



2017/0230(COD)

11.9.2018

AMENDMENTS

278 - 341

Draft report

Burkhard Balz, Pervenche Berès

(PE1158315v01-00)

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; and Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market

(COM(2017)0536 – C8 0319/2017 – 2017/0230(COD))

Proposal for a regulation
(COM(2017)0536 – C8-0319/2017 – 2017/0230(COD))

Amendment 278
Miguel Viegas

Proposal for a regulation
Recital 1

Text proposed by the Commission

(1) Following the financial crisis and the recommendations of a group of high level experts led by Jacques de Larosière, the *the* Union has made important progress in creating not only stronger, but also more harmonised rules for the financial markets in the form of the Single Rule Book. The Union has also set up the European System of Financial Supervision ("ESFS"), built on a two-pillar system which combines micro-prudential supervision, coordinated by European Supervisory Authorities ("ESAs"), and macro-prudential supervision through the establishment of the European Systemic Risk Board ("ESRB"). The three ESAs namely the European Banking Authority ("EBA"), created by Regulation (EU) No 1093/2010 of the European Parliament and of the Council³³, 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 Council³⁴ (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.

Amendment

(1) Following the financial crisis and the recommendations of a group of high level experts led by Jacques de Larosière, the Union has made important progress in creating not only stronger, but also more harmonised rules for the financial markets in the form of the Single Rule Book. The Union has also set up the European System of Financial Supervision ("ESFS"), built on a two-pillar system which combines micro-prudential supervision, coordinated by European Supervisory Authorities ("ESAs"), and macro-prudential supervision through the establishment of the European Systemic Risk Board ("ESRB"). The three ESAs namely the European Banking Authority ("EBA"), created by Regulation (EU) No 1093/2010 of the European Parliament and of the Council³³, 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 Council³⁴ (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. ***However, the current evolution of the financial system, with mergers and concentrations, points to the limits of supervision and the need to establish public control over the financial system in order to align it with the interests of the***

real economy.

³³ 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).

³⁴ 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).

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Or. pt

Amendment 279

Kay Swinburne

on behalf of the ECR Group

Proposal for a regulation

Recital 1

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Amendment

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European Banking Authority ("EBA"), created by Regulation (EU) No 1093/2010 of the European Parliament and of the Council³³, 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 Council³⁴ (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.

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³³ 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).

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Or. en

Amendment 280

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a regulation
Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) Without prejudice to the objective of financial stability and orderly functioning of financial markets, the ESAs shall implement the regulatory and supervisory framework to support the general economic policies in the Union, contributing to the achievement of the objectives of the Union.

Or. en

Amendment 281
Matt Carthy

Proposal for a regulation
Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) Despite the improvements to consumer protection that have been made since the creation of the ESAs, consumers continue to experience abuse in the financial services market in the Union. In particular, problems that remain include: the conflict of interest that can arise when NCAs are charged with ensuring prudential supervision at the same time as being responsible for consumer protection; an inadequate statutory basis for ensuring consumer protection underpinning the NCAs in many Member States; insufficient resources dedicated specifically to pro-active consumer protection by the ESAs and the NCAs; a lack of consistent enforcement of EU and national consumer protection laws by the ESAs and NCAs in the Member States; inadequate legislation regulating the provision of financial advice to consumers and financial services users; and the impact of a sectoral approach by the

ESAs, which fails to grasp the integrated reality of retail financial markets.

Or. en

Amendment 282
Othmar Karas

Proposal for a regulation
Recital 4

Text proposed by the Commission

(4) After seven years of operation and following evaluations and the public consultations undertaken by the Commission it appears that the ESAs are increasingly constrained in their capacity to meet their objectives of the further integration of financial markets and services and the enhancement of consumer protection, within the existing legislative framework, both in the Union and between the Union and third countries.

Amendment

(4) After seven years of operation and following evaluations and the public consultations undertaken by the Commission it appears that the ESAs are increasingly constrained in their capacity to meet their objectives of the further integration of financial markets and services and the enhancement of consumer protection, within the existing legislative framework, both in the Union and between the Union and third countries. ***The regulatory changes to the European System of Financial Supervision must be based on a holistic view which not only considers the two-pillar system of micro- and macro-prudential supervision but also the interdependencies with the Single Rulebook, the ECB, the Single Supervisory Mechanism, the Single Resolution Mechanism and all the relevant competent authorities to ensure consistent, efficient and effective supervisory practices within the Union.***

Or. en

Amendment 283
Matt Carthy

Proposal for a regulation
Recital 4 a (new)

(4a) The review of the mandate and powers of the ESAs presents an opportunity to boost consumer protection significantly by moving towards the solution suggested in the de Larosière report of establishing a dedicated authority to be responsible for conduct of business and market issues, across the three main financial sectors, which is separate from prudential supervision. Establishing a dedicated consumer protection organisation in the area of financial services has benefited consumers where it has been implemented, such as in the US, the UK, the Netherlands and Belgium. The High Level Expert Group on financial supervision should be reconvened in order to examine this proposal and produce a more comprehensive analysis of the value of this proposal being implemented in the Union;

Or. en

Amendment 284
Markus Ferber

Proposal for a regulation
Recital 5

Text proposed by the Commission

(5) Any enhanced powers to be afforded to the ESAs, to enable them to meet those objectives, would also require ***both*** appropriate governance ***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.

Amendment

(5) Any enhanced powers to be afforded to the ESAs, to enable them to meet those objectives, would also require appropriate governance, sufficient funding ***and increased accountability towards the Union legislator***. 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.

Amendment 285**Matt Carthy****Proposal for a regulation****Recital 8***Text proposed by the Commission*

(8) It is therefore crucial that the financial system plays its full part in meeting critical sustainability challenges. This will require a deep re-engineering of the financial system to which the ESAs should make an active contribution starting with reforms to create the right regulatory and supervisory framework to mobilise and orient private capital flows towards sustainable investments.

Amendment

(8) It is therefore crucial that the financial system plays its full part in meeting critical sustainability challenges ***and ensuring the EU meets its obligations under the Paris Agreement.*** This will require a deep re-engineering of the financial system to which the ESAs should make an active contribution starting with reforms to create the right regulatory and supervisory framework to mobilise and orient private capital flows towards sustainable investments. ***The ESAs should be equipped to monitor the implementation of this framework and its specific requirements by financial institutions and national competent authorities and to take action in response to the failure to ensure their implementation.***

Amendment 286**Wolf Klinz, Lieve Wierinck****Proposal for a regulation****Recital 8***Text proposed by the Commission*

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Amendment

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should make an active contribution *starting with reforms* to create the right regulatory and supervisory framework *to mobilise and orient private capital flows towards sustainable investments*.

supervisory framework.

Or. en

Amendment 287

Othmar Karas

Proposal for a regulation

Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) With regard to potential regulatory changes concerning the creation of a regulatory and supervisory framework to mobilise and orient private capital flows towards sustainable investments, any overlap in regulation or pre-emptive legislative action must be avoided which would not be in line with the principles of better regulation and proportionality or would lead to an unnecessary overburdening of both, authorities and financial institutions.

Or. en

Amendment 288

Markus Ferber

Proposal for a regulation

Recital 9

Text proposed by the Commission

Amendment

(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

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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.

Or. en

Amendment 289
Matt Carthy

Proposal for a regulation
Recital 9

Text proposed by the Commission

(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.

Amendment

(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 *to financial institutions, national competent authorities and EU legislators* on how sustainability considerations *that are consistent with the EU's obligations under the Paris Agreement* can be effectively embodied in relevant EU *and national* financial legislation, and promote coherent implementation of these provisions upon adoption. *This requires that the ESAs have a clear mandate requiring them to not only consider environmental, social and governance factors but to be responsible for ongoing analysis of these factors across the financial sector. Each of the ESAs should be mandated with monitoring the enforcement of ESG requirements, issuing opinions and proposals on ESG factors in relation to financial services legislation in the Union, and intervening in the market where necessary to ensure the application of ESG requirements. Adequate resources*

should be dedicated to these tasks by the ESAs.

Or. en

Amendment 290

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) The authority shall properly assess the impact of the non-mitigation of environmental, social and governance factors on the development of systemic risk.

Or. en

Amendment 291

Othmar Karas

Proposal for a regulation

Recital 10

Text proposed by the Commission

Amendment

(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 promote better supervisory convergence and to exchange best practices between relevant authorities on the one hand, and between relevant authorities and financial institutions or financial market participants on the other hand, the role of the ESAs with regard to their oversight function and supervisory coordination should be strengthened..

(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 promote better supervisory convergence and to exchange best practices between relevant authorities on the one hand, and between relevant authorities and financial institutions or financial market participants on the other hand, the role of the ESAs with regard to their oversight function and supervisory coordination should be strengthened. ***In this respect and with a view to ensuring a level playing field***

while facilitating ease of access for new market entrants and preventing regulatory arbitrage across Member States and legal statuses, supervision in the area of FinTech should be based on the following principles: "same services and same risks", "technology neutrality" and "risk-based approach, taking duly into account the proportionality of legislative and supervisory actions to risks and materiality of risks".

Or. en

Amendment 292
Markus Ferber

Proposal for a regulation
Recital 10

Text proposed by the Commission

(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 promote better supervisory convergence and to exchange best practices between relevant authorities on the one hand, and between relevant authorities and financial institutions or financial market participants on the other hand, the role of the ESAs with regard to their oversight function and supervisory coordination should be strengthened..

Amendment

(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, ***which sometimes diverge from one and other. Those diverging practices might constitute barriers to the proper functioning of the internal market.*** In order to promote better supervisory convergence and to exchange best practices between relevant authorities on the one hand, and between relevant authorities and financial institutions or financial market participants on the other hand, the role of the ESAs with regard to their oversight function and supervisory coordination should be strengthened.

Or. en

Amendment 293
Pervenche Berès

Proposal for a regulation
Recital 10

Text proposed by the Commission

(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 promote better supervisory convergence and to exchange best practices between relevant authorities on the one hand, and between relevant authorities and financial institutions or financial market participants on the other hand, the role of the ESAs with regard to their oversight function and supervisory coordination should be strengthened..

Amendment

(10) Technological innovation **and social innovations have** an increasing impact on the financial sector and competent authorities have therefore **to take** initiatives to deal with those developments. In order to promote better supervisory convergence and to exchange best practices between relevant authorities on the one hand, and between relevant authorities and financial institutions or financial market participants on the other hand, the role of the ESAs with regard to their oversight function and supervisory coordination should be strengthened.

Or. en

Amendment 294
Alain Lamassoure

Proposal for a regulation
Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) In order to contribute to establishing high quality and consistent Union legislation, it should be possible for the European Parliament, the Council or the Commission to consult the Authority on technical matters at any relevant stage of the ordinary legislative procedure when a draft legislative act is being negotiated. Such contribution from the Authority should be sought in particular when calibrating the scope and content of any empowerment to adopt delegated or implementing acts.

Or. en

Amendment 295
Alain Lamassoure, Anne Sander

Proposal for a regulation
Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) In exceptional cases, there may be a need to urgently amend specific provisions of a delegated act that has entered into force, where those provisions are proving deficient or causing a serious detriment or threat, including in cases where such provisions are not yet applicable. This may occur for example where full compliance with requirements set forth in delegated acts cannot be timely met by market participants by the required application date due to serious operational challenges, or where the practical application of requirements set forth in delegated acts reveals conceptual flaws in their calibration or unintended consequences. In view of the time required for such amendment to be performed, there may be cases where the application of the deficient provision needs to be suspended while remedial action is being taken by the Commission with the help of the Authority, where applicable. The Authority should therefore be entrusted with the elaboration of an effective legal instrument designed to swiftly suspend the application of all or parts of a delegated act, including the date of application thereof, for a limited period of time.

Or. en

Amendment 296
Alain Lamassoure, Anne Sander

Proposal for a regulation
Recital 12 b (new)

Text proposed by the Commission

Amendment

(12b) As a body with highly specialised expertise, it is efficient and appropriate to entrust the Authority with the elaboration of draft suspensory technical standards, whenever there is an urgency to suspend the application of a particular provision of a delegated act, or the entirety thereof. The suspension of the act should be meant to prevent any disturbance to the internal market for financial services or within one or more Member States. Draft suspensory technical standards may in particular be proposed where the application of all or parts of a delegated act poses a threat to investor protection, market confidence, the orderly functioning and integrity of financial markets or commodity markets, the stability of the whole or part of the financial system in the Union, or to the conditions for neutral competition for financial market participants in the Union in the context of the worldwide application of international standards.

Or. en

Amendment 297

Alain Lamassoure, Anne Sander

Proposal for a regulation

Recital 12 c (new)

Text proposed by the Commission

Amendment

(12c) This Regulation should set out the objectives, content and duration of the draft suspensory technical standards that the Authority should be allowed to submit to the Commission, as well as the procedure for the Commission to adopt them. An appropriate level of control by co-legislators should be ensured by way of an objection period, while delays should

be kept as short as practicable to ensure swift intervention in situations of emergency. The Authority should be able to submit a suspensory technical standard to renew the suspension provided for in a previous suspensory technical standard, using the same procedure, but such renewal should only be performed once to avoid the postponement of a delegated act or parts thereof over a disproportionately long period.

Or. en

Amendment 298
Matt Carthy

Proposal for a regulation
Recital 13

Text proposed by the Commission

Amendment

(13) In order to ensure appropriate safeguards for the stakeholders' interests where the ESAs exercise their competence to issue guidelines or recommendations, the various Stakeholder Groups should be able to issue an opinion where two thirds of their members consider that the ESA concerned has exceeded its competence. In that instance, the Commission should have the authority to require the ESA, after a proper assessment, to withdraw those guidelines or recommendations as appropriate.

deleted

Or. en

Amendment 299
Markus Ferber

Proposal for a regulation
Recital 13

Text proposed by the Commission

(13) In order to ensure appropriate safeguards for the stakeholders' interests where the ESAs exercise their competence to issue guidelines or recommendations, the various Stakeholder Groups should be able to issue an opinion where ***two thirds*** of their members consider that the ESA concerned has exceeded its competence. In that instance, the Commission should have the authority to require the ESA, after a proper assessment, to withdraw those guidelines or recommendations as appropriate.

Amendment

(13) In order to ensure appropriate safeguards for the stakeholders' interests where the ESAs exercise their competence to issue guidelines or recommendations, the various Stakeholder Groups should be able to issue an opinion where ***a majority*** of their members consider that the ESA concerned has exceeded its competence. In that instance, the Commission should have the authority to require the ESA, after a proper assessment, to withdraw those guidelines or recommendations as appropriate.

Or. en

Amendment 300

Othmar Karas

Proposal for a regulation

Recital 14

Text proposed by the Commission

(14) In addition, for the purpose of the procedure provided for in Article 17 of the founding regulations and in the interest of proper application of Union law, it is appropriate to ease and speed up the ESAs' access to information. They should therefore be enabled to request information directly, via a duly justified and reasoned request, from all competent authorities concerned, financial institutions and financial market participants, ***even where those authorities, institutions or market participants have not themselves violated any provision of*** Union law. The ESAs should inform the competent authority concerned of such requests and that competent authority should assist the ESAs in collecting the requested information.

Amendment

(14) In addition, for the purpose of the procedure provided for in Article 17 of the founding regulations and in the interest of proper application of Union law, it is appropriate to ease and speed up the ESAs' access to information. They should therefore be enabled to request information directly, via a duly justified and reasoned request, from all competent authorities concerned, financial institutions and financial market participants. ***The information requests shall, always where possible, be made using existing common reporting formats and respect the principle of proportionality provided for in national and Union law, including in the legislative acts referred to in Article 1(2).*** The ESAs should inform the competent authority concerned of such requests and that competent authority

should assist the ESAs in collecting the requested information. ***Any regulatory changes to the direct information requests shall take due account of the aim to create a consistent and integrated system for collecting statistical and prudential data as regards statistical and regulatory data for all institutions situated within the Union ("One-Stop-Shop"). The respective provisions in the ESAs Regulations should be fully in line with the aim to bring to an end multiple requests for similar or identical data from different authorities and thereby to significantly reduce the administrative and financial burden, both for competent authorities and institutions.***

Or. en

Amendment 301

Matt Carthy

Proposal for a regulation

Recital 16

Text proposed by the Commission

(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.

Amendment

(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. ***The collaboration platforms established by EIOPA provide a good example of dispute resolution that could be adopted formally by the ESAs under their coordination function.***

Or. en

Amendment 302

Kay Swinburne

on behalf of the ECR Group

Proposal for a regulation

Recital 17

Text proposed by the Commission

(17) Integral to the ESAs work on convergence of supervisory practices is the promotion of *a Union supervisory culture. However, the ESAs are not equipped with all the tools required to achieve this objective. It is necessary to enable the ESAs to set out the general supervisory objectives and priorities in a multiannual Strategic Supervisory Plan, intended to assist competent authorities in identifying and focussing on the most important areas of concern for EU-wide market integrity and financial stability, including with respect to prudential supervision of firms engaged in cross-border activities. The Strategic Supervisory Plan should be risk-based and take into account general economic and regulatory orientations for supervisory actions as well as relevant micro-prudential trends, potential risks and vulnerabilities identified by the ESAs in their reviews of competent authorities and from Union-wide and stress tests. The competent authorities should subsequently draw up annual work programmes to implement the Strategic Supervisory Plan, which convert the Union priorities and objectives into operational objectives for those authorities. The ESAs should be empowered to review the implementation of the annual work programs on day-to-day supervision including, on a sample basis, supervisory measures taken in individual cases in order to ensure that the ESAs can achieve their objective of harmonising supervisory practices.*

Amendment

(17) Integral to the ESAs work on convergence of supervisory practices is the promotion of general supervisory objectives and priorities.

Or. en

Amendment 303

Markus Ferber

Proposal for a regulation

Recital 17

Text proposed by the Commission

(17) Integral to the ESAs work on convergence of supervisory practices is the promotion of a Union supervisory culture. However, the ESAs are not equipped with all the tools required to achieve this objective. It is necessary to enable the ESAs to set out the general supervisory objectives and priorities in a multiannual Strategic Supervisory Plan, intended to assist competent authorities in identifying and focussing on the most important areas of concern for EU-wide market integrity and financial stability, including with respect to prudential supervision of firms engaged in cross-border activities. The Strategic Supervisory Plan should be risk-based and take into account general economic and regulatory orientations for supervisory actions as well as relevant micro-prudential trends, potential risks and vulnerabilities identified by the ESAs in their reviews of competent authorities and from Union-wide and stress tests. The competent authorities should subsequently draw up annual work programmes to implement the Strategic Supervisory Plan, which convert the Union priorities and objectives into operational objectives for those authorities. The ESAs should be empowered to review the implementation of the annual work programs on day-to-day *supervisio.n* including, on a sample basis, supervisory measures taken in individual cases in order to ensure that the ESAs can achieve their objective of *harmoising* supervisory practices.

Amendment

(17) Integral to the ESAs work on convergence of supervisory practices is the promotion of a Union supervisory culture. However, the ESAs are not equipped with all the tools required to achieve this objective. It is necessary to enable the ESAs to set out the general supervisory objectives and priorities in a multiannual Strategic Supervisory Plan, intended to assist competent authorities in identifying and focussing on the most important areas of concern for EU-wide market integrity and financial stability, including with respect to prudential supervision of firms engaged in cross-border activities. The Strategic Supervisory Plan should be risk-based and take into account general economic and regulatory orientations for supervisory actions as well as relevant micro-prudential trends, potential risks and vulnerabilities identified by the ESAs in their reviews of competent authorities and from Union-wide and stress tests. ***When drafting the Strategic Supervisory Plan, the ESAs should take into account input received from national competent authorities and from the Union legislator.*** The competent authorities should subsequently draw up annual work programmes to implement the Strategic Supervisory Plan, which convert the Union priorities and objectives into operational objectives for those authorities. ***The Strategic Supervisory Plan shall not prevent national competent authorities to apply national best practices and pay due attention to national particularities. The ESAs should be empowered to review the implementation of the annual work***

programs on day-to-day *supervision*, including, on a sample basis, supervisory measures taken in individual cases in order to ensure that the ESAs can achieve their objective of *harmonising* supervisory practices.

Or. en

Amendment 304

Brian Hayes

Proposal for a regulation

Recital 18

Text proposed by the Commission

Amendment

(18) The current supervisory practices of outsourcing, delegation and risks transfer (back-to-back business or fronting) from one licensed entity to another entity vary from one Member State to another. Those divergent regulatory approaches carry a risk of regulatory arbitrage across Member States ("race to the bottom"). Inefficient supervision of outsourced, delegated or transferred activities exposes the Union to financial stability risks. Those risks are particularly acute in relation to supervised entities outsourcing, delegating or transferring risk to third countries where supervisory authorities may lack the necessary tool to adequately and effectively supervise material activities and key functions. ESAs should have an active role in promoting supervisory convergence by ensuring a common understanding and supervisory practices of outsourcing, risk transfer and delegation of material activities and key functions in third countries, in accordance with Union law and in view of guidelines, recommendations and opinions that the ESAs may adopt. The ESAs should therefore have the necessary powers to effectively coordinate

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supervisory actions carried out by national supervisory authorities both when authorising or registering an undertaking and as part of an ongoing review of supervisory practices. In performing this coordination role, ESAs should particularly focus on situations that may lead to a circumvention of the rules and monitor financial institutions or financial market participants that intend to make an extensive use of outsourcing, delegation and risk transfer in third countries with the intention of benefitting from the EU passport while essentially performing substantial activities or functions outside the Union

Or. en

Amendment 305

Kay Swinburne

on behalf of the ECR Group

Proposal for a regulation

Recital 18

Text proposed by the Commission

Amendment

(18) The current supervisory practices of outsourcing, delegation and risks transfer (back-to-back business or fronting) from one licensed entity to another entity vary from one Member State to another. Those divergent regulatory approaches carry a risk of regulatory arbitrage across Member States ('race to the bottom'). Inefficient supervision of outsourced, delegated or transferred activities exposes the Union to financial stability risks. Those risks are particularly acute in relation to supervised entities outsourcing, delegating or transferring risk to third countries where supervisory authorities may lack the necessary tool to adequately and effectively supervise material activities and key functions. ESAs should have an

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active role in promoting supervisory convergence by ensuring a common understanding and supervisory practices of outsourcing, risk transfer and delegation of material activities and key functions in third countries, in accordance with Union law and in view of guidelines, recommendations and opinions that the ESAs may adopt. The ESAs should therefore have the necessary powers to effectively coordinate supervisory actions carried out by national supervisory authorities both when authorising or registering an undertaking and as part of an ongoing review of supervisory practices. In performing this coordination role, ESAs should particularly focus on situations that may lead to a circumvention of the rules and monitor financial institutions or financial market participants that intend to make an extensive use of outsourcing, delegation and risk transfer in third countries with the intention of benefitting from the EU passport while essentially performing substantial activities or functions outside the Union

Or. en

Amendment 306
Olle Ludvigsson

Proposal for a regulation
Recital 22

Text proposed by the Commission

Amendment

(22) Moreover, the Union dimension in the decision-making process within the Board of Supervisors should be enhanced by including independent full time members as members of the Board, who are not subject to possible conflicts of interest. Decision-making powers on issues of a regulatory nature and on direct supervision should remain fully with the

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competence of the Board of Supervisors. The Management Board should be transformed into an Executive Board composed of full time members and should decide on certain non-regulatory issues, including independent reviews of competent authorities, dispute settlements, breach of Union law, the Strategic Supervisory Plan, monitoring of outsourcing, delegation and risk transfers to third countries, stress tests and requests for information. The Executive Board should also examine and prepare all decisions to be taken by the Board of Supervisors. Moreover, the position and role of the Chairperson should be enhanced by empowering the Chairperson with formal tasks and with a casting vote in the Executive Board. Finally, the Union dimension in the ESAs governance should also be strengthened by amending the selection procedure of the Chairperson and the members of the Executive Board to one which will include the role of the Council and the European Parliament. The Executive Board should have a balanced composition.

Or. en

Justification

The reasons to create an Executive Board are not clear enough since numerous of the tasks attributed to this function already today are executed by the Executive Director and the accompanying staff. Setting up the Executive Board would add significant costs for the ESA:s, and only adds more bureaucracy.

Amendment 307
Brian Hayes

Proposal for a regulation
Recital 22

Text proposed by the Commission

Amendment

(22) *Moreover, the Union dimension in* **deleted**

the decision-making process within the Board of Supervisors should be enhanced by including independent full time members as members of the Board, who are not subject to possible conflicts of interest. Decision-making powers on issues of a regulatory nature and on direct supervision should remain fully with the competence of the Board of Supervisors. The Management Board should be transformed into an Executive Board composed of full time members and should decide on certain non-regulatory issues, including independent reviews of competent authorities, dispute settlements, breach of Union law, the Strategic Supervisory Plan, monitoring of outsourcing, delegation and risk transfers to third countries, stress tests and requests for information. The Executive Board should also examine and prepare all decisions to be taken by the Board of Supervisors. Moreover, the position and role of the Chairperson should be enhanced by empowering the Chairperson with formal tasks and with a casting vote in the Executive Board. Finally, the Union dimension in the ESAs governance should also be strengthened by amending the selection procedure of the Chairperson and the members of the Executive Board to one which will include the role of the Council and the European Parliament. The Executive Board should have a balanced composition.

Or. en

Amendment 308
Markus Ferber

Proposal for a regulation
Recital 22

Text proposed by the Commission

Amendment

(22) Moreover, the Union dimension in

(22) Moreover, the Union dimension in

the decision-making process within the Board of Supervisors should be **enhanced by including independent full time members as members of the Board, who are not subject to possible conflicts of interest**. Decision-making powers on issues of a regulatory nature **and** on direct supervision should remain fully with the competence of the Board of Supervisors. The Management Board should be transformed into an Executive Board composed of full time members and should **decide** on certain non-regulatory issues, including independent reviews of competent authorities, dispute settlements, breach of Union law, the Strategic Supervisory Plan, monitoring of outsourcing, delegation and risk transfers to third countries, stress tests and requests for information. **The Executive Board should also examine and prepare all decisions to be taken** by the Board of Supervisors. Moreover, the position and role of the Chairperson should be enhanced by empowering the Chairperson with formal tasks and with a casting vote in the Executive Board. Finally, the Union dimension in the ESAs governance should also be strengthened by amending the selection procedure of the Chairperson and the members of the Executive Board to one which will include the role of the Council and the European Parliament. The Executive Board should have a balanced composition.

the decision-making process within the Board of Supervisors should be **duly taken into account**. Decision-making powers on issues of a regulatory nature, on direct supervision **and strategic decisions** should remain fully with the competence of the Board of Supervisors. The Management Board should be transformed into an Executive Board composed of full time members and should **prepare decisions** on certain non-regulatory issues, including independent reviews of competent authorities, dispute settlements, breach of Union law, the Strategic Supervisory Plan, monitoring of outsourcing, delegation and risk transfers to third countries, stress tests and requests for information **for final decision** by the Board of Supervisors. Moreover, the position and role of the Chairperson should be enhanced by empowering the Chairperson with formal tasks and with a casting vote in the Executive Board. Finally, the Union dimension in the ESAs governance should also be strengthened by amending the selection procedure of the Chairperson and the members of the Executive Board to one which will include the role of the Council and the European Parliament. The Executive Board should have a balanced composition. **However, the key decision making body of the ESAs remains their respective Board of Supervisors.**

Or. en

Amendment 309
Matt Carthy

Proposal for a regulation
Recital 22

Text proposed by the Commission

(22) Moreover, the Union dimension in

Amendment

(22) Moreover, the Union dimension in

the decision-making process within the Board of Supervisors should be enhanced by including independent full time members as members of the Board, who are not subject to possible conflicts of interest. Decision-making powers on issues of a regulatory nature and on direct supervision should remain fully with the competence of the Board of Supervisors. The Management Board should be transformed into an Executive Board composed of full time members and should decide on certain non-regulatory issues, including independent reviews of competent authorities, dispute settlements, breach of Union law, the Strategic Supervisory Plan, monitoring of outsourcing, delegation and risk transfers to third countries, stress tests and requests for information. The Executive Board should also examine and prepare all decisions to be taken by the Board of Supervisors. Moreover, the position and role of the Chairperson should be enhanced by empowering the Chairperson with formal tasks and with a casting vote in the Executive Board. Finally, the Union dimension in the ESAs governance should also be strengthened by amending the selection procedure of the Chairperson and the members of the Executive Board to one which will include the role of the Council and the European Parliament. The Executive Board should have a balanced composition.

the decision-making process within the Board of Supervisors should be enhanced by including independent full time members as members of the Board, who are not subject to possible conflicts of interest, *including members representing the interests of consumers and civil society*. Decision-making powers on issues of a regulatory nature and on direct supervision should remain fully with the competence of the Board of Supervisors. The Management Board should be transformed into an Executive Board composed of full time members and should decide on certain non-regulatory issues, including independent reviews of competent authorities, dispute settlements, breach of Union law, the Strategic Supervisory Plan, monitoring of outsourcing, delegation and risk transfers to third countries, stress tests and requests for information. The Executive Board should also examine and prepare all decisions to be taken by the Board of Supervisors. Moreover, the position and role of the Chairperson should be enhanced by empowering the Chairperson with formal tasks and with a casting vote in the Executive Board. Finally, the Union dimension in the ESAs governance should also be strengthened by amending the selection procedure of the Chairperson and the members of the Executive Board to one which will include the role of the Council and the European Parliament. The Executive Board should have a balanced composition.

Or. en

Amendment 310
Othmar Karas

Proposal for a regulation
Recital 22 a (new)

(22a) The respective Board of Appeals of the Authorities should have sufficient legal expertise to provide expert legal advice not only on the legality but also on the proportionality of the Authorities' exercise of its powers. They should be composed of individuals of a high repute with a proven record of relevant knowledge of the Union law and international professional experience, to a sufficiently high level in the respective fields of competence of the Authorities, excluding current staff of the competent authorities or other national or Union institutions involved in the activities of the Authority and members of the respective stakeholder groups of the Authorities.

Or. en

Amendment 311
Olle Ludvigsson

Proposal for a regulation
Recital 23

(23) In order to provide for an appropriate level of expertise and accountability, the Chairperson and the members of the Executive Board should be appointed on the basis of merit, skills, knowledge of clearing, post-trading and financial matters, as well as experience relevant to the financial supervision. To ensure transparency and democratic control, as well as to safeguard the rights of the Union institutions, the Chairperson and the members of the Executive Board should be chosen on the basis of an open selection procedure. The Commission should establish a shortlist and submit that shortlist to the European Parliament

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for approval. Following that approval, the Council should adopt a decision to appoint the members of the Executive Board. The Chairperson and the full time members of the Executive Board should be accountable to the European Parliament and to the Council for any decisions taken on the basis of the founding Regulations.

Or. en

Justification

The reasons to create an Executive Board are not clear enough since numerous of the tasks attributed to this function already today are executed by the Executive Director and the accompanying staff. Setting up the Executive Board would add significant costs for the ESAs, and only adds more bureaucracy.

Amendment 312 **Markus Ferber**

Proposal for a regulation **Recital 23**

Text proposed by the Commission

(23) In order to provide for an appropriate level of expertise and accountability, the Chairperson and the members of the Executive Board should be appointed on the basis of merit, skills, knowledge of clearing, post-trading and financial matters, as well as experience relevant to the financial supervision. To ensure transparency and democratic control, as well as to safeguard the rights of the Union institutions, the Chairperson and the members of the Executive Board should be chosen on the basis of an open selection procedure. The Commission should establish a shortlist and submit that shortlist to the European Parliament for approval. Following that approval, the Council should adopt a decision to appoint the members of the Executive Board. The

Amendment

(23) In order to provide for an appropriate level of expertise and accountability, the Chairperson and the members of the Executive Board should be appointed on the basis of merit, skills, knowledge of clearing, post-trading and financial matters, as well as experience relevant to the financial supervision. To ensure transparency and democratic control, as well as to safeguard the rights of the Union institutions, the Chairperson and the members of the Executive Board should be chosen on the basis of an open selection procedure. ***Based on input received by national competent authorities***, the Commission should establish a shortlist and submit that shortlist to the European Parliament for approval. Following that approval, the

Chairperson and the full time members of the Executive Board should be accountable to the European Parliament and to the Council for any decisions taken on the basis of the founding Regulations.

Council should adopt a decision to appoint the members of the Executive Board. The Chairperson and the full time members of the Executive Board should be accountable to the European Parliament and to the Council for any decisions taken on the basis of the founding Regulations.

Or. en

Amendment 313 **Werner Langen**

Proposal for a regulation **Recital 23**

Text proposed by the Commission

(23) In order to provide for an appropriate level of expertise and accountability, the Chairperson and the members of the Executive Board should be appointed on the basis of merit, skills, knowledge of clearing, post-trading and financial matters, as well as experience relevant to the financial supervision. To ensure transparency and democratic control, as well as to safeguard the rights of the Union institutions, the Chairperson and the members of the Executive Board should be chosen on the basis of an open selection procedure. The Commission should establish a shortlist and submit that shortlist to the European Parliament for approval. Following that approval, the Council should adopt a decision to appoint the members of the Executive Board. The Chairperson and the full time members of the Executive Board should be accountable to the European Parliament and to the Council for any decisions taken on the basis of the founding Regulations.

Amendment

(23) In order to provide for an appropriate level of expertise and accountability, the Chairperson and the members of the Executive Board should be appointed on the basis of merit, skills, knowledge *and practical experience* of clearing, post-trading and financial matters, as well as experience relevant to the financial supervision. To ensure transparency and democratic control, as well as to safeguard the rights of the Union institutions, the Chairperson and the members of the Executive Board should be chosen on the basis of an open selection procedure. The Commission should establish a shortlist and submit that shortlist to the European Parliament for approval. Following that approval, the Council should adopt a decision to appoint the members of the Executive Board. The Chairperson and the full time members of the Executive Board should be accountable to the European Parliament and to the Council for any decisions taken on the basis of the founding Regulations.

Or. en

Amendment 314
Olle Ludvigsson

Proposal for a regulation
Recital 24

Text proposed by the Commission

Amendment

(24) To ensure a more efficient allocation of operational tasks on the one hand and the management of administrative day-to-day activities on the other hand, the current tasks of the Executive Director of each of the ESAs should be assumed by one of the members of the Executive Board, who should be selected on the basis of those particular tasks.

deleted

Or. en

Justification

The reasons to create an Executive Board are not clear enough since numerous of the tasks attributed to this function already today are executed by the Executive Director and the accompanying staff. Setting up the Executive Board would add significant costs for the ESA:s, and only adds more bureaucracy.

Amendment 315
Othmar Karas

Proposal for a regulation
Recital 24 a (new)

Text proposed by the Commission

Amendment

(24a) To strengthen the European voice in international standard setting, the respective Authorities should seek as soon as possible full membership in international committees, associations and organisations such as the Basel Committee on Banking Supervision, the Financial Stability Board, the International Association of Insurance Supervisors, the International

Organisation of Pensions Supervisors and the International Organisation of Securities Commissions. Any position to be taken by the respective Authorities in international fora shall first be discussed and approved by the Board of Supervisors. In addition, the respective Authorities shall provide to the European Parliament a meaningful summary of proceedings of any meetings of all relevant international bodies or institutions concerning or affecting financial markets and banking supervision.

Or. en

Amendment 316
Barbara Kappel, Jörg Meuthen

Proposal for a regulation
Recital 25

Text proposed by the Commission

(25) It is appropriate that financial institutions and financial market participants contribute to the financing of the activities of the ESAs, because the overall objective of the activities of the ESAs is to contribute to financial stability and, through the avoidance of distortions of competition, the proper operation of the single market. The activities of the ESAs benefit all financial institutions and financial market participants, whether or not they operate across borders. The ESAs contribute to them conducting their business in a stable environment and on a level playing field. Financial institutions and financial market participants that are not directly supervised by the ESA's should therefore also contribute to the funding of those activities of the ESAs from which they benefit. In addition, the ESAs should however also receive fees paid by the financial institutions and

Amendment

(25) It is appropriate that financial institutions and financial market participants contribute to the financing of the activities of the ESAs, because the overall objective of the activities of the ESAs is to contribute to financial stability and, through the avoidance of distortions of competition, the proper operation of the single market. The activities of the ESAs benefit all financial institutions and financial market participants, whether or not they operate across borders. The ESAs contribute to them conducting their business in a stable environment and on a level playing field. Financial institutions and financial market participants that are not directly supervised by the ESA's should therefore also contribute to the funding of those activities of the ESAs from which they benefit. In addition, the ESAs should however also receive fees paid by the financial institutions and

financial market participants that are directly supervised by them.

financial market participants that are directly supervised by them. ***The fees paid by financial institutions that are intended as a contribution to the financing of the activities of the ESAs should be collected by competent authorities and redirected to the ESAs. This shall be done in a transparent manner and in accordance with specially developed methodologies which determine the contribution of each financial institution for this purpose.***

Or. en

Justification

Financial institutions are currently indirectly contributing to the ESAs' budget through fees they pay to their national competent authorities.

Amendment 317

Pervenche Berès, Doru-Claudian Frunzuliță

Proposal for a regulation

Recital 32

Text proposed by the Commission

(32) To ensure a high level of convergence in the area of supervision and approval of internal models, ***EIOPA should be able to issue opinions to remedy potential inconsistencies*** and assist competent authorities in reaching agreement related to the approval of internal models. Competent authorities should ***take their decisions in conformity with these opinions, or alternatively explain why there are not conforming to the opinion.***

Amendment

(32) To ensure a high level of convergence ***and to remedy potential inconsistencies, EIOPA should be able to assess and, where necessary, review the decisions made by the competent authorities*** in the area of supervision and approval of internal models and assist competent authorities in reaching agreement related to the approval of internal models. ***In cases where EIOPA deems that a decision in the area of supervision and approval of internal models should be amended or withdrawn, competent authorities should conform to the final provisions laid down by the Authority.***

Or. en

Amendment 318
Miguel Viegas

Proposal for a regulation
Recital 32

Text proposed by the Commission

(32) To ensure a high level of convergence in the area of supervision and approval of internal models, EIOPA should be able to issue opinions to remedy potential inconsistencies and assist competent authorities in reaching agreement related to the approval of internal models. Competent authorities should take their decisions in conformity with these opinions, or alternatively explain why there are not conforming to the opinion.

Amendment

(32) To ensure a high level of convergence in the area of supervision and approval of internal models, EIOPA should be able to issue opinions to remedy potential inconsistencies and assist competent authorities in reaching agreement related to the approval of internal models ***with the aim of progressively eliminating internal models in favour of standardised models.*** Competent authorities should take their decisions in conformity with these opinions, or alternatively explain why there are not conforming to the opinion.

Or. pt

Amendment 319
Markus Ferber

Proposal for a regulation
Recital 33

Text proposed by the Commission

(33) With the ever increasing cross-border dimension of trading activities and, in particular, of the activities of certain investment firms which, by their systemic nature, may have cross-border effects impacting financial stability, ESMA should have an enhanced coordination role in recommending competent authorities to initiate corresponding investigations. Furthermore, it should be able to facilitate the exchange of information relevant for those investigations, where ESMA has reasonable grounds to suspect that activity

Amendment

(33) With the ever increasing cross-border dimension of trading activities and, in particular, of the activities of certain investment firms which, by their systemic nature, may have cross-border effects impacting financial stability, ESMA should have an enhanced coordination role in recommending competent authorities to initiate corresponding investigations. Furthermore, it should be able to facilitate the exchange of information relevant for those investigations, where ESMA has reasonable grounds to suspect that activity

with significant cross-border effects is taking place that threatens the orderly functioning and integrity of financial markets or the financial stability in the Union. For this purpose, ESMA should maintain a data storage facility to collect from, and disseminate between, competent authorities, all relevant information

with significant cross-border effects is taking place that threatens the orderly functioning and integrity of financial markets or the financial stability in the Union. For this purpose, ESMA should maintain a data storage facility to collect from, and disseminate between, competent authorities, all relevant information.

However, ESMA's prime role is in ensuring a consistent application of Union law across the Union. That means that direct supervisory powers should only be granted to ESMA if the systemic stability of Union financial markets is at stake, the sector features a significant cross-border dimension and the number of market participants is sufficiently small so that it is ensured that ESMA is able to handle a high-quality supervision;

Or. en

Amendment 320
Markus Ferber

Proposal for a regulation
Recital 34

Text proposed by the Commission

Amendment

(34) The main objectives of Regulation (EU) No 345/2013 of the European Parliament and of the Council³⁵, Regulation (EU) No 346/2013 of the European Parliament and of the Council³⁶ and Regulation (EU) 2015/760 of the European Parliament and of the Council³⁷ is boosting jobs and growth, SME financing, social and long-term investments, as well as promoting an EU investment culture. However, the divergent use by national competent authorities of their discretion, their divergent administrative practices, and the differences in supervisory cultures and performance remain despite the harmonisation achieved by the three

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Regulations. Those divergences hinder the necessary level playing field among managers of qualifying venture capital funds, qualifying social entrepreneurship funds and long-term investment funds in different Member States increasing, at the same time, the transaction and operational costs of those managers.

³⁵ *Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, p. 1).*

³⁶ *Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (OJ L 115, 25.4.2013, p. 18).*

³⁷ *Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (OJ L 123/98, 19.5.2015, p. 98).*

Or. en

Justification

There is no good reason to confer direct supervisory powers over certain funds to ESMA.

Amendment 321
Markus Ferber

Proposal for a regulation
Recital 35

Text proposed by the Commission

Amendment

(35) To lower transaction and operational costs, to strengthen investor choice and to increase legal certainty, it is appropriate to transfer the supervisory powers, including the granting and withdrawal of registrations and authorisations, for managers of

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qualifying venture capital funds and those funds as referred to in Regulation (EU) No 345/2013, managers of qualifying social entrepreneurship funds or those funds as referred to in Regulation (EU) No 346/2013 and European long-term investment funds as referred to in Regulation (EU) 2015/760, from the competent authorities to ESMA. For that purpose, ESMA should be able to conduct investigations and on-site inspections and to impose penalties or periodic penalty payments to compel persons to put an end to an infringement, to supply complete and correct information required by ESMA or to submit to an investigation or an on-site inspection.

Or. en

Justification

There is no good reason to confer direct supervisory powers over certain funds to ESMA.

Amendment 322
Markus Ferber

Proposal for a regulation
Recital 36

Text proposed by the Commission

Amendment

(36) Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds lays down uniform requirements which must be met by long-term funds in order to be authorised as an ‘ELTIF’. Regulation (EU) 2015/760 lays down rules on qualifying investments, qualifying portfolio undertakings, concentration rules, and eligible investors. The rules also define the supervisory powers, including requirements for authorizations and ongoing supervision. Whilst maintaining

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the prudential rules in Regulation (EU) 2015/760, this Regulation confers supervisory powers, including authorization, ongoing supervision and withdrawals of authorisations, on ESMA. This regulation entrusts ESMA with the drawing up of draft regulatory technical standards which do not involve policy choices for submission to the Commission, so that the legal obligations and the scope of ESMA's discretion under Regulation (EU) 2015/760 are sufficiently clear. Similar changes have been made to Regulations (EU) 345/2013 and 346/2013 to confer supervisory powers on ESMA.

Or. en

Justification

There is no good reason to confer direct supervisory powers over certain funds to ESMA.

Amendment 323
Markus Ferber

Proposal for a regulation
Recital 37

Text proposed by the Commission

Amendment

(37) In order to effectively exercise its supervisory powers with respect to qualifying venture capital funds, qualifying social entrepreneurship funds and European long-term investment funds and their managers, ESMA should be able to conduct investigations and on-site inspections. To support ESMA's oversight capabilities, ESMA should be granted powers to impose penalties or periodic penalty payments to compel persons to put an end to an infringement, to supply complete and correct information required by ESMA or to submit to an investigation or an on-site inspection. This Regulation should

deleted

therefore clearly define the boundaries of such administrative sanctions or other administrative measures which should be effective, proportionate and dissuasive and ensure a common approach and a deterrent effect. ESMA's investigatory and enforcement activities should rely on the support of national authorities where needed and required. ESMA should be empowered to delegate certain of these functions can still be delegated back to the national competent authorities

Or. en

Justification

There is no good reason to confer direct supervisory powers over certain funds to ESMA.

Amendment 324
Danuta Maria Hübner

Proposal for a regulation
Recital 47 a (new)

Text proposed by the Commission

Amendment

(47a) There is currently no uniform set of rules in the Union applying to third country trading venues. While some issues are dealt with at the Union level, a significant number of areas concerning the provision of services by third country trading venues in the Union, in particular the provision of remote access and post-trade transparency, are currently subject to national rules, with a wide variety of applicable frameworks. This prevents the establishment of a level playing field within the Union and results in duplication of supervisory work and potentially inconsistent supervisory practices. The establishment of a single framework for the recognition and oversight of third country trading venues at the Union level should therefore be

considered. Within this framework, entrusting ESMA with the recognition and oversight of third-country trading venues would ensure a consistent approach and provide third-country trading venues with a single point of contact in the Union. In order to ensure a proportionate approach, the rules applying to third country trading venues should differ depending on the systemic significance of the trading venue for the Union. The supervision of non-systemically significant trading venues should mainly defer to the third country supervisor. However, systemically significant third country trading venues should be required to comply with the requirements of Regulation 600/2014, subject to comparable compliance, and ESMA should have the power to request information from those trading venues, conduct investigations and on-site inspections at those venues, collect fees from them and impose fines and periodic payments when they are in breach of their obligations.

Or. en

Amendment 325
Danuta Maria Hübner

Proposal for a regulation
Recital 47 b (new)

Text proposed by the Commission

Amendment

(47b) A recognition regime for third country Central Securities Depositories (CSDs) currently only exists with regards to the provision of notary services and central maintenance services. By contrast, third country CSDs may provide settlement services in any country of the Union without being subject to any requirement while settlement services are crucial for financial stability and investor

protection. This situation also results in an unlevel playing field between EU and third country CSDs, since EU CSDs require authorisation for the provision of all of their services, which will be exacerbated after the entry into force of the settlement discipline regime. Finally, the current CSD recognition regime leaves only limited tools for ESMA to use in order to ensure consistent and enforceable ongoing monitoring and supervision. For all those reasons, the establishment of a recognition regime applying to all services provided by third country CSDs and designed in a proportionate manner should be considered. In order to ensure a proportionate approach, the rules applying to third country CSDs should differ depending on the systemic significance of the trading venue for the Union. The supervision of non-systemically significant trading venues should mainly defer to the third country supervisor. However, systemically significant third country CSDs should be required to comply with the requirements of Regulation 909/2014, subject to comparable compliance, and ESMA should have the power to request information from those CSDs, conduct investigations and on-site inspections at those CSDs, collect fees from them and impose fines and periodic payments when they are in breach of their obligations.

Or. en

Amendment 326

Caroline Nagtegaal, Luděk Niedermayer, Kay Swinburne

Proposal for a regulation

Recital 54 a (new)

Text proposed by the Commission

Amendment

(54a) Data used for regulated data benchmarks should be sourced either directly from a trading venue or from an approved reporting mechanism or from an intermediary, as long as this intermediary enjoys no discretion to alter the input data.

Or. en

Amendment 327
Olle Ludvigsson

Proposal for a regulation
Recital 55

Text proposed by the Commission

Amendment

(55) Due to the nature of the securities and issuers concerned, certain types of prospectuses drawn up according to Regulation (EU) 2017/1129 involve a cross-border dimension within the Union, a level of technical complexity and/or potential risks of regulatory arbitrage which are such that their centralised supervision by ESMA would achieve more effective and efficient results than their supervision at national level. Consolidating at the level of ESMA the approval of such prospectuses, as well as related supervisory and enforcement activities at the level of ESMA, should reduce compliance costs and administrative barriers while enhancing the quality, consistency and efficiency of supervision in the Union.

deleted

Or. en

Justification

It seems unjustified to move national prospectuses with no, or quiet limited cross-border

connection from the NCAs to ESMA. This could damage the functioning of the national securities markets and the financing of SMEs. If transferring some of the prospectus competences to ESMA, such an initiative should have been preceded by an impact assessment, including a stakeholder consultation.

Amendment 328

Markus Ferber

Proposal for a regulation

Recital 55

Text proposed by the Commission

Amendment

(55) *Due to the nature of the securities and issuers concerned, certain types of prospectuses drawn up according to Regulation (EU) 2017/1129 involve a cross-border dimension within the Union, a level of technical complexity and/or potential risks of regulatory arbitrage which are such that their centralised supervision by ESMA would achieve more effective and efficient results than their supervision at national level. Consolidating at the level of ESMA the approval of such prospectuses, as well as related supervisory and enforcement activities at the level of ESMA, should reduce compliance costs and administrative barriers while enhancing the quality, consistency and efficiency of supervision in the Union.* **deleted**

Or. en

Justification

National competent authorities have considerable expertise when it comes to approval of prospectuses. Tasking ESMA with the approval of certain prospectuses would create costly additional administrative layers.

Amendment 329

Kay Swinburne

on behalf of the ECR Group

Proposal for a regulation
Recital 55

Text proposed by the Commission

(55) Due to the nature of the securities and issuers concerned, certain types of prospectuses drawn up according to Regulation (EU) 2017/1129 involve a cross-border dimension within the Union, ***at a level of technical complexity and/or potential risks of regulatory arbitrage which are such that their centralised supervision by ESMA would achieve more effective and efficient results than their supervision at national level. Consolidating at the level of ESMA the approval of such prospectuses, as well as related supervisory and enforcement activities at the level of ESMA, should reduce compliance costs and administrative barriers while enhancing the quality, consistency and efficiency of supervision in the Union.***

Amendment

(55) Due to the nature of the securities and issuers concerned, certain types of prospectuses drawn up according to Regulation (EU) 2017/1129 involve a cross-border dimension within the Union.

Or. en

Amendment 330
Markus Ferber

Proposal for a regulation
Recital 56

Text proposed by the Commission

(56) ***Private placements of non-equity securities are an important source of capital for issuers and are cross-border by nature. While a private placement with qualified investors does not require a prospectus, the subsequent admission to trading of the securities on a regulated market is subject to the publication of a prospectus under Regulation (EU) 2017/1129. The prospectus regime provides issuers with the flexibility to choose their home Member State where***

Amendment

deleted

the denomination by unit of non-equity securities is in excess of 1000 EUR. As the non-equity securities concerned by private placements typically display a denomination by unit in excess of 1 000 EUR, this creates a potential for regulatory forum shopping. Entrusting ESMA with approving such wholesale non-equity prospectuses admitted to trading on a regulated market or its specific segment to which only qualified investors can have access to should achieve the double objective of ensuring a level playing field for issuers and a higher degree of efficiency by significantly streamlining approval procedures.

Or. en

Justification

National competent authorities have considerable expertise when it comes to approval of prospectuses. Tasking ESMA with the approval of certain prospectuses would create costly additional administrative layers.

Amendment 331

Kay Swinburne

on behalf of the ECR Group

Proposal for a regulation

Recital 56

Text proposed by the Commission

(56) Private placements of non-equity securities are an important source of capital for issuers and are cross-border by nature. While a private placement with qualified investors does not require a prospectus, the subsequent admission to trading of the securities on a regulated market is subject to the publication of a prospectus under Regulation (EU) 2017/1129. The prospectus regime provides issuers with the flexibility to choose their home Member State where the denomination by unit of

Amendment

(56) Private placements of non-equity securities are an important source of capital for issuers and are cross-border by nature. While a private placement with qualified investors does not require a prospectus, the subsequent admission to trading of the securities on a regulated market is subject to the publication of a prospectus under Regulation (EU) 2017/1129. The prospectus regime provides issuers with the flexibility to choose their home Member State where the denomination by unit of

non-equity securities is in excess of 1000 EUR. *As the non-equity securities concerned by private placements typically display a denomination by unit in excess of 1 000 EUR, this creates a potential for regulatory forum shopping. Entrusting ESMA with approving such wholesale non-equity prospectuses admitted to trading on a regulated market or its specific segment to which only qualified investors can have access to should achieve the double objective of ensuring a level playing field for issuers and a higher degree of efficiency by significantly streamlining approval procedures.*

non-equity securities is in excess of 1000 EUR.

Or. en

Amendment 332
Markus Ferber

Proposal for a regulation
Recital 57

Text proposed by the Commission

Amendment

(57) The approval of prospectuses relating to asset backed securities as well as the approval of prospectuses drawn up by specialist issuers, such as property companies, mineral companies, scientific research based companies or shipping companies, require national competent authorities to have highly specialized staff available, in most cases to deal with a fairly modest volume of prospectuses. Besides, certain non-financial information to be disclosed by specialist issuers is not set out in the delegated acts referred to in Article 13 of Regulation (EU) 2017/1129 but is left to the discretion of national competent authorities. This represents a potential source of inefficiency and regulatory arbitrage. Entrusting ESMA with the approval of these types of prospectuses should, on the one hand, ensure a level

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playing field in terms of information disclosure and eliminate the risk of regulatory arbitrage and, on the other hand, optimise the allocation of supervisory resources at Union level by establishing ESMA as the centre of expertise, thereby enhancing the efficiency of supervision of the prospectuses concerned.

Or. en

Justification

National competent authorities have considerable expertise when it comes to approval of prospectuses. Tasking ESMA with the approval of certain prospectuses would create costly additional administrative layers.

Amendment 333

Kay Swinburne

on behalf of the ECR Group

Proposal for a regulation

Recital 57

Text proposed by the Commission

(57) The approval of prospectuses relating to asset backed securities as well as the approval of prospectuses drawn up by specialist issuers, such as property companies, mineral companies, scientific research based companies or shipping companies, require national competent authorities to have highly specialized staff available, in most cases to deal with a fairly modest volume of prospectuses. Besides, certain non-financial information to be disclosed by specialist issuers is not set out in the delegated acts referred to in Article 13 of Regulation (EU) 2017/1129 but is left to the discretion of national competent authorities. ***This represents a potential source of inefficiency and regulatory arbitrage. Entrusting ESMA with the approval of these types of***

Amendment

(57) The approval of prospectuses relating to asset backed securities as well as the approval of prospectuses drawn up by specialist issuers, such as property companies, mineral companies, scientific research based companies or shipping companies, require national competent authorities to have highly specialized staff available, in most cases to deal with a fairly modest volume of prospectuses. Besides, certain non-financial information to be disclosed by specialist issuers is not set out in the delegated acts referred to in Article 13 of Regulation (EU) 2017/1129 but is left to the discretion of national competent authorities.

prospectuses should, on the one hand, ensure a level playing field in terms of information disclosure and eliminate the risk of regulatory arbitrage and, on the other hand, optimise the allocation of supervisory resources at Union level by establishing ESMA as the centre of expertise, thereby enhancing the efficiency of supervision of the prospectuses concerned.

Or. en

Amendment 334

Kay Swinburne

on behalf of the ECR Group

Proposal for a regulation

Recital 58

Text proposed by the Commission

Amendment

(58) Third country issuers which draw up a prospectus in accordance with Union law enjoy some flexibility as regards the choice of their home Member State for the purpose of prospectus approval, which carries the risk of creating supervisory forum shopping across Member States. Consolidating such approvals at the level of ESMA would ensure a fully harmonised approach vis-à-vis third country issuers and eliminate the potential for regulatory arbitrage. Third country issuers will thereby have ESMA as their single point of contact in the Union regardless of the Member State(s) where they offer their securities or request an admission to trading. This removes the need to determine a home Member State for such third country issuers.

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Or. en

Amendment 335
Markus Ferber

Proposal for a regulation
Recital 62

Text proposed by the Commission

Amendment

(62) ESMA should be empowered to impose administrative sanctions or take other administrative measures for infringements of Regulation (EU) No 2017/1129 related to the specific types of prospectuses for which approval is conferred to ESMA. This Regulation should therefore clearly define the boundaries of such administrative sanctions or other administrative measures which should be effective, proportionate and dissuasive. *deleted*

Or. en

Justification

National competent authorities have considerable expertise when it comes to approval of prospectuses. Tasking ESMA with the approval of certain prospectuses would create costly additional administrative layers.

Amendment 336
Olle Ludvigsson

Proposal for a regulation
Recital 63

Text proposed by the Commission

Amendment

(63) The supervision of advertisements related to those prospectuses whose approval is conferred to ESMA should also be transferred to ESMA. ESMA should have the option to exercise control over the compliance of those advertisements. However such control should always be performed by ESMA in relation to any advertisement *deleted*

disseminated in a Member State whose competent authority has formally requested ESMA to make use of its controlling power whenever a prospectus approved by ESMA is used for an offer or admission in its jurisdiction. To perform such a task, ESMA should have adequate human resources with sufficient knowledge of the relevant national rules on consumer protection.

Or. en

Justification

It seems unjustified to move national prospectuses with no, or quiet limited cross-border connection from the NCAs to ESMA. This could damage the functioning of the national securities markets and the financing of SMEs. If transferring some of the prospectus competences to ESMA, such an initiative should have been preceded by an impact assessment, including a stakeholder consultation.

Amendment 337 **Markus Ferber**

Proposal for a regulation **Recital 63**

Text proposed by the Commission

Amendment

(63) *The supervision of advertisements related to those prospectuses whose approval is conferred to ESMA should also be transferred to ESMA. ESMA should have the option to exercise control over the compliance of those advertisements. However such control should always be performed by ESMA in relation to any advertisement disseminated in a Member State whose competent authority has formally requested ESMA to make use of its controlling power whenever a prospectus approved by ESMA is used for an offer or admission in its jurisdiction. To perform such a task, ESMA should have adequate human resources with sufficient*

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knowledge of the relevant national rules on consumer protection.

Or. en

Justification

National competent authorities have considerable expertise when it comes to approval of prospectuses. Tasking ESMA with the approval of certain prospectuses would create costly additional administrative layers.

Amendment 338

Kay Swinburne

on behalf of the ECR Group

Proposal for a regulation

Recital 64

Text proposed by the Commission

Amendment

(64) ESMA should scrutinise and approve all prospectuses of the types defined by this Regulation that are submitted for approval from the date of application of this Regulation. Prospectuses of the types defined by this Regulation that were approved by a competent authority before the date of application of this Regulation, or submitted for approval to a competent authority but not yet approved at that date, should continue to be supervised by that competent authority. To avoid any confusion, such supervision should cover in particular the finalisation of the scrutiny and approval procedure for those prospectuses not yet approved, as well as all approval and notification tasks applying to related supplements and final terms, where applicable.

deleted

Or. en

Amendment 339
Olle Ludvigsson

Proposal for a regulation
Recital 64

Text proposed by the Commission

Amendment

(64) ESMA should scrutinise and approve all prospectuses of the types defined by this Regulation that are submitted for approval from the date of application of this Regulation. Prospectuses of the types defined by this Regulation that were approved by a competent authority before the date of application of this Regulation, or submitted for approval to a competent authority but not yet approved at that date, should continue to be supervised by that competent authority. To avoid any confusion, such supervision should cover in particular the finalisation of the scrutiny and approval procedure for those prospectuses not yet approved, as well as all approval and notification tasks applying to related supplements and final terms, where applicable.

deleted

Or. en

Justification

It seems unjustified to move national prospectuses with no, or quiet limited cross-border connection from the NCAs to ESMA. This could damage the functioning of the national securities markets and the financing of SMEs. If transferring some of the prospectus competences to ESMA, such an initiative should have been preceded by an impact assessment, including a stakeholder consultation.

Amendment 340
Markus Ferber

Proposal for a regulation
Recital 64

Text proposed by the Commission

Amendment

(64) ESMA should scrutinise and approve all prospectuses of the types defined by this Regulation that are submitted for approval from the date of application of this Regulation. Prospectuses of the types defined by this Regulation that were approved by a competent authority before the date of application of this Regulation, or submitted for approval to a competent authority but not yet approved at that date, should continue to be supervised by that competent authority. To avoid any confusion, such supervision should cover in particular the finalisation of the scrutiny and approval procedure for those prospectuses not yet approved, as well as all approval and notification tasks applying to related supplements and final terms, where applicable.

deleted

Or. en

Justification

National competent authorities have considerable expertise when it comes to approval of prospectuses. Tasking ESMA with the approval of certain prospectuses would create costly additional administrative layers.

Amendment 341
Markus Ferber

Proposal for a regulation
Recital 66

Text proposed by the Commission

Amendment

(66) Regulation (EU) No 1093/2010); Regulation (EU) No 1094/2010; Regulation (EU) No 1095/2010; Regulation (EU) **No 345/2013; Regulation (EU) No 346/2013**; Regulation (EU) No 600/2014 ; **Regulation (EU) No 2015/760**;

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

Regulation (EU) 2016/2011; *Regulation (EU) 2017/1129* should therefore be amended accordingly,

Or. en