.
3. ESMA shall develop draft regulatory technical standards to specify:
- (a) data standards and formats for the financial instrument reference data in accordance with paragraph 1, including the methods and arrangements for supplying the data and any update thereto to ESMA and transmitting it to competent authorities in accordance with paragraph 1, and the form and content of such data;
 - (b) the technical measures that are necessary in relation to the arrangements to be made by ESMA and the competent authorities pursuant to paragraph 2.

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

3a. *ESMA may suspend the reporting obligations specified in paragraph 1 for certain or all financial instruments where all of the following conditions are met:*

- (a) *The suspension is necessary in order to preserve the integrity and quality of the reference data subject to reporting obligation as specified in paragraph 1 which may be put at risk by any of the following:***
 - (i) *serious incompleteness, inaccuracy or corruption of the submitted data, or***
 - (ii) *unavailability in a timely manner, disruption or damage of the functioning of systems used for the submission, collection, procession or storage of the respective reference data by ESMA,***

national competent authorities, market infrastructures, clearing and settlement systems and important market participants.

(b) The existing Union regulatory requirements under Union law that are applicable do not address the threat.

(c) The suspension does not have any detrimental effect on the efficiency of financial markets or investors that are disproportionate to the benefits of the action.

(d) The suspension does not create any regulatory arbitrage.

When taking the measure referred to in the first subparagraph, ESMA shall take into account the extent to which the measure ensures the accuracy and completeness of the reported data for the purposes specified in paragraph 2.

Before deciding to take the measure referred to in the first subparagraph, ESMA shall notify the relevant competent authorities.

The Commission shall be empowered to adopt delegated acts in accordance with Article 50 specifying criteria and factors to be taken into account by ESMA in determining in which cases the measure referred to in the first subparagraph may be adopted and cease to apply.’;

(6) the following Title IVa is inserted:

“TITLE IVa

DATA REPORTING SERVICES

CHAPTER 1

Authorisation of data reporting service providers

Article 27a

Requirement for authorisation

1. The operation of an APA, a CTP or an ARM as a regular occupation or business shall be subject to prior authorisation by ESMA in accordance with this Title.

By way of derogation from the first subparagraph, an APA or ARM identified in accordance with the delegated act referred to in point (36b) of Article 2(1) shall be subject to prior authorisation and supervision by the relevant national competent authority in accordance with this Title.

2. An investment firm or a market operator operating a trading venue may also provide the services of an APA, a CTP or an ARM, subject to the prior verification by ***the relevant competent authority*** that the investment firm or the market operator comply with this Title. The provision of those services shall be included in their authorisation.
3. ESMA shall establish a register of all data reporting services providers in the Union. The register shall be publicly available and shall contain information on the services for which the data reporting services provider is authorised and it shall be updated on a regular basis.

Where ESMA, ***or a national competent authority where relevant***, has withdrawn an authorisation in accordance with Article 27d, that withdrawal shall be published in the register for a period of 5 years.

4. Data reporting services providers shall provide their services under the supervision of ESMA ***or the national competent authority where relevant***. ESMA, ***or the national competent authority where relevant***, shall regularly review the compliance of data reporting services providers with this Title. ESMA, ***or the national competent authority where relevant***, shall monitor that data reporting service providers comply at all times with the conditions for initial authorisation established under this Title.

Article 27b

Authorisation of data reporting service providers

1. Data reporting service providers shall be authorised by ESMA, ***or the national competent authority where relevant***, for the purposes of Title IVa where:
 - (a) the data reporting service provider is a legal person established in the Union; and

- (b) the data reporting service provider meets the requirements laid down in Title IVa.
2. The authorisation referred to in paragraph 1 shall specify the data reporting service which the data reporting services provider is authorised to provide. Where an authorised data reporting services provider seeks to extend its business to additional data reporting services, it shall submit a request to ESMA, *or the national competent authority where relevant*, for extension of that authorisation.
 3. An authorised data reporting service provider shall comply at all times with the conditions for authorisation referred to in Title IVa. An authorised data reporting service provider shall, without undue delay, notify ESMA, *or the national competent authority where relevant*, of any material changes to the conditions for authorisation.
 4. The authorisation referred to in paragraph 1 shall be effective and valid for the entire territory of the Union and shall allow the data reporting service provider to provide the services for which it has been authorised, throughout the Union.

Article 27c

Procedures for granting and refusing applications for authorisation

1. The applicant data reporting service provider shall submit an application providing all information necessary to enable ESMA, *or the national competent authority where relevant*, to confirm that the data reporting service provider has established, at the time of initial authorisation, all the necessary arrangements to meet its obligations under the provisions of this Title, including a programme of operations setting out, inter alia, the types of services envisaged and the organisational structure.
2. ESMA, *or the national competent authority where relevant*, shall assess whether the application for authorisation is complete within 20 working days of receipt of the application.

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

After assessing an application as complete, ESMA shall notify the data reporting service provider accordingly.

3. ESMA, *or the national competent authority where relevant*, shall, within six months from the receipt of a complete application, assess the compliance of the data reporting service provider with this Title and shall adopt a fully reasoned decision granting or refusing authorisation and shall notify the applicant data service provider accordingly within five working days.
4. ESMA shall develop draft regulatory technical standards to determine:
 - (a) the information to be provided to it under paragraph 1, including the programme of operations;
 - (b) the information included in the notifications under Article 27b(3).

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

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

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

Article 27d

Withdrawal of authorisation

1. ESMA, *or the national competent authority where relevant*, may withdraw the authorisation of a data reporting service provider where the latter:

- (a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has provided no services for the preceding six months;
 - (b) obtained the authorisation by making false statements or by any other irregular means;
 - (c) no longer meets the conditions under which it was authorised;
 - (d) has seriously and systematically infringed the provisions of this Regulation.
2. ESMA shall, *where relevant*, without undue delay, notify the competent authority in the Member State where the data reporting service provider is established of a decision to withdraw the authorisation of a data reporting service provider.;

Article 27e

Requirements for the management body of a data reporting services provider

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

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

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

2. Data reporting service provider shall notify to ESMA, *or the national competent authority where relevant*, all members of its management body and of any changes to its membership, along with all information needed to assess whether the entity complies with paragraph 1.
3. The management body of a data reporting services provider shall define and oversee the implementation of the governance arrangements that ensure effective and prudent management of an organisation including the segregation of duties in the organisation and the prevention of conflicts of interest, and in a manner that promotes the integrity of the market and the interest of its clients.
4. ESMA, *or the national competent authority where relevant*, shall refuse authorisation if it is not satisfied that the person or the persons who shall effectively direct the business of the data reporting services provider are of sufficiently good repute, or if there are objective and demonstrable grounds for believing that proposed changes to the management of the provider pose a threat to its sound and prudent management and to the adequate consideration of the interest of its clients and the integrity of the market.
5. ESMA shall develop draft regulatory technical standards by *1 January 2021* for the assessment of the suitability of the members of the management body described in paragraph 1, taking into account different roles and functions carried out by them and the need to avoid conflicts of interest between members of the management body and users of the APA, CTP or ARM.

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

Chapter 2

CONDITIONS FOR APAS, CTPS AND ARMS

Article 27f

Organisational requirements for APAs

1. An APA shall have adequate policies and arrangements in place to make public the information required under Articles 20 and 21 as close to real time as is

technically possible, on a reasonable commercial basis. The information shall be made available free of charge 15 minutes after the APA has published it. The APA shall efficiently and consistently disseminate such information in a way that ensures fast access to the information, on a non-discriminatory basis and in a format that facilitates the consolidation of the information with similar data from other sources.

2. The information made public by an APA in accordance with paragraph 1 shall include, at least, the following details:
 - (a) the identifier of the financial instrument;
 - (b) the price at which the transaction was concluded;
 - (c) the volume of the transaction;
 - (d) the time of the transaction;
 - (e) the time the transaction was reported;
 - (f) the price notation of the transaction;
 - (g) the code for the trading venue the transaction was executed on, or where the transaction was executed via a systematic internaliser the code 'SI' or otherwise the code 'OTC';
 - (h) if applicable, an indicator that the transaction was subject to specific conditions.
3. An APA shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients. In particular, an APA who is also a market operator or investment firm shall treat all information collected in a non-discriminatory fashion and shall operate and maintain appropriate arrangements to separate different business functions.
4. An APA shall have sound security mechanisms in place designed to guarantee the security of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage before

publication. The APA shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

5. The APA shall have systems in place that can effectively check trade reports for completeness, identify omissions and obvious errors and request re-transmission of any such erroneous reports.
6. ESMA shall develop draft regulatory technical standards to determine common formats, data standards and technical arrangements facilitating the consolidation of information as referred to in paragraph 1.

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

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 50 specifying what constitutes a reasonable commercial basis to make information public as referred to in paragraph 1 of this Article.
8. ESMA shall develop draft regulatory technical standards specifying:
 - (a) the means by which an APA may comply with the information obligation referred to in paragraph 1;
 - (b) the content of the information published under paragraph 1, including at least the information referred to in paragraph 2 in such a way as to enable the publication of information required under this Article;
 - (c) the concrete organisational requirements laid down in paragraphs 3, 4 and 5.

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

Article 27g

Organisational requirements for CTPs

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

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

- (a) the identifier of the financial instrument;
- (b) the price at which the transaction was concluded;
- (c) the volume of the transaction;
- (d) the time of the transaction;
- (e) the time the transaction was reported;
- (f) the price notation of the transaction;
- (g) the code for the trading venue the transaction was executed on, or where the transaction was executed via a systematic internaliser the code 'SI' or otherwise the code 'OTC';
- (h) where applicable, the fact that a computer algorithm within the investment firm was responsible for the investment decision and the execution of the transaction;
- (i) if applicable, an indicator that the transaction was subject to specific conditions;
- (j) if the obligation to make public the information referred to in Article 3(1) was waived in accordance with point (a) or (b) of Article 4(1), a flag to indicate which of those waivers the transaction was subject to.

The information shall be made available free of charge 15 minutes after the CTP has published it. The CTP shall be able to efficiently and consistently disseminate such information in a way that ensures fast access to the

information, on a non-discriminatory basis and in formats that are easily accessible and utilisable for market participants.

2. A CTP shall have adequate policies and arrangements in place to collect the information made public in accordance with Article 10 and Article 21, consolidate it into a continuous electronic data stream and make following information available to the public as close to real time as is technically possible, on a reasonable commercial basis including, at least, the following details:
 - (a) the identifier or identifying features of the financial instrument;
 - (b) the price at which the transaction was concluded;
 - (c) the volume of the transaction;
 - (d) the time of the transaction;
 - (e) the time the transaction was reported;
 - (f) the price notation of the transaction;
 - (g) the code for the trading venue the transaction was executed on, or where the transaction was executed via a systematic internaliser the code 'SI' or otherwise the code 'OTC';
 - (h) if applicable, an indicator that the transaction was subject to specific conditions.

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

3. The CTP shall ensure that the data provided is consolidated from all the regulated markets, MTFs, OTFs and APAs and for the financial instruments specified by regulatory technical standards under point (c) of paragraph 8.
4. The CTP shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest. In particular, a market operator or an APA, who also operate a consolidated tape, shall treat all information collected in a non-discriminatory fashion and shall operate and maintain appropriate arrangements to separate different business functions.
5. The CTP shall have sound security mechanisms in place designed to guarantee the security of the means of transfer of information and to minimise the risk of data corruption and unauthorised access. The CTP shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

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

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

6. The Commission shall adopt delegated acts in accordance with Article 89 clarifying what constitutes a reasonable commercial basis to provide access to data streams as referred to in paragraphs 1 and 2 of this Article.
7. ESMA shall develop draft regulatory technical standards specifying:

- (a) the means by which the CTP may comply with the information obligation referred to in paragraphs 1 and 2;
- (b) the content of the information published under paragraphs 1 and 2;
- (c) the financial instruments data of which must be provided in the data stream and for non-equity instruments the trading venues and APAs which need to be included;
- (d) other means to ensure that the data published by different CTPs is consistent and allows for comprehensive mapping and cross-referencing against similar data from other sources, and is capable of being aggregated at Union level;
- (e) the concrete organisational requirements laid down in paragraphs 4 and 5.

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

Article 27h

Organisational requirements for ARMs

1. An ARM shall have adequate policies and arrangements in place to report the information required under Article 26 as quickly as possible, and no later than the close of the working day following the day upon which the transaction took place.
2. The ARM shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients. In particular, an ARM that is also a market operator or investment firm shall treat all information collected in a non-discriminatory fashion and shall operate and maintain appropriate arrangements to separate different business functions.
3. The ARM shall have sound security mechanisms in place designed to guarantee the security and authentication of the means of transfer of

information, minimise the risk of data corruption and unauthorised access and to prevent information leakage, maintaining the confidentiality of the data at all times. The ARM shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

4. The ARM shall have systems in place that can effectively check transaction reports for completeness, identify omissions and obvious errors caused by the investment firm and where such error or omission occurs, to communicate details of the error or omission to the investment firm and request re-transmission of any such erroneous reports.

The ARM shall have systems in place to enable the ARM to detect errors or omissions caused by the ARM itself and to enable the ARM to correct and transmit, or re-transmit as the case may be, correct and complete transaction reports to the competent authority.

5. ESMA shall develop draft regulatory technical standards specifying:
 - (a) the means by which the ARM may comply with the information obligation referred to in paragraph 1; and
 - (b) the concrete organisational requirements laid down in paragraphs 2, 3 and 4.

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

- (7) the following Title VIa is inserted:

“TITLE VIa

ESMA powers and competences

CHAPTER 1

COMPETENCES AND PROCEDURES

Article 38a

Exercise of ESMA's powers

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

Article 38b

Request for information

1. ESMA may by simple request or by decision require the following persons to provide all information to enable ESMA to carry out its duties under this Regulation:
 - (a) an APA, a CTP, an ARM, and an investment firm or a market operator operating a trading venue to operate the data reporting services of an APA, a CTP or an ARM, and the persons that control them or are controlled by them;
 - (b) the managers of the persons referred to in point (a);
 - (c) the auditors and advisors of the persons referred to in point (a);
2. Any simple request for information referred to in paragraph 1 shall:
 - (a) refer to this Article as the legal basis of that request;
 - (b) state the purpose of the request;
 - (c) specify the information required;
 - (d) include a time limit within which the information is to be provided;
 - (e) include a statement that there is no obligation on the person from whom the information is requested to provide that information but that in case of a voluntary reply to the request, the information provided must not be incorrect or misleading;

- (f) indicate the amount of the fine to be issued in accordance with Article 38e where the information provided is incorrect or misleading.
3. When requiring to supply information under paragraph 1 by decision, ESMA shall:
- (a) refer to this Article as the legal basis of that request;
 - (b) state the purpose of the request;
 - (c) specify the information required;
 - (d) set a time limit within which the information is to be provided;
 - (e) indicate the periodic penalty payments provided for in Article 38g where the production of the required information is incomplete;
 - (f) indicate the fine provided for in Article 38f, where the answers to questions asked are incorrect or misleading;
 - (g) indicate the right to appeal the decision before ESMA's Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union ('Court of Justice') in accordance with Articles 60 and 61 of Regulation (EU) No 1095/2010.

4. The persons referred to in paragraph 1 or their representatives and, in the case of legal persons or associations having no legal personality, the persons authorised to represent them by law or by their constitution shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.
5. ESMA shall, without delay, send a copy of the simple request or of its decision to the competent authority of the Member State where the persons referred to in paragraph 1 concerned by the request for information are domiciled or established.

Article 38c

General investigations

1. In order to carry out its duties under this Regulation, ESMA may conduct necessary investigations of persons referred to in Article 38b(1). To that end, the officials and other persons authorised by ESMA shall be empowered to:
 - (a) examine any records, data, procedures and any other material relevant to the execution of its tasks irrespective of the medium on which they are stored;
 - (b) take or obtain certified copies of or extracts from such records, data, procedures and other material;
 - (c) summon and ask any person referred to in Article 38b(1) or their representatives or staff for oral or written explanations on facts or documents relating to the subject matter and purpose of the inspection and to record the answers;
 - (d) interview any other natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;
 - (e) request records of telephone and data traffic.
2. The officials and other persons authorised by ESMA for the purposes of the investigations referred to in paragraph 1 shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the investigation. That authorisation shall also indicate the periodic penalty payments provided for in Article 38i where the production of the required records, data, procedures or any other material, or the answers to questions asked to persons referred to in Article 38b(1) are not provided or are incomplete, and the fines provided for in Article 38h, where the answers to questions asked to persons referred to in Article 38b(1) are incorrect or misleading.
3. The persons referred to in Article 38b(1) are required to submit to investigations launched on the basis of a decision of ESMA. The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 38i, the legal remedies available under

Regulation (EU) No 1095/2010 and the right to have the decision reviewed by the Court of Justice.

4. In good time before an investigation referred to in paragraph 1, ESMA shall inform the competent authority of the Member State where the investigation is to be carried out of the investigation and of the identity of the authorised persons. Officials of the competent authority concerned shall, upon the request of ESMA, assist those authorised persons in carrying out their duties. Officials of the competent authority concerned may also attend the investigations upon request.
5. If a request for records of telephone or data traffic referred to in point (e) of paragraph 1 requires authorisation from a judicial authority according to applicable national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.
6. Where a national judicial authority receives an application for the authorisation of a request for records of telephone or data traffic referred to in point (e) of paragraph 1, that authority shall verify the following:
 - (a) the decision adopted by ESMA referred to in paragraph 3 is authentic;
 - (b) any measures to be taken are proportionate and not arbitrary or excessive.

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

Article 38d

On-site inspections

1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary on-site inspections at any business premises of the persons referred to in Article 38b(1).
2. The officials and other persons authorised by ESMA to conduct an on-site inspection may enter any business premises of the persons subject to an investigation decision adopted by ESMA and shall have all the powers stipulated in Article 38b(1). They shall also have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.
3. In sufficient time before the inspection, ESMA shall give notice of the inspection to the competent authority of the Member State where the inspection is to be conducted. Where the proper conduct and efficiency of the inspection so require, ESMA, after informing the relevant competent authority, may carry out the on-site inspection without prior notice. Inspections in accordance with this Article shall be conducted provided that the relevant authority has confirmed that it does not object to those inspections.
4. The officials and other persons authorised by ESMA to conduct an on-site inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection and the periodic penalty payments provided for in Article 38g where the persons concerned do not submit to the inspection.
5. The persons referred to in Article 38b(1) shall submit to on-site inspections ordered by decision of ESMA. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the periodic penalty payments provided for in Article 38i, the legal remedies available under Regulation (EU) No 1095/2010 as well as the right to have the decision reviewed by the Court of Justice.
6. Officials of, as well as those authorised or appointed by, the competent authority of the Member State where the inspection is to be conducted shall, at the request of ESMA, actively assist the officials and other persons authorised

by ESMA. Officials of the competent authority of the Member State concerned may also attend the on-site inspections.

7. ESMA may also require competent authorities to carry out specific investigatory tasks and on-site inspections as provided for in this Article and in Article 38b(1) on its behalf.
8. Where the officials and other accompanying persons authorised by ESMA find that a person opposes an inspection ordered pursuant to this Article, the competent authority of the Member State concerned shall afford them the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, so as to enable them to conduct their on-site inspection.
9. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7 requires authorisation by a judicial authority according to national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.
10. Where a national judicial authority receives an application for the authorisation of an on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7, that authority shall verify the following:
 - (a) the decision adopted by ESMA referred to in paragraph 5 is authentic;

(b) any measures to be taken are proportionate and not arbitrary or excessive.

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

Article 38e

Exchange of information

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

Article 38f

Professional secrecy

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

Article 38g

Supervisory measures by ESMA

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

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

- (c) issue public notices.
2. When taking the actions referred to in paragraph 1, ESMA shall take into account the nature and seriousness of the infringement, having regard to the following criteria:
- (a) the duration and frequency of the infringement;
 - (b) whether financial crime has been occasioned, facilitated or otherwise attributable to the infringement;
 - (c) whether the infringement has been committed intentionally or negligently.
 - (d) the degree of responsibility of the person responsible for the infringement;
 - (e) the financial strength of the person responsible for the infringement, as indicated by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;
 - (f) the impact of the infringement on investors' interests;
 - (g) the importance of the profits gained, losses avoided by the person responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;
 - (h) the level of cooperation of the person responsible for the infringement with ESMA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;
 - (i) previous infringements by the person responsible for the infringement;
 - (j) measures taken after the infringement by the person responsible for the infringement to prevent its repetition.
3. Without undue delay, ESMA shall notify any action taken pursuant to paragraph 1 to the person responsible for the infringement, and shall communicate it to the competent authorities of the Member States and to the

Commission. It shall publicly disclose any such decision on its website within 10 working days from the date when it was adopted.

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

- (a) a statement affirming the right of the person responsible for the infringement to appeal the decision;
- (b) where relevant, a statement affirming that an appeal has been lodged and specifying that such an appeal does not have suspensive effect;
- (c) a statement asserting that it is possible for ESMA's Board of Appeal to suspend the application of the contested decision in accordance with Article 60(3) of Regulation (EU) No 1095/2010.

CHAPTER 2

ADMINISTRATIVE SANCTIONS AND OTHER MEASURES

Article 38h

Fines

1. Where in accordance with Article 38k(5), ESMA finds that any person has, intentionally or negligently, committed one of the infringements listed in Title IVa, it shall adopt a decision imposing a fine in accordance with paragraph 2 of this Article.

An infringement shall be considered to have been committed intentionally if ESMA finds objective factors which demonstrate that a person acted deliberately to commit the infringement.

2. The maximum amount of the fine referred to in paragraph 1 shall be EUR 200 000 or, in the Member States whose currency is not the euro, the corresponding value in the national currency.
3. When determining the level of a fine pursuant to paragraph 1, ESMA shall take into account the criteria set out in Article 38g(2).

Article 38i

Periodic penalty payments

1. ESMA shall, by decision, impose periodic penalty payments in order to compel:
 - (a) a person to put an end to an infringement in accordance with a decision taken pursuant to *point (a) of Article 38g(1)*;
 - (b) a person referred to in Article 38b(1):
 - to supply complete information which has been requested by a decision pursuant to Article 38b;
 - to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by a decision pursuant to Article 38c;
 - to submit to an on-site inspection ordered by a decision taken pursuant to Article 38d.
2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed for each day of delay.
3. Notwithstanding paragraph 2, the amount of the periodic penalty payments shall be 3 % of the average daily turnover in the preceding business year, or, in the case of natural persons, 2 % of the average daily income in the preceding calendar year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.
4. A periodic penalty payment shall be imposed for a maximum period of six months following the notification of ESMA's decision. Following the end of the period, ESMA shall review the measure.

Article 38j

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

1. ESMA shall disclose to the public every fine and periodic penalty payment that has been imposed pursuant to Articles 38h and 38i unless such disclosure to the

public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved. Such disclosure shall not contain personal data within the meaning of Regulation (EC) No 45/2001.

2. Fines and periodic penalty payments imposed pursuant to Articles 38h and 38i shall be of an administrative nature.
3. Where ESMA decides to impose no fines or penalty payments, it shall inform the European Parliament, the Council, the Commission, and the competent authorities of the Member State concerned accordingly and shall set out the reasons for its decision.
4. Fines and periodic penalty payments imposed pursuant to Articles 38h and 38i shall be enforceable.
5. Enforcement shall be governed by the rules of **■** procedure in force in the State in the territory of which it is carried out.
6. The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the European Union.

Article 38k

Procedural rules for taking supervisory measures and imposing fines

1. Where, in carrying out its duties under this Regulation, ESMA finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in Title IVa, ESMA shall appoint an independent investigation officer within ESMA to investigate the matter. The appointed officer shall not be involved or have been directly or indirectly involved in the supervision or the authorisation process of the data reporting service provider concerned and shall perform its functions independently from ESMA.
2. The investigation officer referred to in paragraph 1 shall investigate the alleged infringements, taking into account any comments submitted by the persons who are subject to the investigations, and shall submit a complete file with his findings to ESMA.
3. In order to carry out its tasks, the investigation officer may exercise the power to request information in accordance with Article 38b and to conduct investigations and on-site inspections in accordance with Articles 38c and 38d.

4. Where carrying out his tasks, the investigation officer shall have access to all documents and information gathered by ESMA in its supervisory activities.
5. Upon completion of his investigation and before submitting the file with his findings to ESMA, the investigation officer shall give the persons subject to the investigations the opportunity to be heard on the matters being investigated. The investigation officer shall base his findings only on facts on which the persons concerned have had the opportunity to comment.
6. The rights of the defence of the persons concerned shall be fully respected during investigations under this Article.
7. When submitting the file with his findings to ESMA, the investigation officer shall notify the persons who are subject to the investigations. The persons subject to the investigations shall be entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information affecting third parties.
8. On the basis of the file containing the investigation officer's findings and, when requested by the persons subject to the investigations, after having heard the those persons in accordance with Article 38l, ESMA shall decide if one or more of the infringements listed in Title IVa have been committed by the persons subject to the investigations and, in such a case, shall take a supervisory measure in accordance with Article 38m.
9. The investigation officer shall not participate in ESMA's deliberations or in any other way intervene in ESMA's decision-making process.
10. The Commission shall adopt delegated acts in accordance with Article 50 by **1 October 2021** to specifying further the rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on the rights of the defence, temporal provisions, and the collection of fines or periodic penalty payments, and the limitation periods for the imposition and enforcement of fines and periodic penalty payments.

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

Article 38l

Hearing of the persons concerned

1. Before taking any decision pursuant to Articles 38g, 38h and 38i, ESMA shall give the persons subject to the proceedings the opportunity to be heard on its findings. ESMA shall base its decisions only on findings on which the persons subject to the proceedings have had an opportunity to comment.

The first subparagraph shall not apply if urgent action is needed in order to prevent significant and imminent damage to the financial system. In such a case ESMA may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.

2. The rights of the defence of the persons subject to investigations shall be fully respected in the proceedings. They shall be entitled to have access to ESMA's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or ESMA's internal preparatory documents.

Article 38m

Review by the Court of Justice

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

Article 38n

Authorisation and supervisory fees

1. ESMA shall charge fees to the data reporting service providers in accordance with this Regulation and in accordance with the delegated acts adopted pursuant to paragraph 3. Those fees shall fully cover ESMA's necessary expenditure relating to the authorisation and supervision of data reporting service providers and the reimbursement of any costs that the competent authorities may incur carrying out work pursuant to this Regulation, in particular as a result of any delegation of tasks in accordance with Article 38o.
2. The amount of an individual fee charged to a particular data reporting service providers shall cover all administrative costs incurred by ESMA for its activities in relation to the prospectus, including supplements thereto, drawn up by such issuer, offeror or person asking for admission to trading on a regulated market. It shall be proportionate to the turnover of the issuer, offeror or person asking for admission to trading on a regulated market.
3. The Commission shall adopt a delegated act in accordance with Article 50 by **1 October 2021** to specifying further the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid.

Article 38o

Delegation of tasks by ESMA to competent authorities

1. Where necessary for the proper performance of a supervisory task, ESMA may delegate specific supervisory tasks to the competent authority of a Member State in accordance with the guidelines issued by ESMA pursuant to Article 16 of Regulation (EU) No 1095/2010. Such specific supervisory tasks may, in particular, include the power to carry out requests for information in

accordance with Article 38b and to conduct investigations and on-site inspections in accordance with Article 38c and Article 38d.

2. Prior to delegation of a task, ESMA shall consult the relevant competent authority about:
 - (a) the scope of the task to be delegated;
 - (b) the timetable for the performance of the task; and
 - (c) the transmission of necessary information by and to ESMA.
3. In accordance with the regulation on fees adopted by the Commission pursuant to Article 38n(3), ESMA shall reimburse a competent authority for costs incurred as a result of carrying out delegated tasks.
4. ESMA shall review the decision referred to in paragraph 1 at appropriate intervals. A delegation may be revoked at any time.
5. A delegation of tasks shall not affect the responsibility of ESMA and shall not limit ESMA's ability to conduct and oversee the delegated activity.";

(8) in Article 40, paragraph 6 is replaced by the following:

“6. ESMA shall review a prohibition or restriction imposed under paragraph 1 at appropriate intervals, and at least every 6 months. Following at least two consecutive renewals and based on proper analysis in order to assess the impact on the consumer, ESMA may decide on the annual renewal of the prohibition.”;

(9) in Article 41, paragraph 6 is replaced by the following:

“6. EBA shall review a prohibition or restriction imposed under paragraph 1 at appropriate intervals, and at least every 6 months. Following at least two consecutive renewals and based on proper analysis in order to assess the impact on the consumer, EBA may decide on the annual renewal of the prohibition.”;

(10) Article 50 is amended as follows:

(a) paragraph 2 is replaced by the following:

“2. The power to adopt delegated acts referred to in Article 1(9), point **(36b)** **of Article 2(1)**, Article 2(2), Article 13(2), Article 15(5), Article 17(3), Article 19(2) and (3), **Article 27(3a)**, **Article 27f(7)**, **Article 27g(6)**, Article 31(4), **Article 38k(10)**, **Article 38n(3)**, Article 40(8), Article 41(8), Article 42(7), Article 45(10) and Article 52(10), (12) **and (14)** shall be conferred for an indeterminate period of time from 2 July 2014.”;

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

“The delegation of power referred to in Article 1(9), point **(36b) of Article 2(1)**, Article 2(2), Article 13(2), Article 15(5), Article 17(3), Article 19(2) and (3), **Article 27(3a), Article 27f(7), Article 27g(6)**, Article 31(4), **Article 38k(10), Article 38n(3)**, Article 40(8), Article 41(8), Article 42(7), Article 45(10) and Article 52(10), (12) **and (14)** may be revoked at any time by the European Parliament or by the Council.’;

(c) in paragraph 5, the first sentence is replaced by the following:

‘A delegated act adopted pursuant to Article 1(9), **point (36b) of Article 2(1)**, Article 2(2), Article 13(2), Article 15(5), Article 17(3), Article 19(2) and (3), **Article 27(3a), Article 27f(7), Article 27g(6)**, Article 31(4), **Article 38k(10), Article 38n(3)**, Article 40(8), Article 41(8), Article 42(7), Article 45(10) and Article 52(10), (12) **and (14)** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object’;

(11) in Article 52, the following paragraphs 13 and 14 are added:

‘13. The Commission shall, after consulting ESMA, present reports to the European Parliament and the Council on the functioning of the consolidated tape established in accordance with Title IVa. The report relating to Article 27d(1) shall be presented by 3 September 2019. The report relating to Article 27d(2) shall be presented by 3 September 2021.

The reports referred to in the first subparagraph shall assess the functioning of the consolidated tape against the following criteria:

(a) the availability and timeliness of post trade information in a consolidated format capturing all transactions irrespective of whether they are carried out on trading venues or not;

- (b) the availability and timeliness of full and partial post trade information that is of a high quality, in formats that are easily accessible and usable for market participants and available on a reasonable commercial basis.

Where the Commission concludes that the CTPs have failed to provide information in a way that meets the criteria set out in the second subparagraph, the Commission shall attach a request to its report for ESMA to launch a negotiated procedure for the appointment through a public procurement process run by ESMA of a commercial entity operating a consolidated tape. ESMA shall launch the procedure after receiving the request from the Commission on the conditions specified in the Commission's request and in accordance with Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council*.

14. The Commission shall, where the procedure outlined in paragraph 13 is initiated, adopt delegated acts in accordance with Article 50, by specifying measures in order to:
 - (a) provide for the contract duration of the commercial entity operating a consolidated tape and the process and conditions for renewing the contract and the launching of new public procurement;
 - (b) provide that the commercial entity operating a consolidated tape shall do so on an exclusive basis and that no other entity shall be authorised as a CTP in accordance with Article 27a;

- (c) empower ESMA to ensure adherence with tender conditions by the commercial entity operating a consolidated tape appointed through a public procurement;
 - (d) ensure that the post-trade information provided by the commercial entity operating a consolidated tape is of a high quality, in formats that are easily accessible and usable for market participants and in a consolidated format capturing the entire market;
 - (e) ensure that the post trade information is provided on a reasonable commercial basis, on both a consolidated and unconsolidated basis, and meets the needs of the users of that information across the Union;
 - (f) ensure that trading venues and APAs shall make their trade data available to the commercial entity operating a consolidated tape appointed through a public procurement process run by ESMA at a reasonable cost;
 - (g) specify arrangements applicable where the commercial entity operating a consolidated tape appointed through a public procurement fails to fulfil the tender conditions;
 - (h) specify arrangements under which CTPs authorised under Article 27a may continue to operate a consolidated tape where the empowerment provided for in point (b) of this paragraph is not used or, where no entity is appointed through the public procurement, until such time as a new public procurement is completed and a commercial entity is appointed to operate a consolidated tape.
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- * Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euroatom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).';

(12) the following articles are inserted:

'Article 54a

Transitional measures related to ESMA

1. All competences and duties related to the supervisory and enforcement activity in the field of data reporting services providers shall be **transferred to ESMA on 1 January 2022, except for competences and duties related to APAs and ARMs subject to derogation referred to in Article 2(1) point 36b**. Those **transferred** competences and duties shall be taken-up by ESMA on the same date.
2. Any files and working documents related to the supervisory and enforcement activity in the field of data reporting services providers, including any ongoing examinations and enforcement actions, or certified copies thereof, shall be taken over by ESMA on the date referred to in paragraph 1.

However, an application for authorisation that has been received by competent authorities before **1 October 2021** shall not be transferred to ESMA, and the decision to register or refuse registration shall be taken by the relevant authority.

3. The competent authorities referred to in paragraph 1 shall ensure that any existing records and working papers, or certified copies thereof, shall be transferred to ESMA as soon as possible and in any event by data reporting services providers. Those competent authorities shall also render all necessary assistance and advice to ESMA to facilitate effective and efficient transfer and taking-up of supervisory and enforcement activity in the field of data reporting services providers.

4. ESMA shall act as the legal successor to the competent authorities referred to in paragraph 1 in any administrative or judicial proceedings that result from supervisory and enforcement activity pursued by those competent authorities in relation to matters that fall under this Regulation.
5. Any authorisation of a data reporting services provider granted by a competent authority referred to in paragraph 1 shall remain valid after the transfer of competences to ESMA.

Article 54b

Relations with auditors

1. Any person authorised within the meaning of Directive 2006/43/EC of the European Parliament and of the Council*, performing in a data reporting services provider the task described in Article 34 of Directive 2013/34/EU or Article 73 of Directive 2009/65/EC or any other task prescribed by law, shall have a duty to report promptly to ESMA any fact or decision concerning that undertaking of which that person has become aware while carrying out that task and which is liable to:
 - (a) constitute a material infringement of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of data reporting services provider;
 - (b) affect the continuous functioning of the data reporting services provider;
 - (c) lead to refusal to certify the accounts or to the expression of reservations.

That person shall also have a duty to report any facts and decisions of which the person becomes aware in the course of carrying out one of the tasks referred to in the first subparagraph in an undertaking having close links with the data reporting services provider within which he is carrying out that task.

2. The disclosure in good faith to the competent authorities, by persons authorised within the meaning of Directive 2006/43/EC, of any fact or decision referred to in paragraph 1 shall not constitute a breach of any contractual or legal

restriction on disclosure of information and shall not involve such persons in liability of any kind.

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- * Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).¹.

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Article 8

Amendments to Regulation (EU) No 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds

Regulation (EU) 2016/1011 is amended as follows:

(-1) in Article 3(1), point (24), point (a), the introductory part is replaced by the following:

“(a) input data contributed entirely from:”;

(-1a) in Article 3(1), point (24), point (a), point (vii) is replaced by the following:

“(vii) a service provider to which the benchmark administrator has outsourced the data collection in accordance with Article 10, with the exception of Article 10(3)(f), provided that the service provider receives the data entirely ■ from an entity referred to in points (i) to (vi);”;

(1) in Article 4, the following paragraph is added:

“9. The ESMA shall *develop the draft regulatory standard* to specify the requirements to ensure that the governance arrangements referred to in paragraph 1 are sufficiently robust.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 October 2020.

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

(2) in Article 12, the following paragraph is added:

“4. The ***ESMA*** shall ***develop the draft regulatory standards*** to specify the conditions to ensure that the methodology referred to in paragraph 1 complies with points (a) to (e) of that paragraph.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 October 2020.

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

(3) in Article 14, the following paragraph is added:

“4. The ***ESMA*** shall ***develop the draft regulatory standard*** to specify the characteristics of the systems and controls referred to in paragraph 1.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 October 2020.

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

(4) ***in Article 20, the following paragraph 1a is inserted :***

“1a. ***Where ESMA considers that a benchmark fulfilling all of the criteria under point (c) of paragraph 1 should be recognised as critical, it shall submit to the Commission a documented request for designation.***

The Commission, after receiving this documented request for designation, shall adopt implementing acts in accordance with paragraph 1.

ESMA shall review its assessment of the criticality of the benchmark at least every two years and they shall notify and transmit the assessment to the Commission.”;

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(5) Article 21 is amended as follows:

(a) paragraph 2 is replaced by the following:

“2. Upon receipt of the assessment by the administrator referred to in paragraph 1, the competent authority shall:

- (a) inform ESMA ***and the college established under Article 46;***
- (b) within four weeks following the receipt of that assessment, make its own assessment of how the benchmark is to be transitioned to a new administrator or be ceased to be provided, taking into account the procedure established in accordance with Article 28(1).

During the period of time referred to in point (b) of the first subparagraph, the administrator shall not cease the provision of the benchmark without the written consent of ESMA ***or the competent authority, where relevant.”;***

(b) paragraph 5 is added:

“5. The ***ESMA*** shall ***develop the draft regulatory standard*** to specify the criteria on which the assessment referred to in point (b) of paragraph 2 is to be based.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 October 2020.

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

(6) in Article 23, paragraphs 3 and 4 are replaced by the following:

“3. A supervised contributor to a critical benchmark that intends to cease contributing input data shall promptly notify the administrator thereof in writing. The administrator shall thereupon inform **■** without delay *its competent authority*.

The competent authority of the critical benchmark administrator shall inform the competent authority of that supervised contributor, and where applicable ESMA thereof without delay. The administrator shall submit to its competent authority an assessment of the implications on the capability of the critical benchmark to measure the underlying market or economic reality, as soon as possible but no later than 14 days after the notification made by the supervised contributor.

4. Upon receipt of the assessment referred to in paragraphs 2 and 3, *the competent authority of the administrator shall where applicable, promptly inform ESMA or the college established under Article 46 and shall on the basis of that assessment make its own assessment on the capability of the benchmark to measure the underlying market and economic reality, taking into account the administrator's procedure for cessation of the benchmark established in accordance with Article 28(1).”;*

(7) in Article 26, the following paragraph is added:

“6. The *ESMA shall develop the draft regulatory standard* to specify the criteria under which competent authorities may require changes to the compliance statement as referred to in paragraph 4.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 October 2020.

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

(8) Article 30 is amended as follows:

(a) in paragraph 2, *the following subparagraph is inserted after point (b)*:

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“The Commission may subject the application of the implementing decision referred to in the first subparagraph to the effective fulfilment by that third country of any condition, *aiming at ensuring equivalent supervisory and regulatory standards*, set out in that implementing decision on an ongoing basis and to the ability of ESMA to effectively exercise the monitoring responsibilities referred to in Article 33 of Regulation (EU) No 1095/2010.”;

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(b) the following paragraph 2a is inserted:

“2a. The Commission may adopt a delegated act in accordance with Article 49 to specify the conditions referred to in points (a) and (b) of the first subparagraph of paragraph 2.”;

(c) in paragraph 3, the following subparagraph is *inserted after point (b)*:

“The Commission may subject the application of the implementing decision referred to in the first subparagraph to the effective fulfilment by that third country of any condition, *aiming at ensuring equivalent supervisory and regulatory standards*, set out in that implementing decision on an ongoing basis and to the ability of ESMA to effectively exercise the monitoring responsibilities referred to in Article 33 of Regulation (EU) No 1095/2010.”;

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(d) the following paragraph is inserted:

“3a. The Commission may adopt a delegated act in accordance with Article 49 to specify the conditions referred to in points (a) and (b) of paragraph 3.”;

(e) the introductory subparagraph of paragraph 4 is replaced by the following:

"4. ESMA shall establish cooperation arrangements with the competent authorities of third countries whose legal framework and supervisory practices have been recognised as equivalent in accordance with paragraph 2 or 3. *When doing so ESMA should take into account whether a third country in question is*, in accordance with a delegated act in force adopted by the Commission pursuant to Article 9 of Directive (EU) 2015/849 of the European Parliament and of the Council, on the list of jurisdictions which have strategic deficiencies in their national anti-money laundering and countering the financing of terrorism regimes that pose significant threats to the financial system of the Union. Such arrangements shall specify at least:";

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(9) Article 32 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. Until such time as an equivalence decision is adopted in accordance with paragraphs 2 and 3 of Article 30, a benchmark provided by an administrator located in a third country may be used by supervised entities in the Union, provided that that administrator acquires prior recognition by ESMA in accordance with this Article.";

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

"To determine whether the condition referred to in the first subparagraph is fulfilled and to assess compliance with the IOSCO principles for financial benchmarks or the IOSCO principles for PRAs, as applicable, ESMA may take into account an assessment by an independent external auditor or, a certification provided by the competent authority of the administrator in the third country where the administrator is located.";

(c) paragraph 3 is replaced by the following:

"An administrator located in a third country intending to obtain prior recognition as referred to in paragraph 1 shall have a legal representative. The

legal representative shall be a natural or legal person located in the Union and expressly appointed by that administrator to act on behalf of that administrator with regard to the administrator's obligations under this Regulation. The legal representative shall, together with the administrator, perform the oversight function relating to the provision of benchmarks performed by the administrator under this Regulation and, in that respect, be accountable to ESMA.”

(d) paragraph 4 is deleted;

(e) paragraph 5 is replaced by the following:

“5. An administrator located in a third country intending to obtain prior recognition as referred to in paragraph 1 shall apply for recognition with ESMA. The applicant administrator shall provide all information necessary to satisfy ESMA that it has established, at the time of recognition, all the necessary arrangements to meet the requirements referred to in paragraph 2 and shall provide the list of its actual or prospective benchmarks which are intended for use in the Union and shall, where applicable, indicate the competent authority in the third country responsible for its supervision.

Within 90 working days of receipt of the application referred to in the first subparagraph of this paragraph, ESMA shall verify that the conditions laid down in paragraphs 2 and 3 are fulfilled.

Where ESMA considers that the conditions laid down in paragraphs 2 and 3 are not fulfilled, it shall refuse the recognition request and set out the reasons for that refusal. In addition, no recognition shall be granted unless the following additional conditions are fulfilled:

(a) where an administrator located in a third country is subject to supervision, an appropriate cooperation arrangement is in place between ESMA and the competent authority of the third country where the administrator is located, in compliance with the regulatory technical standards adopted pursuant to Article 30(5), to

ensure an efficient exchange of information that enables the competent authority of that third country to carry out its duties in accordance with this Regulation;

(b) the effective exercise by ESMA of its supervisory functions under this Regulation is neither prevented by the laws, regulations or administrative provisions of the third country where the administrator is located, nor, where applicable, by limitations in the supervisory and investigatory powers of that third country's competent authority.”;

(f) paragraphs 6 and 7 are deleted;

(g) paragraph 8 is replaced by the following:

“8. ESMA shall suspend or, where appropriate, withdraw the recognition granted in accordance with paragraph 5 where it has well-founded reasons, based on documented evidence, to consider that the administrator:

(a) is acting in a manner which is clearly prejudicial to the interests of users of its benchmarks or to the orderly functioning of markets;

(b) has seriously infringed the relevant requirements set out in this Regulation;

(c) made false statements or used any other irregular means to obtain the recognition.”;

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(11) in Article 34, the following paragraph is inserted:

“1a. Where one or more of the indices provided by the person referred to in paragraph 1 would qualify as critical benchmarks, *as referred to Article 20 paragraph 1 (a) and (c)* the application shall be addressed to ESMA.”;

(12) Article 40 is replaced by the following:

- “1. For the purposes of this Regulation, ESMA shall **■**:
- (a) *be the competent authority for* administrators of critical benchmarks as referred to in *paragraph (1) (a) and (c)* of Article 20;
 - (b) *be the competent authority for* administrators of the benchmarks referred to in *Article 32*;

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- 2. Each Member State shall designate the relevant competent authority responsible for carrying out the duties under this Regulation **■** and shall inform the Commission and ESMA thereof.
- 3. A Member State that designates more than one competent authority in accordance with paragraph 2 shall clearly determine the respective roles of those competent authorities and shall designate a single authority to be responsible for coordinating the cooperation and the exchange of information with the Commission, ESMA and other Member States’ competent authorities.
- 4. ESMA shall publish on its website a list of the competent authorities designated in accordance with paragraphs 1 to 3.”;

(13) Article 41 is amended as follows:

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

“1. In order to fulfil their duties under this Regulation, competent authorities referred to in Article 40(2) shall have, in conformity with national law, at least the following supervisory and investigatory powers:”;

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

“1. The competent authorities referred to in Article 40(2) shall exercise their functions and powers referred to in paragraph 1 and the powers to impose sanctions referred to in Article 42 in accordance with their national legal frameworks, in any of the following ways:”;

(14) in Article 43(1), the introductory part is replaced by the following:

“1. Member States shall ensure that, when determining the type and level of administrative sanctions and other administrative measures, competent authorities they have designated in accordance with Article 40(2) take into account all relevant circumstances, including where appropriate.”;

(15) Article 44 is replaced by the following:

“Article 44

Obligation to cooperate

1. Member States that have chosen, in accordance with Article 42, to lay down criminal sanctions for infringements of the provisions referred to in that Article shall ensure that appropriate measures are in place so that the competent authorities designated in accordance with Article 40(2) have all the necessary powers to liaise with judicial authorities within their jurisdiction to receive specific information relating to criminal investigations or proceedings commenced for possible infringements of this Regulation. Those competent authorities shall provide that information to other competent authorities and to ESMA.
2. Competent authorities shall assist other competent authorities and ESMA. In particular, they shall exchange information and cooperate in any investigation or supervisory activities. Competent authorities may also cooperate with other competent authorities to facilitate the recovery of pecuniary sanctions.”;

(16) in Article 45(5), the first subparagraph is replaced by the following:

“5. Member States shall provide ESMA with aggregated information regarding all administrative sanctions and other administrative measures imposed pursuant to Article 42 on an annual basis. That obligation shall not apply to measures of an investigatory nature. ESMA shall publish that information in an annual report, together with aggregated information on all administrative sanctions and other administrative measures it has imposed itself pursuant to Article 48f.”;

(17) *in Article 46, paragraphs 1 and 2 are replaced by the following:*

- “1. Within 30 working days from the inclusion of a benchmark referred to in points (a) and (c) of Article 20(1) in the list of critical benchmarks, with the exception of benchmarks where the majority of contributors are non-supervised entities, the competent authority of the administrator shall establish a college and lead the college.***
- 2. The college shall comprise the competent authority of the administrator, ESMA, unless it is the competent authority of the administrator, and the competent authorities of supervised contributors.”;***

(18) *in Article 47, paragraphs 1 and 2 are replaced by the following:*

- “1. The competent authorities referred to in Article 40(2) shall cooperate with ESMA for the purposes of this Regulation, in accordance with Regulation (EU) No 1095/2010.***
- 2. The competent authorities referred to in Article 40(2) shall, without delay, provide ESMA with all information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010 ■ .”;***

(19) in Title VI, the following Chapter 4 is inserted:

“CHAPTER 4

ESMA powers and competences

Section 1

Competences and procedures

Article 48a

Exercise of the powers by ESMA

The powers conferred on ESMA, on any official of ESMA or on any other person authorised by ESMA by Articles 48b to 48d shall not be used to require the disclosure of information or documents that are subject to legal privilege.

Article 48b

Request for information

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

(a) persons involved in the provision of, ■ the benchmarks referred to in Article 40(1);

■

(c) third parties to whom the persons referred to under (a) have outsourced functions or activities *in accordance with Article 10*;

(d) persons otherwise closely and substantially related or connected to the persons referred to under (a).

In accordance with Article 35 of Regulation 1095/2010 and at the request of ESMA, competent authorities shall submit that request for information to contributors to critical benchmarks referred to in points (a) and (c) of Article 20(1) and shall share the information received without delay with ESMA.

2. Any simple request for information as referred to paragraph 1 shall:
 - (a) refer to this Article as the legal basis of that request;
 - (b) state the purpose of that request;
 - (c) specify what information is required;
 - (d) include a time limit within which the information is to be provided;
 - (e) include a statement that there is no obligation on the person from whom the information is requested to provide that information but that in case of a voluntary reply to the request, the information provided must not be incorrect or misleading;
 - (f) indicate the amount of the fine to be issued in accordance with Article **48f** where information provided is incorrect or misleading.

3. When requiring to supply information under paragraph 1 by decision, ESMA shall:
 - (a) refer to this Article as the legal basis of that request;
 - (b) state the purpose of that request;
 - (c) specify what information is required;
 - (d) set a time limit within which the information is to be provided;
 - (e) indicate the periodic penalty payments provided for in Article **48g** where the required information is incomplete;

- (f) indicate the fine provided for in Article **48f**, where the answers to the questions asked are incorrect or misleading;
 - (g) indicate the right to appeal the decision before ESMA's Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union ('Court of Justice') in accordance with Articles [ex60 Appeals] and [ex61 Action before the Court...] of Regulation (EU) No 1095/2010.
4. The persons referred to in paragraph 1 or their representatives and, in the case of legal persons or associations having no legal personality, the persons authorised to represent them by law or by their constitution, shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.
 5. ESMA shall, without delay, send a copy of the simple request or of its decision to the competent authority of the Member State where the administrator or supervised contributor referred to in paragraph 1 concerned by the request for information is domiciled or established.

Article 48c

General investigations

1. In order to carry out its duties under this Regulation, ESMA may conduct necessary investigations of the persons referred to in Article 48b(1). To that end, the officials and other persons authorised by ESMA shall be empowered to:
 - (a) examine any records, data, procedures and any other material relevant to the execution of its tasks, irrespective of the medium on which they are stored;
 - (b) take or obtain certified copies of or extracts from such records, data, procedures and other material;

- (c) summon and ask any of those persons or their representatives or staff for oral or written explanations on facts or documents relating to the subject matter and purpose of the inspection and to record the answers;
 - (d) interview any other natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;
 - (e) request records of telephone and data traffic.
2. The officials and other persons authorised by ESMA for the purposes of the investigations referred to in paragraph 1 shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the investigation. That authorisation shall indicate the periodic penalty payments provided for in Article **48g** where the production of the required records, data, procedures or any other material, or the answers to questions asked to the persons referred to in Article 48b(1) or are incomplete, and the fines provided for in Article **48f**, where the answers to questions asked to those persons are incorrect or misleading.
 3. The persons referred to in Article 48b(1) are required to submit to investigations launched on the basis of a decision of ESMA. The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article **48g**, the legal remedies available under Regulation (EU) No 1095/2010 and the right to have the decision reviewed by the Court of Justice.
 4. In good time before an investigation referred to in paragraph 1, ESMA shall inform the competent authority of the Member State where the investigation is to be carried out of the investigation and of the identity of the authorised persons. Officials of the competent authority concerned shall, at the request of ESMA, assist those authorised persons in carrying out their duties. Officials of the competent authority concerned may attend the investigations upon request.
 5. If a request for records of telephone or data traffic referred to in point (e) of paragraph 1 requires authorisation from a national judicial authority according

to applicable national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

6. Where a national judicial authority receives an application for the authorisation of a request for records of telephone or data traffic referred to in point (e) of paragraph 5 that authority shall verify the following:
 - (a) the decision referred to in paragraph 3 is authentic;
 - (b) any measures to be taken are proportionate and not arbitrary or excessive.

For the purposes of point (b), the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice following the procedure set out in Article [61] of Regulation (EU) No 1095/2010.

Article 48d

On-site inspections

1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary on-site inspections at any business premises of the persons referred to in Article 48b(1).
2. The officials and other persons authorised by ESMA to conduct an on-site inspection may enter any business premises of the persons subject to an investigation decision adopted by ESMA and shall have all the powers stipulated in Article 48c(1). They shall have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.
3. In sufficient time before the inspection, ESMA shall give notice of the inspection to the competent authority of the Member State where the inspection

is to be conducted. Where the proper conduct and efficiency of the inspection so require, ESMA, after informing the relevant competent authority, may carry out the on-site inspection without prior notice. Inspections in accordance with this Article shall be conducted provided that the relevant authority has confirmed that it does not object to those inspections.

4. The officials and other persons authorised by ESMA to conduct an on-site inspection shall exercise their powers upon production of a written authorisation, specifying the subject matter and purpose of the inspection and the periodic penalty payments provided for in Article 48g where the persons concerned do not submit to the inspection.

5. The persons referred to in Article 48b(1) shall submit to on-site inspections ordered by a decision of ESMA. That decision shall specify the subject matter and purpose of the inspection, the date on which it is to begin and indicate the periodic penalty payments provided for in Article 48g, the legal remedies available under Regulation (EU) No 1095/2010 as well as the right to have the decision reviewed by the Court of Justice.
6. Officials of, as well as those authorised or appointed by, the competent authority of the Member State where the inspection is to be conducted, shall, at the request of ESMA, actively assist the officials and other persons authorised by ESMA. Officials of that competent authority may also attend the on-site inspections upon request.
7. ESMA may also require competent authorities to carry out specific investigatory tasks and on-site inspections as provided for in this Article and in Article 48c(1) on its behalf. To that end, competent authorities shall enjoy the same powers as ESMA as set out in this Article and in Article 48c(1).
8. Where the officials and other accompanying persons authorised by ESMA find that a person opposes an inspection ordered pursuant to this Article, the competent authority of the Member State concerned shall afford them the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, to enable them to conduct their on-site inspection.
9. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7 requires authorisation by a national judicial authority according to the applicable national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.
10. Where a national judicial authority receives an application for the authorisation of an on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7, that authority shall verify the following:
 - (a) the decision adopted by ESMA referred to in paragraph 4 is authentic;
 - (b) any measures to be taken are proportionate and not arbitrary or excessive.

For the purposes of point (b), the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity of the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice following the procedure set out in Article 61 Regulation (EU) No 1095/2010.

SECTION 2

ADMINISTRATIVE SANCTIONS AND OTHER MEASURES

Article 48e

Supervisory measures by ESMA

1. Where, in accordance with Article 48i(5), ESMA finds that a person has committed one of the infringements listed in Article 48f(2), it shall take one or more of the following actions:
 - (a) adopt a decision requiring the person to bring the infringement to an end;
 - (b) adopt a decision imposing fines pursuant to Article 48f;
 - (c) issue public notices.
2. When taking the actions referred to in paragraph 1, ESMA shall take into account the nature and seriousness of the infringement, having regard to the following criteria:
 - (a) the duration and frequency of the infringement;
 - (b) whether financial crime has been occasioned, facilitated or otherwise attributable to the infringement;
 - (c) whether the infringement has been committed intentionally or negligently.

- (d) the degree of responsibility of the person responsible for the infringement;
 - (e) the financial strength of the person responsible for the infringement, as indicated by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;
 - (f) the impact of the infringement on retail investors' interests;
 - (g) the importance of the profits gained, losses avoided by the person responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;
 - (h) the level of cooperation of the person responsible for the infringement with ESMA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;
 - (i) previous infringements by the person responsible for the infringement;
 - (j) measures taken after the infringement by the person responsible for the infringement to prevent its repetition.
3. Without undue delay, ESMA shall notify any action taken pursuant to paragraph 1 to the person responsible for the infringement, and shall communicate it to the competent authorities of the Member States and to the Commission. It shall publicly disclose any such action on its website within 10 working days from the date when it was adopted.

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

- (a) a statement affirming the right of the person responsible for the infringement to appeal the decision;
- (b) where relevant, a statement affirming that an appeal has been lodged and specifying that such an appeal does not have suspensive effect;

- (c) a statement asserting that it is possible for ESMA's Board of Appeal to suspend the application of the contested decision in accordance with Article 60(3) of Regulation (EU) No 1095/2010.

Article 48f

Fines

1. Where, in accordance with Article 48i(5), ESMA finds that any person has, intentionally or negligently, committed one or more of the infringements listed in paragraph 2, it shall adopt a decision imposing a fine in accordance with paragraph 3 of this Article.

An infringement shall be considered to have been committed intentionally if ESMA finds objective factors which demonstrate that a person acted deliberately to commit the infringement.

2. The list of infringements referred to in paragraph 1 shall be the following:
Infringements of Articles 4 - 16, 21, 23 - 29 and 34 of Regulation (EU) 2016/1011.
3. The maximum amount of the fine referred to in paragraph 1 shall be:
 - (i) in the case of a legal person, EUR 1 000 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 30 June 2016, or 10 % of the total annual turnover of that legal person according to the last available financial statements approved by the management body, whichever is the higher;
 - (ii) in the case of a natural person, EUR 500 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 30 June 2016.

Notwithstanding the first subparagraph, The maximum amount of the fine for infringements of point (d) of Article 11(1) or of Article 11(4) of Regulation (EU) 2016/1011 shall be EUR 250 000 or, in the Member States whose official currency is not the euro, the corresponding value in the national currency on 30 June 2016 or 2 % of the total annual turnover of that legal person according to

the last available financial statements approved by the management body, whichever is the higher for legal persons, and EUR 100 000 or, in the Member States whose official currency is not the euro, the corresponding value in the national currency on 30 June 2016 for natural persons.

For the purposes of point (i), where the legal person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial accounts in accordance with Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

4. When determining the level of a fine pursuant to paragraph 1, ESMA shall take into account the criteria set out in Article 48e(2).
5. Notwithstanding paragraph 4, where the legal person has directly or indirectly benefited financially from the infringement, the amount of the fine shall be at least equal to that benefit.
6. Where an act or omission of a person constitutes more than one infringement listed in Article 48f(2), only the higher fine calculated in accordance with paragraph 3 and relating to one of those infringements shall apply.

Article 48g

Periodic penalty payments

1. ESMA shall, by decision, impose periodic penalty payments to compel:
 - (a) a person to put an end to an infringement in accordance with a decision taken pursuant to Article **48e(1)(a)**;
 - (b) persons referred to in Article 48b(1):
 - (i) to supply complete information which has been requested by a decision pursuant to Article **48b**;

- (ii) to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by a decision pursuant to Article **48c**;
 - (iii) to submit to an on-site inspection ordered by a decision taken pursuant to Article **48d**.
- 2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed for each day of delay.
- 3. Notwithstanding paragraph 2, the amount of the periodic penalty payments shall be 3 % of the average daily turnover in the preceding business year, or, in the case of natural persons, 2 % of the average daily income in the preceding calendar year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.
- 4. A periodic penalty payment shall be imposed for a maximum period of six months following the notification of ESMA's decision. Following the end of the period, ESMA shall review the measure.

Article 48h

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

1. ESMA shall disclose to the public every fine and every periodic penalty payment that has been imposed pursuant to Articles 48f and 48g, unless such disclosure to the public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved. Such disclosure shall not contain personal data within the meaning of Regulation (EC) No 45/2001.
2. Fines and periodic penalty payments imposed pursuant to Articles **48f** and **48g** shall be of an administrative nature.
3. Where ESMA decides not to impose any fines or penalty payments, it shall inform the European Parliament, the Council, the Commission and the

competent authorities of the Member State concerned thereof and shall set out the reasons for its decision.

4. Fines and periodic penalty payments imposed pursuant to Articles **48f** and **48g** shall be enforceable.

Enforcement shall be governed by the rules of **■** procedure in force in the Member State or third country in which it is carried out.

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

SECTION 3

PROCEDURES AND REVIEW

Article 48i

Procedural rules for taking supervisory measures and imposing fines

1. Where, in carrying out its duties under this Regulation, ESMA finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in Article 48f(2), ESMA shall appoint an independent investigation officer within ESMA to investigate the matter. The appointed officer shall not be involved or have been directly or indirectly involved in the supervision of the benchmarks to which the infringement relates and shall perform his functions independently from ESMA's Board of Supervisors.
2. The investigation officer referred to in paragraph 1 shall investigate the alleged infringements, take into account any comments submitted by the persons who are subject to the investigations, and shall submit a complete file with his findings to ESMA's Board of Supervisors.
3. In order to carry out his tasks, the investigation officer shall have the power to request information in accordance with Article 48b and to conduct investigations and on-site inspections in accordance with Articles 48c and 48d.
4. Where carrying out those tasks, the investigation officer shall have access to all documents and information that have been gathered by ESMA in its supervisory activities.
5. Upon completion of his investigation and before submitting the file with his findings to ESMA's Board of Supervisors, the investigation officer shall give the persons subject to the investigations the opportunity to be heard on the matters being investigated. The investigation officer shall base his findings only on facts on which the persons concerned have had the opportunity to comment.

6. The rights of the defence of the persons subject to the investigations shall be fully respected during investigations under this Article.
7. Upon submission of the file with his findings to ESMA's Board of Supervisors, the investigation officer shall notify the persons who are subject to the investigations. The persons subject to the investigations shall be entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information affecting third parties.
8. On the basis of the file containing the investigation officer's findings and, when requested by the persons concerned, after having heard those persons in accordance with Article **48j**, ESMA shall decide if one or more of the infringements listed in Article 48f(1) has been committed by the persons subject to the investigations and, in such case, shall take a supervisory measure in accordance with Article 48e and impose a fine in accordance with Article **48f**.
9. The investigation officer shall not participate in the deliberations of ESMA's Board of Supervisors or in any other way intervene in the decision-making process of ESMA's Board of Supervisors.
10. The Commission shall adopt delegated acts in accordance with Article 49 **by 1 October 2021** to specify the rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on rights of defence, temporal provisions, and the collection of fines or periodic penalty payments, and the limitation periods for the imposition and enforcement of fines and periodic penalty payments.
11. ESMA shall refer matters for criminal prosecution to the relevant national authorities where, in carrying out its tasks under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. In addition, ESMA shall refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from an identical fact or facts which are substantially the same has already

acquired the force of res judicata as the result of criminal proceedings under national law.

Article 48j

Hearing of the persons subject to investigations

1. Before taking any decision pursuant to Articles 48f, 48g and 48e, ESMA shall give the persons subject to the proceedings the opportunity to be heard on its findings. ESMA shall base its decisions only on findings on which the persons subject to the proceedings have had an opportunity to comment.
2. The first subparagraph shall not apply if urgent action pursuant to Article 48e is needed in order to prevent significant and imminent damage to the financial system. In such a case ESMA may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.
3. The rights of the defence of the persons subject to the proceedings shall be fully respected in the investigations. They shall be entitled to have access to ESMA's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or ESMA's internal preparatory documents.

Article 48k

Review by the Court of Justice

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

SECTION 4

FEES AND DELEGATION

Article 48l

Supervisory fees

1. ESMA shall charge fees to administrators in accordance with this Regulation and in accordance with the delegated acts adopted pursuant to paragraph 3. Those fees shall fully cover ESMA's necessary expenditure relating to the supervision of administrators and the reimbursement of any costs that the competent authorities may incur carrying out work pursuant to this Regulation in particular as a result of any delegation of tasks in accordance with Article 48m.
2. The amount of an individual fee charged to an administrator shall cover all administrative costs incurred by ESMA for its activities in relation to the supervision *and* it shall be proportionate to the turnover of the administrator.

3. The Commission shall adopt delegated acts in accordance with Article 49 *by 1 October 2021* to specify the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid.

Article 48m

Delegation of tasks by ESMA to competent authorities

1. Where necessary for the proper performance of a supervisory task, ESMA may delegate specific supervisory tasks to the competent authority of a Member State in accordance with the guidelines issued by ESMA pursuant to Article 16 of Regulation (EU) No 1095/2010. Such specific supervisory tasks may, in particular, include the power to carry out requests for information in accordance with Article 48b and to conduct investigations and on-site inspections in accordance with Article 48c and Article 48d.

By way of derogation from the first subparagraph, the authorisation of critical benchmarks shall not be delegated.

2. Prior to the delegation of a task in accordance with paragraph 1, ESMA shall consult the relevant competent authority about:
 - (a) the scope of the task to be delegated;
 - (b) the timetable for the performance of the task; and
 - (c) the transmission of necessary information by and to ESMA.
3. ESMA shall reimburse a competent authority for costs incurred as a result of carrying out delegated tasks in accordance with the regulation on fees adopted by the Commission pursuant to Article 48l(3).
4. ESMA shall review any delegation made in accordance with paragraph 1 at appropriate intervals. A delegation may be revoked at any time.
5. A delegation of tasks shall not affect the responsibility of ESMA and shall not limit ESMA's ability to conduct and oversee the delegated activity."

Article 48o

Transition measures related to ESMA

1. All competences and duties related to the supervisory and enforcement activity regarding administrators referred to in Article 40(1) that are conferred on competent authorities *referred to in Article 40(2)* shall be terminated on **1 January 2022**. Those competences and duties shall be taken-up by ESMA on the same date.
2. Any files and working documents related to the supervisory and enforcement activity regarding administrators referred to in Article 40(1), including any ongoing examinations and enforcement actions, or certified copies thereof, shall be taken over by ESMA on the date referred to in paragraph 1.

However, applications for authorisation by administrators of a critical benchmark *referred to in Article 20 paragraph 1 (a) and (c)* and applications for recognition in accordance with Article 32 ■ that have been received by competent authorities before **1 October 2021** shall not be transferred to ESMA, and the decision to authorise or *recognise* shall be taken by the relevant competent authority.

3. Competent authorities shall ensure that any existing records and working papers, or certified copies thereof, shall be transferred to ESMA as soon as possible and in any event by **1 January 2022**. Those competent authorities shall also render all necessary assistance and advice to ESMA to facilitate effective and efficient transfer and taking-up of supervisory and enforcement activity regarding administrators referred to in Article 40(1).
4. ESMA shall act as the legal successor to the competent authorities referred to in paragraph 1 in any administrative or judicial proceedings that result from supervisory and enforcement activity pursued by those competent authorities in relation to matters that fall under this Regulation.
5. Any authorisation of administrators of a critical benchmark *as referred to in Article 20 paragraph 1 (a) and (c)* and recognition in accordance with Article

32 ■ granted by a competent authority referred to in paragraph 1 shall remain valid after the transfer of competences to ESMA.”

(20) Article 49 is amended as follows:

(a) paragraph 2 is replaced by the following:

“2. The power to adopt delegated acts referred to in Articles 3(2), 20(6), 24(2), 30(2a), 30(3a), 33(7), 48i(10), 48l(3), 51(6) and 54(3) shall be conferred on the Commission for an indeterminate period of time from 30 June 2016.”;

(b) paragraph 3 is replaced by the following:

“3. The delegation of power referred to in Articles 3(2), 20(6), 24(2), 30(2a), 30(3a), 33(7), 48i(10), 48l(3), 51(6) and 54(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or on a later date specified therein. It shall not affect the validity of any delegated acts already in force.”;

(c) paragraph 6 is replaced by the following:

“6. A delegated act adopted pursuant to Articles 3(2), 20(6), 24(2), 30(2a), 30(3a), 33(7), 48i(10), 48l(3), 51(6) and 54(3) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.”;

(21) Article 53 is replaced as follows:

“Article 53

ESMA reviews

1. *ESMA shall seek to build a common European supervisory culture and consistent supervisory practices and ensure consistent approaches among competent authorities in relation to the application of Article 33. To that end, the endorsements authorised in accordance with Article 33 shall be reviewed by ESMA every two years.*

ESMA shall issue an opinion to each competent authority that has recognised a third country administrator or endorsed a third country benchmark assessing how that competent authority applies the relevant requirements of Article 33 respectively and the requirements of any relevant delegated act and regulatory or implementing technical standard based on this Regulation.

2. ESMA shall have the power to require the documented evidence from a competent authority for any of the decisions adopted in accordance with the first subparagraph of Article 51(2) and Article 25(2), as well as for actions taken with regard to the enforcement of Article 24(1).”.

■

Article 9b

Amendments to Regulation (EU) 2015/847

Regulation (EU) 2015/847 is amended as follows:

(1) *in Article 15, paragraph 1 is replaced by the following*

“1. The processing of personal data under this Regulation is subject to Directive 95/46/EC, as transposed into national law. Personal data that is processed pursuant to this Regulation by the Commission or by the EBA is subject to Regulation (EC) No 45/2001.”;

(2) *in Article 17, paragraph 3 is replaced by the following:*

“3. By 26 June 2017, Member States shall notify the rules referred to in paragraph 1 to the Commission and to the Joint Committee of the ESAs. Thereafter, Member States shall notify the Commission and the EBA without delay of any subsequent amendments thereto.”

(3) *in Article 22, paragraph 2 is replaced by the following:*

“2. After the notification made in accordance with Article 17(3), the Commission shall submit a report to the European Parliament and to the Council on the application of Chapter IV, with particular regard to cross-border cases.”

(4) *Article 25 is replaced by the following:*

“Article 25

Guidelines

By 26 June 2017 the ESAs, and thereafter EBA, shall issue guidelines addressed to the competent authorities and the payment service providers in accordance with Article 16 of Regulation (EU) No 1093/2010 on measures to be taken in accordance with this Regulation, in particular as regards the implementation of Articles 7, 8, 11 and 12.”

█

Article 11

Entry into force and entry into application

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

■

Articles 1, 2, 3 *and 9b* shall apply from *1 January 2020*. *Articles 6 and 8 shall apply from 1 January 2022*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at ...,

For the European Parliament
The President

For the Council
The President