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2017/0230 (COD)

Amended proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority); Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority); Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority); ~~Regulation (EU) No 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 + solvency

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Central Bank[[1]](#footnote-2),

Having regard to the opinion of the European Economic and Social Committee[[2]](#footnote-3),

Acting in accordance with the ordinary legislative procedure[[3]](#footnote-4),

Whereas:

(1)

…..

**Drafting suggestings on recitals will we sent separetly**

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:
   * + 1. paragraph 2 is replaced by the following:

"2. The Authority shall act within the powers conferred by this Regulation and within the scope of Directive 2002/87/EC, Directive 2008/48/EC of the European Parliament and of the Council\*, ***Directive of 2009/110 EC of the European Parliament and of the Council \*(\*)*** Regulation (EU) No 575/2013 of the European Parliament and of the Council, Directive 2013/36/EU of the European Parliament and of the Council, Directive 2014/49/EU of the European Parliament and of the Council\*\*, Directive 2014/92/EU of the European Parliament and of the Council\*\*\*, Regulation (EU) 2015/847\*\*\*\* of the European Parliament and the Council\*\*\*\*\*, Directive (EU) 2015/2366 of the European Parliament and of the Council\*\*\*\*\*\* and, to the extent that those acts apply to credit and financial institutions and the ompetent authorities that supervise them, within the relevant parts of Directive 2002/65/EC and Directive (EU) 2015/849 of the European Parliament and of the Council\*\*\*\*\*\*\*, including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority. The Authority shall also act in accordance with Council Regulation (EU) No 1024/2013\*\*\*\*\*\*\*\*.

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

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

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

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

\*\*\*\*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).

\*\*\*\*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).

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

\*\*\*\*\*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).";

* + - 1. [in Article 1(2), the following subparagraph is added:

'The Authority shall also act within the powers conferred by this Regulation and within the scope of Directive (EU) 2015/849(\*) 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 keep those Authorities 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.';

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

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

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

1. in Article 2 paragraph 5 the following subparagraph is inserted:

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

1. 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); ";

[(aa) the following point (1a) is inserted:

“(1a) 'financial sector operators' means any entity which is subject to Directive (EU) 2015/849 and which is either a 'financial institution' as defined in Article 4(1) of this Regulation and 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";]

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

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

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

"(ii) with regard to Directives 2002/65/EC and (EU) 2015/849 the authorities and bodies competent for ensuring compliance with the requirements of those that Directives by credit and financial institutions;

[(iia) with regard to Directive (EU) 2015/849 the authorities and bodies that supervise financial institutions and are competent for ensuring their compliance with the requirements of that Directive"; ]

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

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

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

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

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

1. Article 6 is amended as follows:

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

"(2) an **~~Executive~~ Management** Board, which shall exercise the tasks set out in Article 47;";

(b) point (4) is deleted;

(5) Article 8 is amended as follows:

(a) paragraph 1 is amended as follows:

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

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

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

(2) "(ab) to develop and maintain up to date a Union resolution handbook on the resolution of financial institutions in the Union **~~which sets out supervisory best practices and high quality methodologies and processes;~~**";

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

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

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

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

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

[(v) the following point (l) is added:

"(l) to contribute to the prevention of the use of the financial system for the purposes of money-laundering and terrorist financing.";]

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

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

(c) in paragraph 2, the following are amended

(i) point (ca) is inserted:

**"(ca) issue recommendations as laid down in Articles 29a and 31a;";**

ii) point h) is replaced by the following:

"(h) collect the necessary information concerning financial institutions as provided for in Article 35 **~~and Article 35b~~**";

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

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

1. Article 9 is amended as follows:

paragraph 2 is replaced by the following:

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

paragraph 4 is replaced by the following:

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

(6a) [the following Articles 9a and 9b are inserted:

"Article 9a  
Special tasks related to combating money-laundering and terrorist financing

1. The Authority shall take a leading role in promoting integrity, transparency and security in the financial system by means of adopting measures to prevent and combat money laundering and terrorist financing, including by:

* + - 1. collecting information from competent authorities relating to weaknesses identified in the processes and procedures, governance arrangements, fit and proper assessments, business models and activities of financial sector operators to prevent money-laundering and terrorist financing as well as measures taken by competent authorities. Competent authorities shall provide all such information to the Authority in addition to any obligations under Article 35. The Authority shall coordinate closely with Financial Intelligence Units;
      2. developing common standards for combating money-laundering and terrorist financing in the financial sector and promoting their consistent implementation;
      3. monitoring market developments and assessing vulnerabilities to money-laundering and terrorist financing in the financial sector.

2. 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.

3. The Authority shall promote convergence of supervisory processes referred to in Directive (EU) 2015/849, including by conducting periodic reviews, in accordance with Article 30.

Where such a review reveals serious shortcomings in the identification, assessment or addressing of risks of money-laundering and terrorist financing and the competent authority does not take action to address the follow-up measures set out in the report referred to in Article 30(3), the Authority shall inform the European Parliament, the Council and the Commission.

4. The Authority shall regularly perform risk assessments on competent authorities with a main focus on competent authorities as referred to in point (iia) of Article 4(2)to test their strategies and resources to address and monitor the most important emerging risks related to money-laundering and terrorist financing. The Authority shall inform the Commission of the outcomes of these risk assessments, including by integrating the analysis of the outcomes in the opinion it is requested to deliver pursuant to paragraph 5 of Article 6 of Directive (EU) 2015/849.

5. In material cases of money-laundering or terrorist financing affecting cross border matters with third countries, the Authority shall have a leading role in facilitating cooperation between competent authorities in the Union and the relevant authorities in third countries.

6. The Authority shall establish a permanent internal committee on anti-money laundering and countering terrorist financing to coordinate measures in order to combat money-laundering and terrorist financing and to prepare draft decisions to be taken by the Authority in accordance with Article 44.

7. The committee shall be chaired by the Chairperson of the Board of Supervisors and shall be composed of the heads of the authorities and bodies competent for ensuring compliance with the requirements of Directive (EU) 2015/849 by financial institutions. In addition, the Commission, the ESRB, the Supervisory Board of the European Central Bank, the European Insurance and Occupational Pensions Authority, and the European Securities and Markets Authority may each nominate a high-level representative to participate in the committee meetings as observers.";

Article 9b  
Request for investigation related to the prevention 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 transposing Directives or exercising 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 (iia) 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 transposing Directives or exercising options granted to Member States by Union law, including the cessation of any conduct.

2. The competent authority shall comply with any request addressed to it in accordance with paragraph 1 and shall inform the Authority within 10 days 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 comply with paragraph 2 of this Article, Article 17 shall apply.";]

1. Article 16 is amended as follows:

paragraph 1 is replaced by the following:

**~~The Authority may also address guidelines and recommendations to the authorities of Member States that are not defined as competent authorities under this Regulation but that are empowered to ensure the application of the acts referred to in Article 1(2).~~**

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

"2. The Authority shall, **~~save in exceptional circumstances~~**, conduct open public consultations regarding the guidelines and recommendations which it issues and shall analyse the related potential costs and benefits of issuing such guidelines and recommendations ***unless the Board of Supervisors objects to such consultations and analyses by simple majority****.* Those consultations and analyses shall be proportionate in relation to the scope, nature and impact of the guidelines or recommendations. The Authority ***or three voting members of the Board of Supervisors may* ~~shall, save in exceptional circumstances~~**, also request opinions or advice from the Banking Stakeholder Group referred to in Article 37.";

***(b1) paragraph 2a is inserted:***

***“The Authority may issue guidelines and recommendations in the form of answers to specific questions from competent authorities or financial institutions on how discretion granted by Union law to the competent authorities shall be exercised. Three voting members of the Board of Supervisors may request the Authority to decide pursuant to Article 44 whether it shall conduct open public consultations regarding an answer to specific questions from competent authorities or financial institutions, analyse the related potential cost and benefits or request opinions or advice from the Banking Stakeholder Group referred to in Article 37. Those 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.”***

***“The Authority shall publish each question received from competent authorities and financial institutions and, following its adoption, the answer thereto, on its website in a user-friendly way in a timely manner, unless the publication could impair legitimate interests of natural or legal persons concerned or could have negative repercussions for the stability of the financial system. Questions that the Authority has received, but will not respond to shall be published on the Authority’s website for a period of two months.”***

***(b2) in paragraph 3, the following text is added as third subparagraph:***

***“By derogation to the previous sub-paragraph, within two months of the issuance of a guideline or recommendation in the form of an answer to a specific question, in the event that a competent authority does not comply or does not intend to comply, it shall inform the Authority. If the Authority decides so, the competent authority shall state its reasons for not complying.”]***

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

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

**~~(d) the following paragraph 5 is added:~~**

**~~"5. Where two thirds of the members of the Banking Stakeholder Group are of the opinion that the Authority has exceeded its competence by issuing certain guidelines or recommendations, they may send a reasoned opinion to the Commission.~~**

**~~The Commission shall request an explanation justifying the issuance of the guidelines or recommendations concerned from the Authority. The Commission shall, on receipt of the explanation from the Authority, assess the scope of the guidelines or recommendations in view of the Authority's competence. Where the Commission considers that the Authority has exceeded its competence, and after having given the Authority the opportunity to state its views, the Commission may adopt an implementing decision requiring the Authority to withdraw the guidelines or recommendations concerned .The decision of the Commission shall be made public.";~~**

**[(7a) Article 16a is inserted:**

***“Art 16a***

***Questions and Answers***

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

**Before submitting a question to the Authority, financial institutions shall assess whether to firstly address the question to their competent authority. The questions can be categorized as follows:**

**(a) Questions regarding the practical implementation or application of provisions of the regulatory framework referred to in Article 1 (2);**

**(b) Questions referred to in (a) of this paragraph that are perceived by the Authority as well as at least three competent authorities as having a high impact on the single market or on the financial stability and therefore will be prioritized over questions referred to in (a);**

**2. Answers by the Authority to questions referred to in paragraph (1)a and (1)b as well as answers published by the Authority on behalf of the European Commission referred to in paragraph 7 of this Article are non-binding and shall be considered suitable to comply with the requirements of the legislative acts referred to in Article 1(2), associated delegated and implementing acts and guidelines and recommendations adopted under these legislative acts.**

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

**4. The Authority shall set up internal processes to ensure the involvement of competent authorities ~~and of the relevant Stakeholder Group referred to in Article 37~~ during the preparation of answers for all admissible questions. . The Authority shall set up internal processes to ensure the involvement of the Stakeholder Group referred to in Article 37 during the preparation of answers for admissible questions where the Authority or at least three competent authorities consider this involvement as appropriate. In this process, due care of confidentiality shall be guaranteed.**

**5. The Authority shall have in place adequate internal procedures to ensure that competent authorities may put forward the stance of a potential transgression of competences of the Authority or may propose to address the issue of the admissible question in guidelines referred to in Article 16; ~~to conduct open public consultations on draft questions and answers or to analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft questions and answers concerned or in relation to the particular urgency of the matter~~ or to review questions and answers at appropriate intervals. The Authority shall have in place internal procedures to ensure that a stance or proposal put forward by at least three competent authorities shall be subject to discussion of an internal committee prior to submission to the Board of Supervisors for decision.**

**6. The Authority shall have in place adequate internal procedures to conduct open public consultations for or to analyse potential related costs and benefits of questions referred to in paragraph (1)b, unless the Board of Supervisors objects to such consultations and analyses *by simple majority. 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.***

**7. The Authority shall publish the answers to questions regarding the legal explanation of provisions of the regulatory framework on behalf of the European Commission. It shall be clearly stated that the Court of Justice of the European Union is the competent body to provide the definitive interpretations of European legislation.]**

1. Article 17 is amended as follows:
   * + 1. in paragraph 2 the following subparagraphs are added:

"Without prejudice to the powers laid down in Article 35, the Authority may address a duly justified and reasoned request for information directly to other competent authorities **~~or relevant financial institutions,~~** whenever ***requesting information from the competent authority concerned has proven, or is deemed, insufficient to obtain the information that*** it is deemed necessary for the purpose of investigating an alleged breach or non-application of Union law. **~~Where it is addressed to financial institutions, the reasoned request shall explain why the information is necessary for the purposes 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.

**~~Where a request for information has been addressed to a financial institution, the Authority shall inform the relevant competent authorities of such a request. The competent authorities shall assist the Authority in collecting the information, where so requested by the Authority.";~~**

* + - 1. [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 combating 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 transposing 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 exercising 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.”;]

1. 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) on its own initiative where on the basis of objective criteria, disagreement can be determined between competent authorities.

In cases where the acts referred to in Article 1(2) require a joint decision to be taken by competent authorities, a disagreement shall be presumed in the absence of a joint decision being taken by those authorities within the time limits set out in those acts".;

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

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

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

(i) the time limit has expired;

(ii) one or more of the competent authorities concerned conclude that a disagreement exists, on the basis of objective factors;

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

(i) one or more of the competent authorities concerned concludes that a disagreement exists on the basis of objective factors; or

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

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

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

(c) paragraph 3 is replaced by the following:

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

(d) the following paragraph 3a is inserted:

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

(e) paragraph 4 is replaced by the following:

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

“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 combating 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 transposing 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 exercising those options.”;]

1. Article 22 is amended as follows
   * + 1. , paragraph 1a is deleted;
       2. in paragraph 4, the second subparagraph is replaced by the following:

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

1. Article 29 is amended as follows:

(a) paragraph 1 is amended as follows:

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

"(aa) **establishing coordination groups in accordance with Art 45c to promote supervisory convergence and identify best practices. “~~issuing the Strategic Supervisory Plan in accordance with Article 29a;";~~**

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

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

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

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

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

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

1. the following Article 29a is inserted:

*"Article 29a*

**Common Supervisory Priorities**

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

**~~Strategic Supervisory Plan~~ Common Supervisory Priorities**

1. **~~Upon the entry into application of Regulation [XXX insert reference to amending Regulation] and every three years thereafter by 31 March, the Authority shall issue a recommendation addressed to competent authorities, laying down supervisory strategic objectives and priorities ("Strategic Supervisory Plan") and, taking into account any contributions from competent authorities,. The Authority shall transmit the Strategic Supervisory Plan for information to the European Parliament, the Council and the Commission and shall make it public on its website.~~**

**~~The Strategic Supervisory Plan shall identify specific priorities for supervisory activities in order to promote consistent, efficient and effective supervisory practices and the common, uniform and consistent application of Union law and to address relevant micro-prudential trends, potential risks and vulnerabilities~~****~~identified in accordance with Article 32.~~**

**~~2. By 30 September of each year, each competent authority shall submit a draft annual work programme for the following year to the Authority for consideration and specifically stipulate how that draft programme is aligned with the Strategic Supervisory Plan.~~**

**~~The draft annual work programme shall contain specific objectives and priorities for supervisory activities and quantitative and qualitative criteria for the selection of financial institutions, market practices and behaviours and financial markets to be examined by the competent authority submitting the draft annual work programme during the year covered by that programme.~~**

**~~3. The Authority shall assess the draft annual work programme and where there are material risks for not attaining the priorities set out in the Strategic Supervisory Plan, the Authority shall issue a recommendation to the relevant competent authority aiming at the alignment of the relevant competent authority's annual work programme with the Strategic Supervisory Plan.~~**

**~~By 31 December of each year, the competent authorities shall adopt their annual work programmes taking into account any such recommendations.~~**

**~~4. By 31 March of each year, each competent authority shall transmit to the Authority a report on the implementation of the annual work programme.~~**

**~~The report shall include at least the following information:~~**

**~~(a) a description of the supervisory activities and examinations of financial institutions, market practices and behaviours and of financial markets, and on the administrative measures and sanctions imposed against financial institutions responsible for breaches of Union and national law;~~**

**~~(b) a description of activities that were carried out and which were not foreseen in the annual work programme;~~**

**~~(c) an account of the activities provided for in the annual work programme that were not carried out and of the objectives of that programme that were not met, as well as the reasons for the failure to carry out those activities and to reach those objectives.~~**

**~~5. The Authority shall assess the implementation reports of the competent authorities. Where there are material risks of not attaining the priorities set out in the Strategic Supervisory Plan the Authority shall issue a recommendation to each competent authority concerned on how the relevant shortcomings in its activities can be remedied.~~**

**~~Based on the reports and its own assessment of risks, the Authority shall identify the activities of the competent authority that are critical to fulfilling the Strategic Supervisory Plan and shall, as appropriate, conduct reviews under Article 30 of those activities.~~**

**~~6. The Authority shall make best practices identified during the assessment of the annual work programmes publicly available.";~~**

1. Article 30 is amended as follows:

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

"**Peer r**eviews of competent authorities";

(b) paragraph 1 is replaced by the following:

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

(c) the following paragraph is inserted:

1a. For the purposes of this Article, the Authority shall establish ~~a~~ **peer** review committee**s**, **which shall be** **composed of members of competent authorities with the participation of staff from the Authority** **~~exclusively composed of staff from the Authority. The Authority may delegate certain tasks or decisions to the review committee~~**. **~~[~~*~~In case of peer reviews in relation to combating money-laundering and terrorist financing, the Peer Review Committees shall be chaired by a senior member of ESA staff~~*~~];~~**

(d) paragraph 2 is amended as follows:

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

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

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

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

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

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

(e) paragraph 3 is replaced by the following:

"3. The Authority shall produce a report setting out the results of the review **which shall be ~~is~~ 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~~at~~** report shall explain and indicate the follow-up measures that are **~~foreseen~~** **deemed appropriate, *proportionate* and necessary** as a result of the 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. **~~Where competent authorities do not take action to address the follow-up measures indicated in the report, the Authority shall issue a follow-up report.~~**

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

(f) the following paragraph 3a to **3c are**  **~~is~~** inserted:

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

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

***3c. Where a peer review reveals serious shortcomings and the competent authority does not take action to address the urgently required follow-up measures set out in the report referred to in Article 30(3), the Authority shall inform the European Parliament, the Council and the Commission.***

(g) paragraph 4 is replaced by the following:

“4. The Authority shall publish **the main findings of the report referred to in paragraph 3 and the follow-up report referred to in paragraph 3b~~, the reports referred to in paragraph 3 including any follow-up report~~** , unless publication would involve risks to the stability of the financial system. ***Where*  ~~If T~~t**he competent authority that is subject to the review **is concerned that the publication of the main findings of the reports would pose risks to the stability of the financial system, it shall have the possibility to refer the matter to the Board of Supervisors. The Board of Supervisors may decide by simple majority not to publish these extracts. ~~shall be invited to comment before the publication of any report. Those comments shall be made publicly available unless publication would involve risks to the stability of the financial system.~~**";

**paragraph 5 is inserted:**

**“5. For the purposes of this Article the Management Board shall make a proposal for a peer review work plan, 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.***

1. in Article 31 a paragraph is added:

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

1. **~~the following Article 31a is inserted:~~**

***~~"Article 31a~~***

***~~Coordination on delegation and outsourcing of activities as well as of risk transfers~~***

**~~1. The Authority shall on an ongoing basis coordinate supervisory actions of competent authorities with a view to promoting supervisory convergence in the fields of delegation and outsourcing of activities by financial institutions as well as in relation to risk transfers conducted by them, in accordance with paragraphs 2, 3, and 4 and 5.~~**

**~~2. The competent authorities shall notify the Authority where they intend to carry out an authorisation or registration related to a financial institution which is under supervision of the competent authority concerned in accordance with the acts referred to in Article 1(2) and where the business plan of the financial institution entails the outsourcing or delegation of a material part of its activities or any of the key functions or the risk transfer of a material part of its activities into third countries, to benefit from the EU passport while essentially performing substantial activities or functions outside the Union. The notification to the Authority shall be sufficiently detailed to allow for a proper assessment. by the Authority.~~**

**~~Where the Authority considers it necessary to issue an opinion to a competent authority regarding the non-compliance of an authorisation or registration notified pursuant to the first subparagraph with Union law or guidelines, recommendations or opinions adopted by the Authority, the Authority shall inform that competent authority thereof within 20 working days of the receipt of the notification by that competent authority. In that case the competent authority concerned shall await the opinion of the Authority before carrying out the registration or authorisation.~~**

**~~At the request of the Authority, the competent authority shall within 15 working days of the receipt of such a request provide information related to its decisions to authorise or register a financial institution which is under its supervision in accordance with the acts referred to in Article 1(2).~~**

**~~The Authority shall issue the opinion, without prejudice to any time limits set out in Union law, at the latest within 2 months of the receipt of the notification pursuant to the first subparagraph.~~**

**~~3. A financial institution shall notify the competent authority of the outsourcing or delegation of a material part of its activities or any of its key functions, and the risk transfer of a material part of its activities, to another entity or its own branch established in a third country. The competent authority concerned shall inform the Authority of such notifications on a semi-annual basis.~~**

**~~Without prejudice to Article 35, at the request of the Authority, the competent authority shall provide information in relation to the outsourcing, delegation or risk transfer arrangements by financial institutions.~~**

**~~The Authority shall monitor whether the competent authorities concerned verify that outsourcing, delegation or risk transfer arrangements referred to in the first subparagraph are concluded in accordance with Union law, comply with guidelines, recommendations or opinions from the Authority and do not prevent effective supervision by the competent authorities and enforcement in a third country.~~**

**~~4. The Authority may issue recommendations to the competent authority concerned, including recommendations to review a decision or to withdraw an authorisation. Where the competent authority concerned does not follow the recommendations of the Authority within 15 working days, the competent authority shall state the reasons and the Authority shall make its recommendation public together with those reasons.";~~**

1. Article 32 is amended as follows:

(a) a new paragraph 2a is inserted:

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

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

* + - 1. paragraphs 3a and 3b are replaced by the following:

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

1. Article 33 is amended as follows:

(a) paragraph 2 is replaced by the following:

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

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

"2a. The Authority shall **periodically** monitor ***relevant*** regulatory and supervisory developments and enforcement practices and relevant 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) 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. **It shall take into account the market relevance of the third countries concerned. *The Authority may liaise with relevant authorities in the third countries.***The Authority shall submit a***country specific*** confidential report**s** on its findings to the Commission **~~on an annual basis~~** ***with a particular focus on their implications for financial stability, market integrity, investor protection or the functioning of the internal market. When deciding on drawing up the report, the market relevance of the third country shall be taken into account. The Authority shall submit the reports at least every three years.***

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

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

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

The Authority shall inform the Commission where a third-country competent authority refuses to conclude such administrative arrangements or when it refuses to effectively cooperate. The Commission shall take this information into account when reviewing the relevant equivalence decisions.

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

2c. The competent authorities shall inform the Authority in advance of their intentions to conclude any administrative arrangements with third-country supervisory authorities in any of the areas governed by the acts referred to in Article 1(2), including in relation to branches of third country entities. They shall provide simultaneously to the Authority a draft of such planned arrangements.

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

1. Article 34, paragraph 2, is replaced by the following:

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

1. Article 35 is amended as follows:

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

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

The information provided shall be accurate, complete and submitted within the time limit prescribed by the Authority.

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

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

(b) paragraph 5 is replaced by the following:

"5. Where information requested in accordance with paragraph 1 is not available or is not made available by the competent authorities within the time limit set by the Authority, the Authority may address a duly justified and reasoned request to any of the following:

(a) other authorities with supervisory functions;

(b) to the ministry responsible for finance in the Member State concerned where it has at its disposal prudential information;

(c) to the national central bank of the Member State concerned;

(d) to the statistical office of the Member State concerned.

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

**~~(c)~~ paragraphs 6 and ~~7a~~ are ~~deleted :~~**

1. **~~the following Articles 35a to 35h are inserted:~~**

***~~"Article 35a~~***

***~~Exercise of the powers referred to in Article 35b~~***

**~~The powers conferred on the Authority, any of its officials or another person authorised by the Authority in accordance with Article 35(b) shall not be used to require the disclosure of information or documents that are subject to legal privilege.~~**

***~~Article 35b~~***

***~~Request for information to financial institutions, holding companies or branches of relevant financial institutions and non-regulated operational entities within a financial group or conglomerate~~***

**~~1. Where information requested under paragraph 1 or paragraph 5 of Article 35 is not available or is not made available within the time limit set by the Authority, it may by simple request or by decision require the following institutions and entities to provide all necessary information to enable the Authority to carry out its duties under this Regulation:~~**

**~~(a) relevant financial institutions;~~**

**~~(b) holding companies or branches of a relevant financial institution;~~**

**~~(c) non-regulated operational entities within a financial group or conglomerate that are significant to the financial activities of the relevant financial institutions.~~**

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

**~~(a) refer to this Article as the legal base 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 35c where the information provided is incorrect or misleading information.~~**

**~~3. When requesting information by decision, the Authority shall:~~**

**~~(a) refer to this Article as the legal base 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 35d where the production of the required information is incomplete;~~**

**~~(f) indicate the fine provided for in Article 35c where the answers to the questions are incorrect or misleading information;~~**

**~~(g) indicate the right to appeal the decision before the Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union in accordance with Articles 60 and 61.~~**

**~~4. The relevant institutions and entities listed 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. The authority shall send, without delay, a copy of the simple request or of its decision to the competent authority of the Member State where the relevant entity listed in paragraph 1 concerned by the request for information is domiciled or established.~~**

**~~6. The Authority may use confidential information received in accordance with this Article only for the purposes of carrying out the tasks assigned to it by this Regulation.~~**

***~~Article 35c~~***

***~~Procedural rules for imposing fines~~***

**~~1. Where, in carrying out its duties under this Regulation, the authority finds that there are serious indications of the possible existence of facts liable to constitute an infringement as referred to in Article 35d(1), the Authority shall appoint an independent investigation officer within the Authority to investigate the matter. The appointed officer shall not be involved or have been directly or indirectly involved in the direct or indirect supervision of the institutions or entities listed in Article 35b(1) and shall perform his or her functions independently from the Board of Supervisors.~~**

**~~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 or her findings to the Board of Supervisors.~~**

**~~3. In order to carry out his or her tasks, the investigation officer shall have the power to request information in accordance with Article 35b.~~**

**~~4. Where carrying out his or her tasks, the investigation officer shall have access to all documents and information gathered by the Authority in its supervisory activities.~~**

**~~5. Upon completion of his investigation and before submitting the file with his or her findings to the 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 or her findings only on facts on which the persons concerned have had the opportunity to comment.~~**

**~~6. The rights of defence of the persons subject to the investigations shall be fully respected during investigations undertaken pursuant to this Article.~~**

**~~7. Upon submission of the file with his finding to the 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 subject to the investigations, after having heard those persons in accordance with Article 35f, the Authority shall decide if one or more of the infringements as referred to in Article 35d(1) has been committed by the persons subject to the investigations and, in such a case, shall take a measure in accordance with that Article.~~**

**~~9. The investigation officer shall not participate in the deliberations of the Board of Supervisors or intervene in any way in the decision-making process of the Board of Supervisors.~~**

**~~10. The Commission shall adopted delegated acts in accordance with Article 75a to specify the rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including rules on the following:~~**

**~~(a) rights of defence~~**

**~~(b) temporal provisions,~~**

**~~(c) provisions specifying how fines or periodic penalty payments are to be collected,~~**

**~~(d) provisions specifying the limitation periods for the imposition and enforcement of fines and periodic penalty payments.~~**

**~~11. The Authority 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, the Authority 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 35d~~***

***~~Fines~~***

**~~1. The Authority shall adopt a decision to impose a fine where it finds that an institution or entity listed in Article 35b(1) has, intentionally or negligently, failed to provide information in response to a decision requiring information pursuant to Article 35b(3) or has provided incomplete, incorrect or misleading information in response to a simple request for information or a decision pursuant to Article 35b(2).~~**

**~~2. The basic amount of the fine referred to in paragraph 1 shall amount to at least EUR 50 000 and shall not exceed EUR 200 000.~~**

**~~3. When setting the basic amount of the fine referred to in paragraph 2, the Authority shall have regard to the annual turnover of the institution or entity concerned for the preceding business year and shall be:~~**

**~~(a) at the lower end of the limit for entities with an annual turnover below EUR 10 million;~~**

**~~(b) the middle of the limit for entities with an annual turnover between EUR 10 and 50 million;~~**

**~~(c) the higher end of the limit for entities with an annual turnover higher than EUR 50 million.~~**

**~~The basic amounts defined within the limits set out in paragraph 2 shall be adjusted, where necessary, by taking into account aggravating or mitigating factors in accordance with the relevant coefficients set out in paragraph 5.~~**

**~~The relevant aggravating coefficient shall be applied one by one to the basic amount. Where more than one aggravating coefficient is applicable, the difference between the basic amount and the amount resulting from the application of each individual aggravating coefficient shall be added to the basic amount.~~**

**~~The relevant mitigating coefficient shall be applied one by one to the basic amount. Where more than one mitigating coefficient is applicable, the difference between the basic amount and the amount resulting from the application of each individual mitigating coefficient shall be subtracted from the basic amount.~~**

**~~4. The following adjustment coefficients shall be applied cumulatively to the basic amount referred to in paragraph 2, based on the following:~~**

**~~(a) the adjustment coefficients linked to aggravating factors are as follows:~~**

**~~(i) where the infringement has been committed repeatedly, an additional coefficient of 1.1 shall apply each time the infringement has been repeated;~~**

**~~(ii) where the infringement lasted for more than six months, a coefficient of 1.5 shall apply;~~**

**~~(iii) where the infringement has been committed intentionally, a coefficient of 2 shall apply;~~**

**~~(iv) where no remedial action has been taken since the infringement has been identified, a coefficient of 1.7 shall apply;~~**

**~~(v) where the entity’s senior management has not cooperated with the Authority, a coefficient of 1.5 shall apply.~~**

**~~(b) the adjustment coefficients linked to mitigating factors are as follows:~~**

**~~(i) where the infringement lasted fewer than 10 working days, a coefficient of 0.9 shall apply;~~**

**~~(ii) where the institution's or entity’s senior management can demonstrate that they have taken all the necessary measures to prevent the failure to comply with a request pursuant to Article 35(6a), a coefficient of 0.7 shall apply;~~**

**~~(iii) where the entity has brought the infringement to the Authority’s attention quickly, effectively and completely, a coefficient of 0.4 shall apply;~~**

**~~(iv) where the entity has voluntarily taken measures to ensure that similar infringement cannot be committed in the future, a coefficient of 0.6 shall apply.~~**

**~~5. Notwithstanding paragraphs 2 and 3, the total fine shall not exceed 20% of the annual turnover of the entity concerned in the preceding business year unless the entity has directly or indirectly benefitted financially from the infringement. In that case, the total fine shall be at least equal to that financial benefit.~~**

***~~Article 35e~~***

***~~Periodic penalty payments~~***

**~~1. The Authority shall adopt decisions to impose a periodic penalty payment in order to compel institutions or entities referred to in Article 35b(1) to provide information requested by decision in accordance with Article 35b(3)..~~**

**~~2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed on a daily basis until the institution or entity concerned complies with the relevant decision referred to in paragraph 1.~~**

**~~3. Notwithstanding paragraph 2, the amount of a periodic penalty payment shall be 3% of the average daily turnover of the institution or entity concerned in the preceding business year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.~~**

**~~4. A periodic penalty payment may be imposed for a period of no more than six months following the notification of the Authority's decision.~~**

***~~Article 35f~~***

***~~Right to be heard~~***

**~~1. Before taking any decision to impose a fine and periodic penalty payment under Articles 35d and 35e, the Authority shall give the institution or entity subject to the request for information the opportunity to be heard.~~**

**~~The Authority shall base its decisions only on the findings on which the institutions or entities concerned have had the opportunity to comment.~~**

**~~2. The rights of defence of the institution or entity referred to in paragraph 1 shall be fully respected during the procedure. The institution or entity shall be entitled to have access to the Authority's file, subject to the legitimate interest of other persons in protecting their business secrets. The right of access to the file shall not extend to confidential information or internal preparatory documents of the Authority.~~**

***~~Article 35g~~***

***~~Disclosure, nature, enforcement and allocation of fines and periodic penalty payments~~***

**~~1. Fines and periodic penalty payments imposed pursuant to Articles 35d and 35e shall be of an administrative nature and shall be enforceable.~~**

**~~2. Enforcement of the fine and periodic penalty payment shall be governed by the rules of procedure in force in the Member State in the territory of which the enforcement is carried out. The enforcement order shall be appended to the decision imposing a fine or a periodic penalty payment without the requirement for any other formality than the verification of the authenticity of the decision by an authority which each Member State shall designate for that purpose and shall make known to the Authority and to the Court of Justice of the European Union.~~**

**~~3. Where the formalities referred to in paragraph 2 have been completed on application by the party concerned, the party concerned may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent body.~~**

**~~4. Enforcement of the fine or periodic penalty payment may only be suspended by a decision of the Court of Justice of the European Union. However, the courts of the Member State concerned shall have jurisdiction over complaints that the enforcement of the fine or periodic penalty payment is being carried out in an irregular manner.~~**

**~~5. The Authority shall disclose to the public every fine and periodic penalty payment that has been imposed pursuant to Articles 35d and 35e, unless such disclosure to the public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.~~**

**~~6. The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the European Union.~~**

***~~Article 35h~~***

***~~Review by the Court of Justice of the European Union~~***

**~~The Court of Justice of the European Union shall have unlimited jurisdiction to review decisions whereby the Authority has imposed a fine or a periodic penalty payment. It may annul, reduce or increase the fine or periodic penalty payment imposed by the Authority.";~~**

1. In paragraph 5 of Article 36, the first subparagraph is replaced by the following:

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

1. Article 37 is amended as follows:

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

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

in paragraph 5, the following subparagraphs are added:

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

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

1. Article 39 is replaced by the following:

*"Article 39*

*Decision-making procedures*

1. The Authority shall act in accordance with paragraphs 2 to 6 when adopting decisions provided for in this Regulation **~~save for those decisions adopted in accordance with Articles 35b, 35d and 35e.~~**

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

3. The decisions of the Authority shall state the reasons on which they are based.

4. The addressees of decisions of the Authority shall be informed of the legal remedies available under this Regulation.

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

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

1. Article 40 is amended as follows:

(a) paragraph 1 is amended as follows:

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

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

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

(c) the following paragraph 8 is added:

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

1. Article 41 is replaced by the following:

*"Article 41*

*Internal committees*

"The Board of Supervisors may establish internal committees for specific tasks attributed to it. The Board of Supervisors may provide for the delegation of certain clearly defined tasks and decisions to internal committees, **~~to the Executive Management Board or to the Chairperson.";~~ or to the Management Board. Where internal committees have been established in relation to Art 17 and Art. 19, they shall be chaired by the Vice-Chair of the Management Board.”**

1. in Article 42 the first paragraph is replaced by the following:

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

1. Article 43 is amended as follows:

paragraph 1 is replaced by the following:

"1. The Board of Supervisors shall give guidance to the work of the Authority **and shall be in charge of taking the decisions referred to in chapter II. The**. **~~Save as otherwise provided in this Regulation the~~** Board of Supervisors shall adopt the opinions, recommendations, guidelines and decisions of the Authority, and issue the advice referred to in Chapter II, based on **preparations by the relevant internal committees or** ~~a proposal from~~ the **~~Executive~~** **Management** Board.";

paragraphs 2 and 3 are deleted;

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

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

paragraph 5 is replaced by the following:

"5. The Board of Supervisors shall adopt, on the basis of a proposal by the **~~Executive~~ Management** Board, the annual report on the activities of the Authority, including on the performance of the Chairperson’s duties, on the basis of the draft report referred to in Article 53(7) and shall transmit that report to the European Parliament, the Council, the Commission, the Court of Auditors and the European Economic and Social Committee by 15 June each year. The report shall be made public.";

paragraph 8 is deleted;

1. Article 44 is amended as follows:

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

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

**~~The full time members of the Executive~~ Management** **~~Board and the Chairperson shall not vote on these decisions~~**.";

in paragraph 1, the third, fourth, **~~fifth~~** and sixth subparagraphs are deleted; paragraph 4 is replaced by the following:

"4. [**With regard to the decisions in accordance with Article 17, Article 19 and Article 30 the Board of Supervisors shall vote on the proposed decisions in a written procedure.  The voting members of the Board of Supervisors shall have ten (10) working days to vote.  The proposed decision will be considered  adopted unless a simple majority of voting members of the Board of Supervisors objects.  Abstentions will not be counted as approvals or as objections, and will not be considered when calculating the number of votes cast. If [three] /[five] voting members of the Board of Supervisors object to the written procedure, the draft decision will be discussed and decided on by the Board of Supervisors in accordance with the procedure set out in paragraph 1 [of this Article].**

**~~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 Chairperson, the members that are also members of the **~~Executive~~ Management** Board and the European Central Bank representative nominated by its Supervisory Board.";

1. in Chapter III, the title of Section 2 is replaced by the following:

**"Section 2**

**~~Executive~~ Management** **Board"**

1. Article 45 is replaced by the following:

*"Article 45*

*Composition*

1. [The **~~Executive~~ Management** Board shall be composed of the Chairperson and [**three] members of the Board of Supervisors, elected by and from the voting members of the Board of Supervisors, and [three] full -time members** three full time members.]
2. The Chairperson shall assign clearly defined policy and managerial tasks to each of the full time members. One of the full time members shall be assigned responsibilities for budgetary matters and for matters relating to the work programme of the Authority ("Member in charge "). One of the full time members shall act as a Vice Chairperson and carry out the tasks of the Chairperson in his or her absence or reasonable impediment, in accordance with this Regulation.***One of the full-time members shall be assigned responsibilites for matters relating to the prevention of the use of the financial system for the purposes of money-laundering and terrorist financing.***

1. The full time members shall be appointed by the Board of Supervisors selected on the basis of merit, skills, knowledge of financial institutions and markets, and experience relevant to financial supervision and regulation. The full time members shall have extensive management experience. The selection shall be based on an open call for candidates, to be published in the Official Journal of the European Union, following which the Commission shall draw up a shortlist of qualified candidates.
2. The **Board of Supervisors shall apoint the full-time member. Before taking up his duties, and up to 1 month after the selection by the Board of Supervisors, the European Parliament and the Council may, after having heard the candidate selected by the Board of Supervisors, object to the designation of the selected person.** ~~Commission shall submit the shortlist to the European Parliament for approval. Following the approval of that shortlist, the Council shall adopt a decision to appoint the full time members of the~~ **~~ExecutiveManagement~~** ~~Board including the Member in charge.~~ **~~The Executive Board shall be balanced and proportionate and shall reflect the Union as a whole.3~~**
3. Where a full time member of the **~~Executive~~Management** Board no longer fulfils the conditions set out in Article 46 or has been found guilty of serious misconduct, the Council may, on a proposal from the Commission which has been approved by the European Parliament, adopt a decision to remove him or her from office.
4. The term of office of the full time members shall be 5 years and shall be renewable once. In the course of the 9 months preceding the end of the 5-year term of office of the full time member, the Board of Supervisors shall evaluate:

(a) the results achieved in the first term of office and the way in which they were achieved;

(b) the Authority’s duties and requirements in the coming years.

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

1. **Other than the Chairperson and the full-time members, each member of the Management Board elected by the Board of Supervisors shall have an alternate, who may replace him if he is prevented from attending. In a specific situation where a conflict of interest may arise in relation to Article 17, Article 19 and Article 30, the Board of Supervisors shall nominate a replacement without any delay.**
2. **The term of office of the members elected by the Board of Supervisors shall be two-and-a-half years. 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. the following Article 45a is inserted:

*["Article 45a*

*Decision-making*

1. Decisions by the **~~Executive~~ Management** Board shall be adopted by simple majority of its members. Each member shall have one vote. In the event of a tie, the Chairperson shall have a casting vote.

2. The representative of the Commission shall participate in meetings of the **~~Executive~~ Management** Board without the right to vote save in respect of matters referred to in Article 63.

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

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

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

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

1. the following Article 45b is inserted:

*"Article 45b*

*Internal committees*

The **~~Executive~~ Management** Board may establish internal committees for specific tasks attributed to it **and may provide for the delegation of certain clearly defined tasks and decisions to internal committees. Where internal committees have been established in relation to Article ~~16~~ 17 and Article 19, they shall be chaired by the Vice-Chair of the Management Board**.";

(32a) the following Article 45c is inserted:

***“Art 45c***

***Coordination Groups***

**The Management Board may set up coordination groups ~~platforms~~ on its own initiative or on the request by a competent authority. All competent authorities shall be participants of the coordination groups. The meetings shall be based on submissions from the competent authorities and any issues identified by the Authority. In relation to Article 29(1)aa, the groups ~~platform~~ shall be chaired by the Vice-Chair 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.”**

1. Article 46 is replaced by the following:

*"Article 46*

*Independence*

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

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

(34) Article 47 is replaced by the following:

*"Article 47*

*Tasks*

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

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

**~~For the purposes of Articles 17, 19, 22, 29a, 30, 31a, 32 and 35b to 35h, the Executive Board shall be competent to act and to take decisions. The Executive Board shall keep the Board of Supervisors informed of the decisions it takes.~~**

3a. The **~~Executive~~ Management** Board ***may* ~~shall~~** 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 **~~Executive~~ 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 **~~Executive~~ Management** Board shall adopt the special provisions on right of access to the documents of the Authority, in accordance with Article 72.

6. The **~~Executive~~ Management** Board shall propose an annual report on the activities of the Authority, including on the Chairperson’s duties, **~~on the basis of the draft report referred to in Article 53(7)~~** to the Board of Supervisors for approval.

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

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

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

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

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

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

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

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

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

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

1. Article 48 is amended as follows:

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

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

paragraph 2 is replaced by the following:

"2. The Chairperson shall be **~~selected~~ appointed** **by the Board of Supervisors** on the basis of merit, skills, knowledge of financial institutions and markets, and of experience relevant to financial supervision and regulation, following an open call for candidates to be published in the Official Journal of the European Union. The **Management Board** **~~Commission~~**shall submit **~~in cooperation with the Board of Supervisors~~** a shortlist of candidates for the position of the Chairperson to the **Board of Supervisors** **~~European Parliament~~** for **selection ~~approval.~~**   
**Before taking up his duties, and up to 1 month after the selection by the Board of Supervisors, the European Parliament and the Council may, after having heard the candidate selected by the Board of Supervisors, object to the designation of the selected person ~~Following the approval of that shortlist, the Council shall adopt a decision to appoint the Chairperson~~.**

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

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

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

paragraph 5 is deleted;

1. Article 49a is replaced by the following:

*"Article 49a*

*Expenses*

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

1. Articles 51, 52, 52a and 53 are deleted;
2. [Article 54 is amended as follows:
   * + 1. in paragraph 2 of Article 54, the following indent is added:

" — depositor, consumer and investor protection issues";

* + - 1. in paragraph 2 the fifth indent is deleted;
      2. the following paragraph 2a is inserted:

"2a. With regard to the Authority's tasks related to preventing and combating of money-laundering and terrorist financing, the Joint Committee shall serve as a forum in which the Authority shall cooperate with the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority on matters relating to the interaction between the specific tasks of the Authority referred to in point (l) of Article 8(1) and the tasks conferred on the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority.";]

1. in Article 55, paragraph 2 is replaced by the following:

"2. One member of the **~~Executive~~ 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.";

1. Article 58 is amended as follows:

paragraph 3 is replaced by the following:

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

paragraph 5 is replaced by the following:

"5. A member of the Board of Appeal appointed by the **~~Executive~~ 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 **~~Executive~~ Management** Board takes a decision to that effect after consulting the Board of Supervisors.";

1. in Article 59, paragraph 1 is replaced by the following:

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

1. in Article 60, paragraph 1 is replaced by the following:

"1. Any natural or legal person, including competent authorities, may appeal against a decision of the Authority referred to in Articles 17, 18, 19 and 35 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.";

1. Article 62 is amended as follows:
   * + 1. paragraph 1 is replaced by the following:

"1. The revenues of the Authority shall consist, without prejudice to other types of revenue, of any combination of the following:

(a) a balancing contribution from the Union, entered in the General Budget of the Union (Commission section) which shall not ***amount to less than [25%]*** ***and shall not*** exceed 40% of the estimated revenues of the Authority;

**~~(b) annual contributions from financial institutions, based on the annual estimated expenditure relating to the activities required by this Regulation and by the Union Acts referred to in Article 1(2) for each category of participants within the remit of the Authority;~~**

(c) any fees paid to the Authority in the cases specified in the relevant instruments of Union law.

(d) any voluntary contribution from Member States or observers; ***Voluntary contributions from Members States and observers as referred to in point (d) of paragraph 1 shall not be accepted if such acceptance would cast doubt on the independence and impartiality of the Authority***

**~~(e) charges for publications, training and for any other services requested by competent authorities.";~~**

* + - 1. **~~the following paragraphs 5 and 6 are added:~~**

**~~"5. The annual contributions referred to in paragraph 1(b) shall be collected each year from individual financial institutions by the authorities designated by each Member State. By 31 March of each financial year, each Member State shall pay to the Authority the amount that it is required to collect in accordance with the criteria set out in the delegated act referred in to Article 62a.~~**

**~~6. Voluntary contributions from Members States and observers as referred to in point (d) of paragraph 1 shall not be accepted if such acceptance would cast doubt on the independence and impartiality of the Authority.";~~**

1. **~~the following Article 62a is inserted:~~**

***~~"Article 62a~~***

***~~Delegated acts on the calculation of annual contributions by financial institutions~~***

**~~The Commission shall be empowered, in accordance with Article 75a, to adopt delegated acts determining how annual contributions by individual financial institutions referred to in point (e) of Article 62 are to be calculated, establishing the following:~~**

**~~(a) a methodology to allocate the estimated expenditure to categories of financial institutions as a basis for determining the share of contributions to be made by financial institutions of each category;~~**

**~~(b) appropriate and objective criteria to determine the annual contributions payable by individual financial institutions within the scope of the Union Acts referred to in Article 1(2) based on their size so as to approximately reflect their importance in the market.~~**

**~~The criteria referred to in point (b) of the first paragraph may establish either~~ *~~de minimis~~* ~~thresholds below which no contribution is due or minima below which contributions must not fall.";~~**

1. Article 63 is replaced by the following:

*"Article 63*

*Establishment of the budget*

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

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

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

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

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

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

5. The **~~Executive~~ 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.";

1. Article 64 is replaced by the following:

*"Article 64*

*Implementation and control of the budget*

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

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

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

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

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

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

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

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

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

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

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

1. Article 65 is replaced by the following:

*"Article 65*

*Financial rules*

The financial rules applicable to the Authority shall be adopted by the **~~Executive~~ 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).";

1. 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).";

1. Article 68 is amended as follows:

paragraphs 1 and 2 are replaced by the following:

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

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

paragraph 4 is replaced by the following:

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

1. Article 70 is amended as follows:

paragraph 1 is replaced by the following:

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

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

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

the following paragraph 2a is inserted:

"2a. The **~~Executive~~ 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 **~~Executive~~ 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 **~~Executive~~ Management** Board and the Board of Supervisors who take part in the activities of the Authority.";

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

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

1. Article 71is replaced by the following:

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

1. in Article 72, paragraph 2 is replaced by the following:

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

1. in Article 73, paragraph 2 is replaced by the following:

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

1. 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 **~~Executive~~ Management** Board.";

1. the following Article 75a is inserted:

***~~"Article 75a~~***

***~~Exercise of the delegation~~***

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

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

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

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

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

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

1. 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."

1. new Article 77a is inserted:

*Article 77a*

*Transitional provisions*

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

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

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

***Article 2***

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

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

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

"2. The Authority shall act within the powers conferred by this Regulation and within the scope of Directive 2009/138/EC with the exception of Title IV thereof, **~~of Directives 2002/92/EC,~~** 2003/41/EC, 2002/87/EC, Directive 2009/103/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 Directives (EU) 2015/849 and 2002/65/EC ***and of Directive (EU) 2016/97***\*\* including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority.

\* Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ L 263, 7.10.2009, p. 11).";   
***\*\* Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast)***

*in paragraph 5, the following subparagraph is added:*

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

1. paragraph 5 of Article 2 the following subparagraph is inserted:

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

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

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

1. Article 6 is amended as follows:

point (2) is replaced by the following:

"(2) an **~~Executive~~ Management** Board, which shall exercise the tasks set out in Article 47;";

point (4) is deleted;

1. Article 8 is amended as follows:
   * + 1. paragraph 1 is amended as follows:

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

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

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

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

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

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

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

(iv) point (l) is deleted;

**~~(v) the following point (m) is inserted:~~**

**~~"(m) to issue opinions in respect of the applications of internal models, to facilitate decision making and to provide assistance as foreseen in Article 21a;";~~**

* + - 1. a new paragraph 1a is inserted:

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

* + - 1. in paragraph 2, the following are amended

**~~(i) point (ca) is inserted:~~**

**~~"(ca) issue recommendations as laid down in Articles 29a and 31a;";~~**

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

"(h) collect the necessary information concerning financial institutions as provided for in Article 35 **~~and Article 35b~~**";

* + - 1. the following paragraph 3 is added:

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

1. Article 9 is amended as follows:

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

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

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

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

"(d) developing common disclosure rules.";

paragraph 2 is replaced by the following:

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

paragraphs 4 is replaced by the following:

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

1. Article 16 is amended as follows:
   * + 1. in paragraph 1, the following subparagraph is added:

"The Authority may also address guidelines and recommendations to the authorities of Member States that are not defined as competent authorities under this Regulation but that are empowered to ensure the application of the acts referred to in Article 1(2).";

* + - 1. [(b) paragraph 2 is replaced by the following:

1. "2. The Authority shall, **~~save in exceptional circumstances~~**, conduct open public consultations regarding the guidelines and recommendations which it issues and shall analyse the related potential costs and benefits of issuing such guidelines and recommendations ***unless the Board of Supervisors objects to such consultations and analyses by simple majority****.* Those consultations and analyses shall be proportionate in relation to the scope, nature and impact of the guidelines or recommendations. The Authority ***or three voting members of the Board of Supervisors may* ~~shall, save in exceptional circumstances~~**, also request opinions or advice from the Banking Stakeholder Group referred to in Article 37.";
2. (b1) paragraph 2a is inserted:

“***The Authority may issue guidelines and recommendations in the form of answers to specific questions from competent authorities or financial institutions on how discretion granted by Union law to the competent authorities shall be exercised. Three voting members of the Board of Supervisors may request the Authority to decide pursuant to Article 44 whether it shall conduct open public consultations regarding an answer to specific questions from competent authorities or financial institutions, analyse the related potential cost and benefits or request opinions or advice from the Banking Stakeholder Group referred to in Article 37. Those 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.”***

***“The Authority shall publish each question received from competent authorities and financial institutions and, following its adoption, the answer thereto, on its website in a user-friendly way in a timely manner, unless the publication could impair legitimate interests of natural or legal persons concerned or could have negative repercussions for the stability of the financial system. Questions that the Authority has received, but will not respond to shall be published on the Authority’s website for a period of two months.”***

***(b2) in paragraph 3, the following text is added as third subparagraph:***

***“By derogation to the previous sub-paragraph, within two months of the issuance of a guideline or recommendation in the form of an answer to a specific question, in the event that a competent authority does not comply or does not intend to comply, it shall inform the Authority. If the Authority decides so, the competent authority shall state its reasons for not complying.”]***

* + - 1. in paragraph 4 the following sentence is added at the end:

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

* + - 1. **~~the following paragraph 5 is added:~~**

**~~"5. Where two thirds of the members of the Insurance and Reinsurance Stakeholder Group or Occupational Pensions Stakeholder Group are of the opinion that the Authority has exceeded its competence by issuing certain guidelines or recommendations, they may send a reasoned opinion to the Commission.~~**

**~~The Commission shall request an explanation justifying the issuance of the guidelines or recommendations concerned from the Authority. The Commission shall, on receipt of the explanation from the Authority, assess the scope of the guidelines or recommendations in view of the Authority's competence. Where the Commission considers that the Authority has exceeded its competence, and after having given the Authority the opportunity to state its views, the Commission may adopt an implementing decision requiring the Authority to withdraw the guidelines or recommendations concerned. The decision of the Commission shall be made public.";~~**

**[Article 16a is inserted:**

***“Art 16a***

***Questions and Answers***

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

**Before submitting a question to the Authority, financial institutions shall assess whether to firstly address the question to their competent authority. The questions can be categorized as follows:**

**(a) Questions regarding the practical implementation or application of provisions of the regulatory framework referred to in Article 1 (2);**

**(b) Questions referred to in (a) of this paragraph that are perceived by the Authority as well as at least three competent authorities as having a high impact on the single market or on the financial stability and therefore will be prioritized over questions referred to in (a);**

**2. Answers by the Authority to questions referred to in paragraph (1)a and (1)b as well as answers published by the Authority on behalf of the European Commission referred to in paragraph 7 of this Article are non-binding and shall be considered suitable to comply with the requirements of the legislative acts referred to in Article 1(2), associated delegated and implementing acts and guidelines and recommendations adopted under these legislative acts.**

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

**4. The Authority shall set up internal processes to ensure the involvement of competent authorities ~~and of the relevant Stakeholder Group referred to in Article 37~~ during the preparation of answers for all admissible questions. . The Authority shall set up internal processes to ensure the involvement of the Stakeholder Group referred to in Article 37 during the preparation of answers for admissible questions where the Authority or at least three competent authorities consider this involvement as appropriate. In this process, due care of confidentiality shall be guaranteed.**

**5. The Authority shall have in place adequate internal procedures to ensure that competent authorities may put forward the stance of a potential transgression of competences of the Authority or may propose to address the issue of the admissible question in guidelines referred to in Article 16; ~~to conduct open public consultations on draft questions and answers or to analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft questions and answers concerned or in relation to the particular urgency of the matter~~ or to review questions and answers at appropriate intervals. The Authority shall have in place internal procedures to ensure that a stance or proposal put forward by at least three competent authorities shall be subject to discussion of an internal committee prior to submission to the Board of Supervisors for decision.**

**6. The Authority shall have in place adequate internal procedures to conduct open public consultations for or to analyse potential related costs and benefits of questions referred to in paragraph (1)b, unless the Board of Supervisors objects to such consultations and analyses *by simple majority. 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.***

**7. The Authority shall publish the answers to questions regarding the legal explanation of provisions of the regulatory framework on behalf of the European Commission. It shall be clearly stated that the Court of Justice of the European Union is the competent body to provide the definitive interpretations of European legislation.]**

1. Article 17 is amended as follows:
   * + 1. in paragraph 2 the following subparagraphs are added:

"Without prejudice to the powers laid down in Article 35, the Authority may address a duly justified and reasoned request for information directly to other competent authorities **~~or relevant financial institutions,~~** whenever ***requesting information from the competent authority concerned has proven, or is deemed, insufficient to obtain the information that*** it is deemed necessary for the purpose of investigating an alleged breach or non-application of Union law. **~~Where it is addressed to financial institutions, the reasoned request shall explain why the information is necessary for the purposes 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.

**~~Where a request for information has been addressed to a financial institution, the Authority shall inform the relevant competent authorities of such a request. The competent authorities shall assist the Authority in collecting the information, where so requested by the Authority.";~~**

1. Article 19 is amended as follows:
   * + 1. 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) on its own initiative where on the basis of objective criteria, disagreement can be determined between competent authorities.

In cases where the acts referred to in Article 1(2) require a joint decision to be taken by competent authorities, 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.";

* + - 1. the following paragraphs 1a and 1b are inserted:

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

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

(i) the time limit has expired;

(ii) one or more of the competent authorities concerned conclude that a disagreement exists, on the basis of objective factors;

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

i. one and more of the competent authorities concerned conclude that a disagreement exists on the basis of objective factors; or

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

* + - 1. paragraph 1, sub-paragraph 2 is deleted;

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

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

* + - 1. 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.";

* + - 1. the following paragraph 3a is inserted:

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

* + - 1. paragraph 4 is replaced by the following:

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

1. **~~Article 21 is amended as follows:~~**
   * + 1. **~~paragraph 1 is replaced by the following:~~**

**~~"The Authority shall promote and monitor the efficient, effective and consistent functioning of the colleges of supervisors referred to in Directive 2009/138/EC and foster the coherence of the application of Union law among the colleges of supervisors. With the objective of converging supervisory best practices, staff from the Authority shall be able to participate or where appropriate lead the activities of the colleges of supervisors, including on-site examinations, carried out jointly by two or more competent authorities.";~~**

* + - 1. **~~in paragraph 2, subparagraph 2 is replaced by the following:~~**

**~~"For the purpose of this paragraph and of paragraph 1 of this Article, the Authority shall be considered a ‘competent authority’ or a 'supervisory authority' within the meaning of the relevant legislation.";~~**

1. **~~the following Article 21a is inserted:~~**

***~~"Article 21a~~***

***~~Internal models~~***

**~~1. In order to contribute to the establishment of high-quality common supervisory standards and practices, the Authority shall on its own initiative, or upon request from one or more supervisory authorities:~~**

**~~(a) Issue opinions to the supervisory authorities concerned on the application to use or change an internal model. To this end, EIOPA may request all the information necessary from the supervisory authorities concerned; and~~**

**~~(b) In case of disagreement related to the approval of internal models assist the supervisory concerned authorities in reaching an agreement in accordance with the procedure set out in Article 19.~~**

**~~2. In the circumstances set out under Article 231(6a) of Directive 2009/138/EC, undertakings may request EIOPA to assist the competent authorities in reaching an~~** agreement in accordance with the procedure set out in Article 19.

1. in Article 22(4), the second subparagraph is replaced by the following:

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

1. Article 29 is amended as follows:

paragraph 1 is amended as follows::

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

aa) **establishing coordination groups in accordance with Art 45c to promote supervisory convergence and identify best practices. “~~issuing the Strategic Supervisory Plan in accordance with Article 29a;"~~**

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

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

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

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

in paragraph 2, the following subparagraph 2 is added:

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

1. The following Article 29a is inserted:

*"Article 29a*

**Common Supervisory Priorities**

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

***~~Strategic Supervisory Plan~~***

**~~1. Upon the entry into application of Regulation [XXX insert reference to amending Regulation] and every three years thereafter by 31 March, the Authority shall issue a recommendation addressed to competent authorities, laying down supervisory strategic objectives and priorities ("Strategic Supervisory Plan") and, taking into account any contributions from competent authorities,. The Authority shall transmit the Strategic Supervisory Plan for information to the European Parliament, the Council and the Commission and shall make it public on its website.~~**

**~~The Strategic Supervisory Plan shall identify specific priorities for supervisory activities in order to promote consistent, efficient and effective supervisory practices and the common, uniform and consistent application of Union law and to address relevant micro-prudential trends, potential risks and vulnerabilities identified in accordance with Article 32.~~**

**~~2. By 30 September of each year, each competent authority shall submit a draft annual work programme for the following year to the Authority for consideration and specifically stipulate how that draft programme is aligned with the Strategic Supervisory Plan.~~**

**~~The draft annual work programme shall contain specific objectives and priorities for supervisory activities and quantitative and qualitative criteria for the selection of financial institutions, market practices and behaviours and financial markets to be examined by the competent authority submitting the draft annual work programme during the year covered by that programme.~~**

**~~3. The Authority shall assess the draft annual work programme and where there are material risks for not attaining the priorities set out in the Strategic Supervisory Plan the Authority shall issue a recommendation to the relevant competent authority aiming at the alignment of the relevant competent authority's annual work programme with the Strategic Supervisory Plan.~~**

**~~By 31 December of each year, the competent authorities shall adopt their annual work programmes taking into account any such recommendations.~~**

**~~4. By 31 March of each year, each competent authority shall transmit to the Authority a report on the implementation of the annual work programme.~~**

**~~The report shall include at least the following information:~~**

**~~(a) a description of the supervisory activities and examinations of financial institutions, market practices and behaviours and of financial markets, and on the administrative measures and sanctions imposed against financial institutions responsible for breaches of Union and national law;~~**

**~~(b) a description of activities that were carried out and which were not foreseen in the annual work programme;~~**

**~~(c) an account of the activities provided for in the annual work programme that were not carried out and of the objectives of that programme that were not met, as well as of the reasons for the failure to carry out those activities and to reach those objectives.~~**

**~~5. The Authority shall assess the implementation reports of the competent authorities. Where there are material risks of not attaining the priorities set out in the Strategic Supervisory Plan the Authority shall issue a recommendation to each competent authority concerned on how the relevant shortcomings in its activities can be remedied.~~**

**~~Based on the reports and its own assessment of risks, the Authority shall identify the activities of the competent authority that are critical to fulfilling the Strategic Supervisory Plan, and shall as appropriate conduct reviews under Article 30 of those activities.~~**

**~~6. The Authority shall make best practices identified during the assessment of the annual work programmes publicly available.";~~**

1. Article 30 is amended as follows:
   * + 1. the title of the Article is replaced by the following:

"**Peer r**eviews of competent authorities";

* + - 1. paragraph 1 is replaced be the following:

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

* + - 1. the following paragraphs 1a is inserted:

"For the purposes of this Article, the Authority shall establish **~~a~~ peer** review committee***s***, **which shall be** **composed of members of competent authorities with the participation of staff from the Authority** **~~exclusively composed of staff from the Authority. The Authority may delegate certain tasks or decisions to the review committee~~**.";

* + - 1. paragraph 2 is amended as follows:

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

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

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

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

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

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

* + - 1. paragraph 3 is replaced by the following:

"3. The Authority shall produce a report setting out the results of the review **which shall be ~~is~~ 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~~at~~** report shall explain and indicate the follow-up measures that are **~~foreseen~~** **deemed appropriate*, proportionate* and necessary** as a result of the 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. **~~Where competent authorities do not take action to address the follow-up measures indicated in the report, the Authority shall issue a follow-up report.~~**

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

the following paragraph 3a is inserted:

"3a. the following paragraph 3a to **3c are**  **~~is~~** inserted:

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

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

***3c. Where a peer review reveals serious shortcomings and the competent authority does not take action to address the urgently required follow-up measures set out in the report referred to in Article 30(3), the Authority shall inform the European Parliament, the Council and the Commission.***.";

* + - 1. paragraph 4 is replaced by the following:

4. The Authority shall publish **the main findings of the report referred to in paragraph 3 and the follow-up report referred to in paragraph 3b~~, the reports referred to in paragraph 3 including any follow-up report~~** , unless publication would involve risks to the stability of the financial system. **If ~~T~~t**he competent authority that is subject to the review **is concerned that the publication of the main findings of the reports would pose risks to the stability of the financial system, it shall have the possibility to refer the matter to the Board of Supervisors. The Board of Supervisors may decide by simple majority not to publish these extracts. ~~shall be invited to comment before the publication of any report. Those comments shall be made publicly available unless publication would involve risks to the stability of the financial system.~~**";

**(g) paragraph 5 is inserted:**

**“5. For the purposes of this Article the Management Board shall make a proposal for a peer review work plan, 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.***

in Article 31 a new paragraph 2 is inserted:

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

1. **~~a new Article 31a is inserted:~~**

***~~"Article 31a~~***

***~~Coordination on delegation and outsourcing of activities as well as of risk transfer~~***

**~~1. The Authority shall on an ongoing basis coordinate supervisory actions of competent authorities with a view to promoting supervisory convergence in the fields of delegation and outsourcing of activities by financial institutions as well as in relation to risk transfers conducted by them, in accordance with paragraphs 2, 3 and 4.~~**

**~~2. The competent authorities shall notify the Authority where they intend to carry out an authorisation or registration related to a financial institution which is under supervision of the competent authority concerned in accordance with the acts referred to in Article 1(2) and where the business plan of the financial institution entails the outsourcing or delegation of a material part of its activities or any of the key functions or the risk transfer of a material part of its activities into third countries, to benefit from the EU passport while essentially performing substantial activities or functions outside the Union. The notification to the Authority shall be sufficiently detailed to allow for a proper assessment by the Authority.~~**

**~~Where the Authority considers it necessary to issue an opinion to a competent authority regarding the non-compliance of an authorisation or registration notified pursuant to the first subparagraph with Union law or guidelines, recommendations or opinions adopted by the Authority, the Authority shall inform that competent authority thereof within 20 working days of the receipt of the notification by that competent authority. In that case the competent authority concerned shall await the opinion of the Authority before carrying out the registration or authorisation.~~**

**~~At the request of the Authority, the competent authority shall within 15 working days of the receipt of such a request provide information related to its decisions to authorise or register a financial institution which is under its supervision in accordance with the acts referred to in Article 1(2).~~**

**~~The Authority shall issue the opinion, without prejudice to any time limits set out in Union law, at the latest within 2 months of the receipt of the notification pursuant to the first subparagraph.~~**

**~~3. A financial institution shall notify the competent authority of the outsourcing or delegation of a material part of its activities or any of its key functions, and the risk transfer of a material part of its activities, to another entity or its own branch established in a third country. The competent authority concerned shall inform the Authority of such notifications on a semi-annual basis.~~**

**~~Without prejudice to Article 35, at the request of the Authority, the competent authority shall provide information in relation to the outsourcing, delegation or risk transfer arrangements by financial institutions.~~**

**~~The Authority shall monitor whether the competent authorities concerned verify that outsourcing, delegation or risk transfer arrangements referred to in the first subparagraph are concluded in accordance with Union law, comply with guidelines, recommendations or opinions from the Authority and do not prevent effective supervision by the competent authorities [and enforcement] in a third country.~~**

**~~4. The Authority may issue recommendations to the competent authority concerned, including recommendations to review a decision or to withdraw an authorisation. Where the competent authority concerned does not follow the recommendations of the Authority within 15 working days, the competent authority shall state the reasons and the Authority shall make its recommendation public together with those reasons.";~~**

1. Article 32 is amended as follows:
2. a new paragraph 2a is inserted:

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

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

1. Article 33 is amended as follows
   * + 1. paragraph 2 is replaced by the following:

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

* + - 1. the following paragraphs 2a, 2b and 2c are inserted:

"2a. 2a. The Authority shall **periodically** monitor ***relevant*** regulatory and supervisory developments and enforcement practices and relevant 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) 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. **It shall take into account the market relevance of the third countries concerned. *The Authority may liaise with relevant authorities in the third countries.***The Authority shall submit ~~a~~***country specific*** confidential report**s** on its findings to the Commission **~~on an annual basis~~** ***with a particular focus on their implications for financial stability, market integrity, investor protection or the functioning of the internal market. When deciding on drawing up the report, the market relevance of the third country shall be taken into account. The Authority shall submit the reports at least every three years***

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

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

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

The Authority shall inform the Commission where a third-country competent authority refuses to conclude such administrative arrangements or when it refuses to effectively cooperate. The Commission shall take this information into account when reviewing the relevant equivalence decisions..

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

**~~The Authority shall on an annual basis submit a confidential report to the Commission on the regulatory, supervisory, enforcement and market developments in the third countries referred to in paragraph 2a with a particular focus on their implications for financial stability, market integrity, investor protection or the functioning of the internal market~~**

2c. The competent authorities shall inform the Authority in advance of their intentions to conclude any administrative arrangements with third-country supervisory authorities in any of the areas governed by the acts referred to in Article 1(2), including in relation to branches of third country entities. They shall provide simultaneously to the Authority a draft of such planned arrangements.

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

1. in Article 34, paragraph 2, is replaced by the following:

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

1. Article 35 is amended as follows:

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

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

The information provided shall be accurate, complete and submitted within the time limit prescribed by the Authority.

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

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

paragraph 5 is replaced by the following:

"5. Where information requested in accordance with paragraph 1 is not available or is not made available by the competent authorities within the time limit set by the Authority, the Authority may address a duly justified and reasoned request to any of the following:

(a) other authorities with supervisory functions;

(b) to the ministry responsible for finance in the Member State concerned where it has at its disposal prudential information;

(c) to the national central bank of the Member State concerned;

(d) to the statistical office of the Member State concerned.

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

**~~paragraphs 6 and 7 are deleted:~~**

1. **~~the following Articles 35a to 35h are inserted:~~**

***~~"Article 35a~~***

***~~Exercise of the powers referred to in Article 35b~~***

**~~The powers conferred on the Authority, any of its officials or another person authorised by the Authority in accordance with Article 35(b) shall not be used to require the disclosure of information or documents that are subject to legal privilege.~~**

***~~Article 35b~~***

***~~Request for information to financial institutions~~***

**~~1. Where information requested under paragraph 1 or paragraph 5 of Article 35 is not available or is not made available within the time limit set by the Authority, it may by simple request or by decision require the relevant financial institutions to provide all necessary information to enable the Authority to carry out its duties under this Regulation.~~**

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

**~~(a) refer to this Article as the legal base 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 35c where the information provided is incorrect or misleading information.~~**

**~~3. When requesting information by decision per, the Authority shall:~~**

**~~(a) refer to this Article as the legal base 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 35d where the production of the required information is incomplete;~~**

**~~(f) indicate the fine provided for in Article 35c where the answers to the questions are incorrect or misleading information;~~**

**~~(g) indicate the right to appeal the decision before the Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union in accordance with Articles 60 and 61.~~**

**~~4. The financial institutions 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. The authority shall send, without delay, a copy of the simple request or of its decision to the competent authority of the Member State where the relevant entity listed in paragraph 1 concerned by the request for information is domiciled or established.~~**

**~~6. The Authority may use confidential information received in accordance with this Article only for the purposes of carrying out the tasks assigned to it by this Regulation.";~~**

***~~Article 35c~~***

***~~Procedural rules for imposing fines~~***

**~~1. Where, in carrying out its duties under this Regulation, the authority finds that there are serious indications of the possible existence of facts liable to constitute an infringement as referred to in Article 35d(1), the Authority shall appoint an independent investigation officer within the Authority to investigate the matter. The appointed officer shall not be involved or have been directly or indirectly involved in the direct or indirect supervision of the financial institutions concerned and shall perform his or her functions independently from the Board of Supervisors.~~**

**~~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 or her findings to the Board of Supervisors.~~**

**~~3. In order to carry out his or her tasks, the investigation officer shall have the power to request information in accordance with Article 35b.~~**

**~~4. Where carrying out his or her tasks, the investigation officer shall have access to all documents and information gathered by the Authority in its supervisory activities.~~**

**~~5. Upon completion of his or her investigation and before submitting the file with his or her findings to the 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 or her findings only on facts on which the persons concerned have had the opportunity to comment.~~**

**~~6. The rights of defence of the persons subject to the investigations shall be fully respected during investigations undertaken pursuant to this Article.~~**

**~~7. Upon submission of the file with his finding to the 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 subject to the investigations, after having heard those persons in accordance with Article 35f, the Authority shall decide if one or more of the infringements as referred to in Article 35d(1) has been committed by the persons subject to the investigations and, in such a case, shall take a measure in accordance with that Article.~~**

**~~9. The investigation officer shall not participate in the deliberations of the Board of Supervisors or intervene in any way in the decision-making process of the Board of Supervisors.~~**

**~~10. The Commission shall adopted delegated acts in accordance with Article 75a to specify the rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including rules on the following:~~**

**~~(a) rights of defence~~**

**~~(b) temporal provisions,~~**

**~~(c) provisions specifying how fines or periodic penalty payments are to be collected,~~**

**~~(d) provisions specifying the limitation periods for the imposition and enforcement of fines and periodic penalty payments.~~**

**~~11. The Authority 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, the Authority 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 35d~~***

***~~Fines~~***

**~~1. The Authority shall adopt a decision to impose a fine where it finds that a financial institution referred to in Article 35b has, intentionally or negligently, failed to provide information in response to a decision requiring information pursuant to Article 35b(3) or has provided incomplete, incorrect or misleading information in response to a simple request for information or a decision pursuant to Article 35b(2).~~**

**~~2. The basic amount of the fine referred to in paragraph 1 shall amount to at least EUR 50 000 and shall not exceed EUR 200 000.~~**

**~~3. When setting the basic amount of the fine referred to in paragraph 2, the Authority shall have regard to the annual turnover of the financial institution concerned for the preceding business year and shall be:~~**

**~~(a) at the lower end of the limit for entities with an annual turnover below EUR 10 million;~~**

**~~(b) the middle of the limit for entities with an annual turnover between EUR 10 and 50 million;~~**

**~~(c) the higher end of the limit for entities with an annual turnover higher than EUR 50 million.~~**

**~~The basic amounts defined within the limits set out in paragraph 2 shall be adjusted, where necessary, by taking into account aggravating or mitigating factors in accordance with the relevant coefficients set out in paragraph 5.~~**

**~~The relevant aggravating coefficient shall be applied one by one to the basic amount. Where more than one aggravating coefficient is applicable, the difference between the basic amount and the amount resulting from the application of each individual aggravating coefficient shall be added to the basic amount.~~**

**~~The relevant mitigating coefficient shall be applied one by one to the basic amount. Where more than one mitigating coefficient is applicable, the difference between the basic amount and the amount resulting from the application of each individual mitigating coefficient shall be subtracted from the basic amount.~~**

**~~4. The following adjustment coefficients shall be applied cumulatively to the basic amount referred to in paragraph 2, based on the following:~~**

**~~(a) the adjustment coefficients linked to aggravating factors are as follows:~~**

**~~(i) where the infringement has been committed repeatedly, an additional coefficient of 1.1 shall apply each time the infringement has been repeated;~~**

**~~(ii) where the infringement lasted for more than six months, a coefficient of 1.5 shall apply;~~**

**~~(iii) where the infringement has been committed intentionally, a coefficient of 2 shall apply;~~**

**~~(iv) where no remedial action has been taken since the infringement has been identified, a coefficient of 1.7 shall apply;~~**

**~~(v) where the financial institution’s senior management has not cooperated with the Authority, a coefficient of 1.5 shall apply.~~**

**~~(b) the adjustment coefficients linked to mitigating factors are as follows:~~**

**~~(i) where the infringement lasted fewer than 10 working days, a coefficient of 0.9 shall apply;~~**

**~~(ii) where the financial institution’s senior management can demonstrate that they have taken all the necessary measures to prevent the failure to comply with a request pursuant to Article 35(6a), a coefficient of 0.7 shall apply;~~**

**~~(iii) where the financial institution has brought the infringement to the Authority’s attention quickly, effectively and completely, a coefficient of 0.4 shall apply y;~~**

**~~(iv) where the financial institution has voluntarily taken measures to ensure that similar infringement cannot be committed in the future, a coefficient of 0.6 shall apply.~~**

**~~5. Notwithstanding paragraphs 2 and 3, the total fine shall not exceed 20% of the annual turnover of the financial institution concerned in the preceding business year unless the financial institution has directly or indirectly benefitted financially from the infringement. In that case, the total fine shall be at least equal to that financial benefit.~~**

***~~Article 35e~~***

***~~Periodic penalty payments~~***

**~~1. The Authority shall adopt decisions to impose a periodic penalty payment in order to compel institutions or entities referred to in Article 35b(1) to provide information requested by decision in accordance with Article 35b(3)..~~**

**~~2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed on a daily basis until the financial institution concerned complies with the relevant decision referred to in paragraph 1.~~**

**~~3. Notwithstanding paragraph 2, the amount of a periodic penalty payment shall be 3% of the average daily turnover of the financial institution concerned in the preceding business year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.~~**

**~~4. A periodic penalty payment may be imposed for a period of no more than six months following the notification of the Authority's decision.~~**

***~~Article 35f~~***

***~~Right to be heard~~***

**~~1. Before taking any decision to impose a fine and periodic penalty payment under Articles 35d and 35e, the Authority shall give the financial institution subject to the request for information the opportunity to be heard.~~**

**~~The Authority shall base its decisions only on the findings on which the financial institutions concerned have had the opportunity to comment.~~**

**~~2. The rights of defence of the financial institution referred to in paragraph 1 shall be fully respected during the procedure. The financial institution shall be entitled to have access to the Authority's file, subject to the legitimate interest of other persons in protecting their business secrets. The right of access to the file shall not extend to confidential information or internal preparatory documents of the Authority.~~**

***~~Article 35g~~***

***~~Disclosure, nature, enforcement and allocation of fines and periodic penalty payments~~***

**~~1. Fines and periodic penalty payments imposed pursuant to Articles 35d and 35e shall be of an administrative nature and shall be enforceable.~~**

**~~2. Enforcement of the fine and periodic penalty payment shall be governed by the rules of procedure in force in the Member State in the territory of which the enforcement is carried out. The enforcement order shall be appended to the decision imposing a fine or a periodic penalty payment without the requirement for any other formality than the verification of the authenticity of the decision by an authority which each Member State shall designate for that purpose and shall make known to the Authority and to the Court of Justice of the European Union.~~**

**~~3. Where the formalities referred to in paragraph 2 have been completed on application by the party concerned, the party concerned may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent body.~~**

**~~4. Enforcement of the fine or periodic penalty payment may only be suspended by a decision of the Court of Justice of the European Union. However, the courts of the Member State concerned shall have jurisdiction over complaints that the enforcement of the fine or periodic penalty payment is being carried out in an irregular manner.~~**

**~~5. The Authority shall disclose to the public every fine and periodic penalty payment that has been imposed pursuant to Articles 35d and 35e, unless such disclosure to the public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.~~**

**~~6. The amounts of the fine and periodic penalty payment shall be allocated to the general budget of the European Union.~~**

***~~Article 35h~~***

***~~Review by the Court of Justice of the European Union~~***

**~~The Court of Justice of the European Union shall have unlimited jurisdiction to review decisions whereby the Authority has imposed a fine or a periodic penalty payment. It may annul, reduce or increase the fine or periodic penalty payment imposed by the Authority.";~~**

1. In paragraph 5 of Article 36, the first subparagraph is replaced by the following:

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

1. Article 37 is amended as follows:

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

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

in paragraph 6, the following subparagraphs are added:

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

The 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.";

1. Article 39 is replaced by the following:

*"Article 39*

*Decision-making procedures*

1. The Authority shall act in accordance with paragraphs 2 to 6 when adopting decisions provided for in this Regulation**~~, save for those decisions adopted in accordance with Articles 35b, 35d and 35e.~~**

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

3. The decisions of the Authority shall state the reasons on which they are based.

4. The addressees of decisions of the Authority shall be informed of the legal remedies available under this Regulation.

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

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

1. Article 40 is amended as follows:

paragraph 1 is amended as follows:

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

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

in paragraph 7, the second subparagraph is deleted;

the following paragraph 8 is added;

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

1. Article 41 is replaced by the following"

*"Article 41*

*Internal committees*

" The Board of Supervisors may establish internal committees for specific tasks attributed to it. The Board of Supervisors may provide for the delegation of certain clearly defined tasks and decisions to internal committees, **~~to the Executive Management Board or to the Chairperson.";~~ or to the Management Board. Where internal committees have been established in relation to Art 17 and Art. 19, they shall be chaired by the Vice-Chair of the Management Board.”**;

;

1. in Article 42, the first paragraph is replaced by the following:

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

1. Article 43 is amended as follows:

paragraph 1 is replaced by the following:

"1. The Board of Supervisors may establish internal committees for specific tasks attributed to it. The Board of Supervisors may provide for the delegation of certain clearly defined tasks and decisions to internal committees, **~~to the Executive Management Board or to the Chairperson.";~~ or to the Management Board. Where internal committees have been established in relation to Art 17 and Art. 19, they shall be chaired by the Vice-Chair of the Management Board.”**.";

paragraphs 2 and 3 are deleted;

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

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

paragraph 5 is replaced by the following:

"5. The Board of Supervisors shall adopt, on the basis of a proposal by the **~~Executive~~ Management** Board, the annual report on the activities of the Authority, including on the performance of the Chairperson’s duties, on the basis of the draft report referred to in Article 53(7) and shall transmit that report to the European Parliament, the Council, the Commission, the Court of Auditors and the European Economic and Social Committee by 15 June each year. The report shall be made public.";

(e) paragraph 8 is deleted;

1. Article 44 is amended as follows:

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

**~~"The full time members of the Executive Board and the Chairperson shall not vote on these decisions.";~~**

in paragraph 1, the third and the fourth subparagraphs are deleted;

paragraph 4 is replaced by the following:

"4. [**With regard to the decisions in accordance with Article 17, Article 19 and Article 30 the Board of Supervisors shall vote on the proposed decisions in a written procedure.  The voting members of the Board of Supervisors shall have ten (10) working days to vote.  The proposed decision will be considered  adopted unless a simple majority of voting members of the Board of Supervisors objects.  Abstentions will not be counted as approvals or as objections, and will not be considered when calculating the number of votes cast. If [three] /[five] voting members of the Board of Supervisors object to the written procedure, the draft decision will be discussed and decided on by the Board of Supervisors in accordance with the procedure set out in paragraph 1 [of this Article].**

**~~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 Chairperson, the members that are also members of the **~~Executive~~ Management** Board and the European Central Bank representative nominated by its Supervisory Board.";

1. in Chapter III, the title of Section 2 is replaced by the following:

" **~~Executive~~ Management** Board";

1. Article 45 is replaced by the following:

*"Article 45*

*Composition*

1. "[The **~~Executive~~ Management** Board shall be composed of the Chairperson and [**three] members of the Board of Supervisors, elected by and from the voting members of the Board of Supervisors, and [three] full -time members** three full time members.]

**2.** The Chairperson shall assign clearly defined policy and managerial tasks to each of the full time members. One of the full time members shall be assigned responsibility for budgetary matters and for matters relating to the work programme of the Authority ("Member in charge"). One of the full time members shall act as a Vice Chairperson and carry out the tasks of the Chairperson in his or her absence or reasonable impediment, in accordance with this Regulation. .

**3**. The full time members shall be selected on the basis of merit, skills, knowledge of financial institutions and markets, and experience relevant to financial supervision and regulation. The full time members shall have extensive management experience. The selection shall be based on an open call for candidates, to be published in the Official Journal of the European Union, following which the Commission shall draw up a shortlist of qualified candidates.

1. The **Board of Supervisors shall apoint the full-time member. Before taking up his duties, and up to 1 month after the selection by the Board of Supervisors, the European Parliament and the Council may, after having heard the candidate selected by the Board of Supervisors, object to the designation of the selected person.** ~~Commission shall submit the shortlist to the European Parliament for approval. Following the approval of that shortlist, the Council shall adopt a decision to appoint the full time members of the~~ **~~ExecutiveManagement~~** ~~Board including the Member in charge.~~ **~~The Executive Board shall be balanced and proportionate and shall reflect the Union as a whole.3~~**

**5.** Where a full time member of the **~~Executive~~ Management** Board no longer fulfil the conditions set out in Article 46 or has been found guilty of serious misconduct, the Council may, on a proposal from the Commission which has been approved by the European Parliament, adopt a decision to remove him or her from office.

**6.** The term of office of the full time members shall be 5 years and shall be renewable once. In the course of the 9 months preceding the end of the 5-year term of office of the full time member, the Board of Supervisors shall evaluate:

(a) the results achieved in the first term of office and the way in which they were achieved;

(b) the Authority’s duties and requirements in the coming years.

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

1. **Other than the Chairperson and the full-time members, each member of the Management Board elected by the Board of Supervisors shall have an alternate, who may replace him if he is prevented from attending. In a specific situation where a conflict of interest may arise in relation to Article 17, Article 19 and Article 30, the Board of Supervisors shall nominate a replacement without any delay.**
2. **The term of office of the members elected by the Board of Supervisors shall be two-and-a-half years. 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. the following Article 45a is inserted:

*"Article 45a*

*Decision-making*

1. Decisions by the **~~Executive~~ Management** Board shall be adopted by simple majority of its members. Each member shall have one vote. In the event of a tie, the Chairperson shall have a casting vote.

2. The representative of the Commission shall participate in meetings of the **~~Executive~~ Management** Board without the right to vote save in respect of matters referred to in Article 63.

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

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

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

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

1. the following Article 45b is inserted:

*"Article 45b*

*Internal committees*

The **~~Executive~~ Management** Board may establish internal committees for specific tasks attributed to it **and may provide for the delegation of certain clearly defined tasks and decisions to internal committees. Where internal committees have been established in relation to Article ~~16~~ 17 and Article 19, they shall be chaired by the Vice-Chair of the Management Board."**

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

***“Art 45c***

***Coordination Groups***

**The Management Board may set up coordination groups ~~platforms~~ on its own initiative or on the request by a competent authority. All competent authorities shall be participants of the coordination groups. The meetings shall be based on submissions from the competent authorities and any issues identified by the Authority. In relation to Article 29(1)aa, the group ~~platform~~ shall be chaired by the Vice-Chair 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.”**

1. Article 46 is replaced by the following:

*"Article 46*

*Independence*

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

Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence the members of the **~~Executive~~ Management**

Board in the performance of their tasks.";

1. Article 47 is replaced by the following:

*"Article 47*

*Tasks*

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

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

**~~For the purposes of Articles 17, 19, 22, 29a, 30, 31a, 32 and 35b to 35h, the Executive Board shall be competent to act and to take decisions. The Executive Board shall keep the Board of Supervisors informed of the decisions taken.~~**

3a. The **~~Executive~~ Management** Board shall examine, give an opinion and made proposal on all matters to be decided by the Board of Supervisors.

4. The **~~Executive~~ Management** Board **~~may~~** **~~shall~~** adopt the Authority’s staff policy plan and, pursuant to Article 68(2), the necessary implementing measures of the Staff Regulations of Officials of the European Communities ('the Staff Regulations’) **after discussion at the relevant internal committee, save for peer reviews according to Article 30**..

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

6. The **~~Executive~~ Management** Board shall propose an annual report on the activities of the Authority, including on the Chairperson’s duties**~~, on the basis of the draft report referred to in Article 53(7)~~** to the Board of Supervisors for approval.

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

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

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

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

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

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

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

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

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

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

1. Article 48 is amended as follows:

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

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

paragraph 2 is replaced by the following:

"2. The Chairperson shall be **~~selected~~ appointed** **by the Board of Supervisors** on the basis of merit, skills, knowledge of financial institutions and markets, and of experience relevant to financial supervision and regulation, following an open call for candidates to be published in the Official Journal of the European Union. The **Management Board** **~~Commission~~**shall submit **~~in cooperation with the Board of Supervisors~~** a shortlist of candidates for the position of the Chairperson to the **Board of Supervisors** **~~European Parliament~~** for **selection ~~approval.~~**   
**Before taking up his duties, and up to 1 month after the selection by the Board of Supervisors, the European Parliament and the Council may, after having heard the candidate selected by the Board of Supervisors, object to the designation of the selected person ~~Following the approval of that shortlist, the Council shall adopt a decision to appoint the Chairperson~~.**

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

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

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

paragraph 5 is deleted;

1. the following Article 49a is inserted:

*"Article 49a*

*Expenses*

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

1. Articles 51, 52 and 53 are deleted;
2. Article 54 is amended as follows:
   * + 1. in paragraph 2 of Article 54, the following indent is added:

" — consumer and investor protection issues;" ;

* + - 1. in paragraph 2, the fifth indent is deleted;

(c) the following paragraph 2a is inserted:

"2a. The Joint Committee shall serve as a forum in which the Authority shall cooperate with the European Banking Authority and the European Securities and Markets Authority on matters relating to the interaction between the tasks of the Authority and of the European Securities and Markets Authority and the specific tasks referred to in point (l) of Article 8(1) of Regulation (EU) No 1093/2010 conferred on the European Banking Authority.";

1. in Article 55 paragraph 2 is replaced by the following:

"2. One member of the **~~Executive~~ Management** Board, The Member in charge in accordance with Article 47(8a), 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.";

1. Article 58 is amended as follows:

paragraph 3 is replaced by the following:

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

paragraph 5 is replaced by the following:

"5. A member of the Board of Appeal appointed by the **~~Executive~~ 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 **~~Executive~~ Management** Board takes a decision to that effect after consulting the Board of Supervisors.";

1. in Article 59 paragraph 1 is replaced by the following:

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

1. in Article 60 paragraph 1 is replaced by the following:

"1. Any natural or legal person, including competent authorities, may appeal against a decision of the Authority referred to in Articles 17, 18, 19 and 35 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.";

1. Article 62 is amended as follows:

paragraph 1 is replaced by the following:

The revenues of the Authority shall consist, without prejudice to other types of revenue, of any combination of the following:

(a) a balancing contribution from the Union, entered in the General Budget of the Union (Commission section) which shall not ***amount to less than [25%]*** ***and shall not*** exceed 40% of the estimated revenues of the Authority;

**~~(b) annual contributions from financial institutions, based on the annual estimated expenditure relating to the activities required by this Regulation and by the Union Acts referred to in Article 1(2) for each category of participants within the remit of the Authority;~~**

(c) any fees paid to the Authority in the cases specified in the relevant instruments of Union law.

(d) any voluntary contribution from Member States or observers; ***Voluntary contributions from Members States and observers as referred to in point (d) of paragraph 1 shall not be accepted if such acceptance would cast doubt on the independence and impartiality of the Authority***

**~~(e) charges for publications, training and for any other services requested by competent authorities.";~~**

* + - 1. **~~the following paragraphs 5 and 6 are added:~~**

**~~"5. The annual contributions referred to in paragraph 1(b) shall be collected each year from individual financial institutions by the authorities designated by each Member State. By 31 March of each financial year, each Member State shall pay to the Authority the amount that it is required to collect in accordance with the criteria set out in the delegated act referred in to Article 62a. 6. Voluntary contributions from Members States and observers as referred to in point (d) of paragraph 1 shall not be accepted if such acceptance would cast doubt on the independence and impartiality of the Authority.";~~**

1. **~~the following Article 62a is inserted:~~**

***~~"Article 62a~~***

***~~Delegated acts on the calculation of annual contributions by financial institutions~~***

**~~The Commission shall be empowered, in accordance with Article 75a, to adopt delegated acts determining how annual contributions by individual financial institutions referred to in point (e) of Article 62 are to be calculated, establishing the following:~~**

**~~(a) a methodology to allocate the estimated expenditure to categories of financial institutions as a basis for determining the share of contributions to be made by financial institutions of each category;~~**

**~~(b) appropriate and objective criteria to determine the annual contributions payable by individual financial institutions within the scope of the Union Acts referred to in Article 1(2) based on their size so as to approximately reflect their importance in the market.~~**

**~~The criteria referred to in point (b) of the first paragraph may establish either~~ *~~de minimis~~* ~~thresholds below which no contribution is due or minima below which contributions must not fall.";~~**

1. Article 63 is replaced by the following:

*"Article 63*

*Establishment of the budget*

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

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

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

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

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

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

5. The **~~Executive~~ 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.";

1. Article 64 is replaced by the following:

*Article 64*

*Implementation and control of the budget*

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

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

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

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

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

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

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

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

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

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

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

1. Article 65 is replaced by the following:

*"Article 65*

*Financial rules*

The financial rules applicable to the Authority shall be adopted by the **~~Executive~~ 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).";

1. 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).";

1. Article 68 is amended as follows:

paragraphs 1 and 2 are replaced by the following:

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

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

paragraph 4 is replaced by the following:

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

1. Article 70 is amended as follows:

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

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

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

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

the following paragraph 2a is inserted:

"2a. The **~~Executive~~ 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 **~~Executive~~ 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 **~~Executive~~ Management** Board and the Board of Supervisors who take part in the activities of the Authority.";

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

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

1. In Article 71 is replaced by the following:

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

1. in Article 72, paragraph 2 is replaced by the following:

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

1. in Article 73, paragraph 2 is replaced by the following:

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

1. 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 **~~Executive~~ Management** Board.";

1. **~~the following Article 75a is inserted:~~**

***~~"Article 75a~~***

***~~Exercise of the delegation~~***

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

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

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

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

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

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

1. Article 76 is replaced by the following:

*"Article 76*

*Relationship with CEIOPS*

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

1. new Article 77a is inserted:

*Article 77a*

*Transitional provisions*

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

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

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

***Article 3***

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

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

1. Article 1 is amended as follows:

paragraph 2 is replaced by the following:

"2. The Authority shall act within the powers conferred by this Regulation and within the scope of Directive 97/9/EC, Directive 98/26/EC, Directive 2001/34/EC, Directive 2002/47/EC, Directive 2003/71/EC, Directive 2004/39/EC, Directive 2004/109/EC, Directive 2009/65/EC, Directive 2011/61/EU of the European Parliament and of the Council \* **~~Regulation 1606/2002 of the European Parliament and of the Council\*\*, Directive 2013/34/EU of the European Parliament and of the Council\*\*\*~~**, and Regulation (EC) No 1060/2009, and, to the extent that these acts apply to firms providing investment services or to collective investment undertakings marketing their units or shares and the competent authorities that supervise them, within the relevant parts of, Directive 2002/87/EC, Directive (EU) 2015/849, Directive 2002/65/EC, including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority.

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

\*\*Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).

\*\*\*Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).";

*in paragraph 5, the following subparagraph is added:*

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

the following paragraph 3a is inserted:

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

1. in Article 2 paragraph 5 the following subparagraph is inserted:

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

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

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

1. Article 6 is amended as follows:

point (2) is replaced by the following:

"(2) an **~~Executive~~ Management** Board, which shall exercise the tasks set out in Article 47;";

point (4) is deleted;

1. Article 8 is amended as follows:
   * + 1. paragraph 1 is amended as follows:

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

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

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

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

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

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

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

(iv) point (l) is deleted;

* + - 1. a new paragraph 1a is inserted:

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

in paragraph 2, the following are amended:

(i) point (ca) is inserted:

"**~~(c) issue recommendations as laid down in Articles 29a and 31a;";~~**

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

"(h) collect the necessary information concerning financial institutions as provided for in Article 35 **~~and Article 35b~~**";

* + - 1. the following paragraph 3 is added:

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

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

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

1. Article 9 is amended as follows:
   * + 1. in paragraph 1, the following points (aa) and (ab) are inserted:

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

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

* + - 1. paragraph 2 is replaced by the following:

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

* + - 1. paragraph 4 is replaced by the following:

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

1. Article 16 is amended as follows:
   * + 1. in paragraph 1, the following subparagraph is added:

**~~"The Authority may also address guidelines and recommendations to the authorities of Member States that are not defined as competent authorities under this Regulation but that are empowered to ensure the application of the acts referred to in Article 1(2).";~~**

* + - 1. paragraph 2 is replaced by the following:

"2 The Authority shall, **~~save in exceptional circumstances~~**, conduct open public consultations regarding the guidelines and recommendations which it issues and shall analyse the related potential costs and benefits of issuing such guidelines and recommendations ***unless the Board of Supervisors objects to such consultations and analyses by simple majority****.* Those consultations and analyses shall be proportionate in relation to the scope, nature and impact of the guidelines or recommendations. The Authority ***or three voting members of the Board of Supervisors may* ~~shall, save in exceptional circumstances~~**, also request opinions or advice from the Banking Stakeholder Group referred to in Article 37.";

***(b1) paragraph 2a is inserted:***

***“The Authority may issue guidelines and recommendations in the form of answers to specific questions from competent authorities or financial institutions on how discretion granted by Union law to the competent authorities shall be exercised. Three voting members of the Board of Supervisors may request the Authority to decide pursuant to Article 44 whether it shall conduct open public consultations regarding an answer to specific questions from competent authorities or financial institutions, analyse the related potential cost and benefits or request opinions or advice from the Banking Stakeholder Group referred to in Article 37. Those 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.”***

***“The Authority shall publish each question received from competent authorities and financial institutions and, following its adoption, the answer thereto, on its website in a user-friendly way in a timely manner, unless the publication could impair legitimate interests of natural or legal persons concerned or could have negative repercussions for the stability of the financial system. Questions that the Authority has received, but will not respond to shall be published on the Authority’s website for a period of two months.”***

***(b2) in paragraph 3, the following text is added as third subparagraph:***

***“By derogation to the previous sub-paragraph, within two months of the issuance of a guideline or recommendation in the form of an answer to a specific question, in the event that a competent authority does not comply or does not intend to comply, it shall inform the Authority. If the Authority decides so, the competent authority shall state its reasons for not complying.”]***

* + - 1. in paragraph 4, the following sentence is added:

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

* + - 1. the following paragraph 5 is added:

"5. **~~Where two thirds of the members of the Securities and Markets Stakeholder Group are of the opinion that the Authority has exceeded its competence by issuing certain guidelines or recommendations, they may send a reasoned opinion to the Commission.~~**

**~~The Commission shall request an explanation justifying the issuance of the guidelines or recommendations concerned from the Authority. The Commission shall, on receipt of the explanation from the Authority, assess the scope of the guidelines or recommendations in view of the Authority's competence. Where the Commission considers that the Authority has exceeded its competence, and after having given the Authority the opportunity to state its views, the Commission may adopt an implementing decision requiring the Authority to withdraw the guidelines or recommendations concerned. The decision of the Commission shall be made public.";~~**

**[(7a) Article 16a is inserted:**

***“Art 16a***

***Questions and Answers***

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

**Before submitting a question to the Authority, financial institutions shall assess whether to firstly address the question to their competent authority. The questions can be categorized as follows:**

**(a) Questions regarding the practical implementation or application of provisions of the regulatory framework referred to in Article 1 (2);**

**(b) Questions referred to in (a) of this paragraph that are perceived by the Authority as well as at least three competent authorities as having a high impact on the single market or on the financial stability and therefore will be prioritized over questions referred to in (a);**

**2. Answers by the Authority to questions referred to in paragraph (1)a and (1)b as well as answers published by the Authority on behalf of the European Commission referred to in paragraph 7 of this Article are non-binding and shall be considered suitable to comply with the requirements of the legislative acts referred to in Article 1(2), associated delegated and implementing acts and guidelines and recommendations adopted under these legislative acts.**

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

**4. The Authority shall set up internal processes to ensure the involvement of competent authorities ~~and of the relevant Stakeholder Group referred to in Article 37~~ during the preparation of answers for all admissible questions. . The Authority shall set up internal processes to ensure the involvement of the Stakeholder Group referred to in Article 37 during the preparation of answers for admissible questions where the Authority or at least three competent authorities consider this involvement as appropriate. In this process, due care of confidentiality shall be guaranteed.**

**5. The Authority shall have in place adequate internal procedures to ensure that competent authorities may put forward the stance of a potential transgression of competences of the Authority or may propose to address the issue of the admissible question in guidelines referred to in Article 16; ~~to conduct open public consultations on draft questions and answers or to analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft questions and answers concerned or in relation to the particular urgency of the matter~~ or to review questions and answers at appropriate intervals. The Authority shall have in place internal procedures to ensure that a stance or proposal put forward by at least three competent authorities shall be subject to discussion of an internal committee prior to submission to the Board of Supervisors for decision.**

**6. The Authority shall have in place adequate internal procedures to conduct open public consultations for or to analyse potential related costs and benefits of questions referred to in paragraph (1)b, unless the Board of Supervisors objects to such consultations and analyses *by simple majority. 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.***

**7. The Authority shall publish the answers to questions regarding the legal explanation of provisions of the regulatory framework on behalf of the European Commission. It shall be clearly stated that the Court of Justice of the European Union is the competent body to provide the definitive interpretations of European legislation.]**

1. Article 17 is amended as follows:
   * + 1. in paragraph 2 the following subparagraphs are added:

" Without prejudice to the powers laid down in Article 35, the Authority may address a duly justified and reasoned request for information directly to other competent authorities **~~or relevant financial institutions,~~** whenever ***requesting information from the competent authority concerned has proven, or is deemed, insufficient to obtain the information that*** it is deemed necessary for the purpose of investigating an alleged breach or non-application of Union law. **~~Where it is addressed to financial institutions, the reasoned request shall explain why the information is necessary for the purposes 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.

**~~Where a request for information has been addressed to a financial institution, the Authority shall inform the relevant competent authorities of such a request. The competent authorities shall assist the Authority in collecting the information, where so requested by the Authority.~~**Article 19 is amended as follows:

* + - 1. 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) on its own initiative where on the basis of objective criteria, disagreement can be determined between competent authorities.

In cases where the acts referred to in Article 1(2) require a joint decision to be taken by competent authorities, 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;";

* + - 1. the following paragraphs 1a and 1b are inserted:

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

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

(i) the time limit has expired;

(ii) one or more of the competent authorities conclude that a disagreement exists, on the basis of objective factors;

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

(i) one or more of the competent authorities concerned conclude that a disagreement exists on the basis of objective factors; or

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

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

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

* + - 1. 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.";

* + - 1. the following paragraph 3a is inserted:

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

* + - 1. paragraph 4 is replaced by the following:

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

1. in Article 22(4), the second subparagraph is replaced by the following:

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

1. Article 29 is amended as follows:

paragraph 1 is amended as follows:

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

"(aa) **establishing coordination groups in accordance with Art 45c to promote supervisory convergence and identify best practices. “~~issuing the Strategic Supervisory Plan in accordance with Article 29a;";~~**

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

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

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

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

in paragraph 2, the following subparagraph is added:

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

1. the following Article 29a is inserted:

*"Article 29a*

**Common Supervisory Priorities**

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

***~~Strategic Supervisory Plan~~***

**~~1. Upon the entry into application of Regulation [XXX insert reference to amending Regulation] and every three years thereafter by 31 March, the Authority shall issue a recommendation addressed to competent authorities, laying down supervisory strategic objectives and priorities ("Strategic Supervisory Plan") and, taking into account any contributions from competent authorities,. The Authority shall transmit the Strategic Supervisory Plan for information to the European Parliament, the Council and the Commission and shall make it public on its website.~~**

**~~The Strategic Supervisory Plan shall identify specific priorities for supervisory activities in order to promote consistent, efficient and effective supervisory practices and the common, uniform and consistent application of Union lawand to address relevant micro-prudential trends, potential risks and vulnerabilities identified in accordance with Article 32.~~**

**~~2. By 30 September of each year, each competent authority shall submit a draft annual work programme for the following year to the Authority for consideration and specifically stipulate how that draft programme is aligned with the Strategic Supervisory Plan.~~**

**~~The draft annual work programme shall contain specific objectives and priorities for supervisory activities and quantitative and qualitative criteria for the selection of financial market participants, market practices and behaviours and financial markets to be examined by the competent authority submitting the draft work programme during the year covered by that programme.~~**

**~~3. The Authority shall assess the draft annual work programme and where there are material risks for not attaining the priorities set out in the Strategic Supervisory Plan the Authority shall issue a recommendation to the relevant competent authority aiming at the alignment of the relevant competent authority's annual work programme with the Strategic Supervisory Plan.~~**

**~~By 31 December of each year, the competent authorities shall adopt their annual work programmes taking into account any such recommendations.~~**

**~~4. By 31 March of each year, each competent authority shall transmit to the Authority a report on the implementation of the annual work programme.~~**

**~~The report shall include at least the following information:~~**

**~~(a) a description of the supervisory activities and examinations of financial institutions, market practices and behaviours and of financial markets, and on the administrative measures and sanctions imposed against financial institutions responsible for breaches of Union and national law;~~**

**~~(b) a description of activities that were carried out and which were not foreseen in the annual work programme;~~**

**~~(c) an account of the activities provided for in the annual work programme that were not carried out and of the objectives of that programme that were not met, as well as the reasons for the failure to carry out those activities and to reach those objectives.~~**

**~~5. The Authority shall assess the implementation reports of the competent authorities. Where there are material risks of not attaining the priorities set out in the Strategic Supervisory Plan the Authority shall issue a recommendation to each competent authority concerned on how the relevant shortcomings in its activities can be remedied.~~**

**~~Based on the reports and its own assessment of risks, the Authority shall identify the activities of the competent authority that are critical to fulfilling the Strategic Supervisory Plan, and shall as appropriate conduct reviews under Article 30 of those activities.~~**

**~~6. The Authority shall make best practices identified during the assessment of the annual work programmes publicly available.";~~**

1. Article 30 is amended as follows:
   * + 1. (a) the title of the article is replaced by the following:

"**Peer r**eviews of competent authorities";

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

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

* + - 1. (c) the following paragraph is inserted:

1a. For the purposes of this Article, the Authority shall establish **~~a~~** **peer** review committee***s***, **which shall be composed of members of competent authorities with the participation of staff from the Authority ~~exclusively composed of staff from the Authority. The Authority may delegate certain tasks or decisions to the review committee~~**. **~~[~~*~~In case of peer reviews in relation to combating money-laundering and terrorist financing, the Peer Review Committees shall be chaired by a senior member of ESA staff~~*~~];~~**

* + - 1. (d) paragraph 2 is amended as follows:

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

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

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

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

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

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

* + - 1. (e) paragraph 3 is replaced by the following:

"3. The Authority shall produce a report setting out the results of the review **which shall be ~~is~~ 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~~a~~**~~t~~ report shall explain and indicate the follow-up measures that are ~~foreseen~~ **deemed appropriate *proportionate* and necessary** as a result of the 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. **~~Where competent authorities do not take action to address the follow-up measures indicated in the report, the Authority shall issue a follow-up report.~~**

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.";

* + - 1. (f) the following paragraph 3a to **3c are**  **~~is~~** inserted:

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

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

***3c. Where a peer review reveals serious shortcomings and the competent authority does not take action to address the urgently required follow-up measures set out in the report referred to in Article 30(3), the Authority shall inform the European Parliament, the Council and the Commission.***

* + - 1. (g) paragraph 4 is replaced by the following:

“4. The Authority shall publish **the main findings of the report referred to in paragraph 3 and the follow-up report referred to in paragraph 3b~~, the reports referred to in paragraph 3 including any follow-up report~~** , unless publication would involve risks to the stability of the financial system. If ~~T~~the competent authority that is subject to the review **is concerned that the publication of the main findings of the reports would pose risks to the stability of the financial system, it shall have the possibility to refer the matter to the Board of Supervisors. The Board of Supervisors may decide by simple majority not to publish these extracts**. ~~shall be invited to comment before the publication of any report. Those comments shall be made publicly available unless publication would involve risks to the stability of the financial system.~~";

**paragraph 5 is inserted:**

**“5. For the purposes of this Article the Management Board shall make a proposal for a peer review work plan, 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.***

1. in Article 31a new paragraph is added:

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

1. **~~new Article 31a is inserted:~~**

***~~"Article 31a~~***

***~~Coordination on delegation and outsourcing of activities as well as of risk transfers~~***

**~~"1. The Authority shall on an ongoing basis coordinate supervisory actions of competent authorities with a view to promoting supervisory convergence in the fields of delegation and outsourcing of activities by financial market participants as well as in relation to risk transfers conducted by them, in accordance with paragraphs 2, 3 and 4.~~**

**~~2. The competent authorities shall notify the Authority where they intend to carry out an authorisation or registration related to a financial market participant which is under supervision of the competent authority concerned in accordance with the acts referred to in Article 1(2) and where the business plan of the financial market participant entails the outsourcing or delegation of a material part of its activities or any of the key functions or the risk transfer of a material part of its activities into third countries, to benefit from the EU passport while essentially performing substantial activities or functions outside the Union. The notification to the Authority shall be sufficiently detailed to allow for a proper assessment by the Authority.~~**

**~~Where the Authority considers it necessary to issue an opinion to a competent authority regarding the non-compliance of an authorisation or registration notified pursuant to the first subparagraph with Union law or guidelines, recommendations or opinions adopted by the Authority, the Authority shall inform that competent authority thereof within 20 working days of the receipt of the notification by that competent authority. In that case the competent authority concerned shall await the opinion of the Authority before carrying out the registration or authorisation.~~**

**~~At the request of the Authority, the competent authority shall within 15 working days of the receipt of such a request provide information related to its decisions to authorise or register a financial market participant which is under its supervision in accordance with the acts referred to in Article 1(2).~~**

**~~The Authority shall issue the opinion, without prejudice to any time limits set out in Union law, at the latest within 2 months of the receipt of the notification pursuant to the first subparagraph.~~**

**~~3. A financial market participant shall notify the competent authority of the outsourcing or delegation of a material part of its activities or any of its key functions, and the risk transfer of a material part of its activities, to another entity or its own branch established in a third country. The competent authority concerned shall inform the Authority of such notifications on a semi-annual basis.~~**

**~~Without prejudice to Article 35, at the request of the Authority, the competent authority shall provide information in relation to the outsourcing, delegation or risk transfer arrangements by financial market participants.~~**

**~~The Authority shall monitor whether the competent authorities concerned verify that outsourcing, delegation or risk transfer arrangements referred to in the first subparagraph are concluded in accordance with Union law, comply with guidelines, recommendations or opinions from the Authority and do not prevent effective supervision by the competent authorities and enforcement in a third country.~~**

**~~4. The Authority may issue recommendations to the competent authority concerned, including recommendations to review a decision or to withdraw an authorisation. Where the competent authority concerned does not follow the recommendations of the Authority within 15 working days, the competent authority shall state the reasons and the Authority shall make its recommendation public together with those reasons.";~~**

1. new Article 31b is inserted:

*"Article 31b*

*Coordination function in relation to orders, transactions and activities with significant cross-border effects*

1. Where the Authority has reasonable grounds 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 recommend that competent authorities of the Member States concerned initiate an investigation and shall provide those competent authorities with the relevant information.

2. Where a competent authority has reasonable grounds 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 recommend the competent authorities of the Member States where the suspected activity has occurred to take action after transmitting the relevant information to those competent authorities.

3. **~~To facilitate the exchange of information between the Authority and the competent authorities, the Authority shall establish and maintain a data storage facility designed for that purpose.";~~ The Authority shall facilitate the electronic exchange of information between the Authority and the competent authorities.”**

1. in Article 32 a new paragraph 2a is inserted:

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

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

1. Article 33 is amended as follows:

paragraph 2 is replaced by the following:

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

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

"2a. The Authority shall **periodically** monitor ***relevant*** regulatory and supervisory developments and enforcement practices and relevant 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) 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. **It shall take into account the market relevance of the third countries concerned. *The Authority may liaise with relevant authorities in the third countries.***The Authority shall submit **~~a~~*country specific*** confidential report**s** on its findings to the Commission **~~on an annual basis~~** ***with a particular focus on their implications for financial stability, market integrity, investor protection or the functioning of the internal market. When deciding on drawing up the report, the market relevance of the third country shall be taken into account. The Authority shall submit the reports at least every three years.***

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

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

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

The Authority shall inform the Commission where a third -country competent authority refuses to conclude such administrative arrangements or when it refuses to effectively cooperate. The Commission shall take this information into account when reviewing the relevant equivalence decisions.

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

The Authority shall on an annual basis submit a confidential report to the Commission on the regulatory, supervisory, enforcement and market developments in the third countries referred to in paragraph 2a with a particular focus on their implications for financial stability, market integrity, investor protection or the functioning of the internal market.

2c. The competent authorities shall inform the Authority in advance of their intentions to conclude any administrative arrangements with third-country supervisory authorities in any of the areas governed by the acts referred to in Article 1(2) including in relation to branches of third country entities. They shall provide simultaneously to the Authority a draft of such planned arrangements.

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

1. in Article 34, paragraph 2, the last sentence is replaced by the following:

"Articles 35 **~~and 35b~~** shall apply to the areas in respect of which the Authority may issue an opinion."

1. Article 35 is amended as follows:

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

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

The information provided shall be accurate, complete and submitted within the time limit prescribed by the Authority."

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

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

paragraph 5 is replaced by the following:

"5. Where information requested in accordance with paragraph 1 is not available or is not made available by the competent authorities within the time limit set by the Authority, the Authority may address a duly justified and reasoned request to any of the following:

(a) other supervisory authorities with supervisory functions;,

(b) to the ministry responsible for finance in the Member State concerned where it has at its disposal prudential information;,

(c) to the national central bank or to the statistical office of the Member State concerned;

(d) to the statistical office of the Member State concerned..

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

**~~paragraphs 6 and 7 are deleted;~~**

1. **~~The following Articles 35a to 35 h are inserted:~~**

***~~"Article 35a~~***

***~~Exercise of the powers referred to in Article 35b~~***

**~~The powers conferred on the Authority or any of its official or other person authorised by the Authority in accordance with Article 35b shall not be used to require the disclosure of information or documents that are subject to legal privilege.~~**

***~~Article 35b~~***

***~~Request for information to financial market participants~~***

**~~1. Where information requested under paragraph 1 or paragraph 5 of Article 35 is not available or is not made available within the time limit set by the Authority, it may by simple request or by decision require the relevant financial market participants to provide all necessary information to enable the Authority to carry out its duties under this Regulation.~~**

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

**~~(a) refer to this Article as the legal base 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 35c where the information provided is incorrect or misleading information."~~**

**~~3. When requesting to supply information by decision, the Authority shall:~~**

**~~(a) refer to this Article as the legal base 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 35d where the production of the required information is incomplete;~~**

**~~(f) indicate the fine provided for in Article 35c where the answers to the questions are incorrect or misleading information;~~**

**~~(g) indicated the right to appeal the decision before the Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union in accordance with Articles 60 and 61.~~**

**~~4. The relevant financial market participants 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. The authority shall send, without delay, a copy of the simple request or of its decision to the competent authority of the Member State where the relevant financial market participant concerned by the request for information is domiciled or established.~~**

**~~6. The Authority may use confidential information received in accordance with this Article only for the purposes of carrying out the tasks assigned to it by this Regulation.";~~**

***~~Article 35c~~***

***~~Procedural rules for imposing fines~~***

**~~1. Where, in carrying out its duties under this Regulation, the authority finds that there are serious indications of the possible existence of facts liable to constitute an infringement as referred to in Article 35d(1), the Authority shall appoint an independent investigation officer within the Authority to investigate the matter. The appointed officer shall not be involved or have been directly or indirectly involved in the direct or indirect supervision of the financial market participants concerned and shall perform his or her functions independently from the Board of Supervisors.~~**

**~~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 or her findings to the Board of Supervisors.~~**

**~~3. In order to carry out his or her tasks, the investigation officer shall have the power to request information in accordance with Article 35b.~~**

**~~4. Where carrying out his or her tasks, the investigation officer shall have access to all documents and information gathered by the Authority in its supervisory activities.~~**

**~~5. Upon completion of his investigation and before submitting the file with his or her findings to the 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 or her findings only on facts on which the persons concerned have had the opportunity to comment.~~**

**~~6. The rights of defence of the persons subject to the investigations shall be fully respected during investigations undertaken pursuant to this Article.~~**

**~~7. Upon submission of the file with his finding to the 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 subject to the investigations, after having heard those persons in accordance with Article 35f, the Authority shall decide if one or more of the infringements as referred to in Article 35d(1) has been committed by the persons subject to the investigations and, in such a case, shall take a measure in accordance with that Article.~~**

**~~9. The investigation officer shall not participate in the deliberations of the Board of Supervisors or intervene in any way in the decision-making process of the Board of Supervisors.~~**

**~~10. The Commission shall adopted delegated acts in accordance with Article 75a to specify the rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including rules on the following:~~**

**~~(a) rights of defence~~**

**~~(b) temporal provisions,~~**

**~~(c) provisions specifying how fines or periodic penalty payments are to be collected,~~**

**~~(d) provisions specifying the limitation periods for the imposition and enforcement of fines and periodic penalty payments.~~**

**~~11. The Authority 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, the Authority 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 35d~~***

***~~Fines~~***

**~~1. The Authority shall adopt a decision to impose a where it finds that a financial market participant has, intentionally or negligently, failed to provide information in response to a decision requiring information pursuant to Article 35b(3) or has provided incomplete, incorrect or misleading information in response to a simple request for information or a decision pursuant to Article 35b(2).~~**

**~~2. The basic amount of the fine referred to in paragraph 1 shall amount to at least EUR 50 000 and shall not exceed EUR 200 000.~~**

**~~3. When setting the basic amount of the fine referred to in paragraph 2, the Authority shall have regard to the annual turnover of the financial market participant concerned for the preceding business year and shall be:~~**

**~~(a) at the lower end of the limit for entities with an annual turnover below EUR 10 million;~~**

**~~(b) the middle of the limit for entities with an annual turnover between EUR 10 and 50 million;~~**

**~~(c) the higher end of the limit for entities with an annual turnover higher than EUR 50 million.~~**

**~~The basic amounts defined within the limits set out in paragraph 2 shall be adjusted, where necessary, by taking into account aggravating or mitigating factors in accordance with the relevant coefficients set out in paragraph 5.~~**

**~~The relevant aggravating coefficient shall be applied one by one to the basic amount. Where more than one aggravating coefficient is applicable, the difference between the basic amount and the amount resulting from the application of each individual aggravating coefficient shall be added to the basic amount.~~**

**~~The relevant mitigating coefficient shall be applied one by one to the basic amount. Where more than one mitigating coefficient is applicable, the difference between the basic amount and the amount resulting from the application of each individual mitigating coefficient shall be subtracted from the basic amount.~~**

**~~4. The following adjustment coefficients shall be applied cumulatively to the basic amount referred to in paragraph 2, based on the following:~~**

**~~(a) the adjustment coefficients linked to aggravating factors are as follows:~~**

**~~(i) where the infringement has been committed repeatedly, an additional coefficient of 1.1 shall apply each time the infringement has been repeated;~~**

**~~(ii) where the infringement lasted for more than six months, a coefficient of 1.5 shall apply;~~**

**~~(iii) where the infringement has been committed intentionally, a coefficient of 2 shall apply;~~**

**~~(iv) where no remedial action has been taken since the infringement has been identified, a coefficient of 1.7 shall apply;~~**

**~~(v) where the financial market participant’s senior management has not cooperated with the Authority, a coefficient of 1.5 shall apply.~~**

**~~(b) the adjustment coefficients linked to mitigating factors are as follows:~~**

**~~(i) where the infringement lasted fewer than 10 working days, a coefficient of 0.9 shall apply;~~**

**~~(ii) where the financial market participant’s senior management can demonstrate that they have taken all the necessary measures to prevent the failure to comply with a request pursuant to Article 35(6a), a coefficient of 0.7 shall apply;~~**

**~~(iii) where the financial market participant has brought the infringement to the Authority’s attention quickly, effectively and completely, a coefficient of 0.4 shall apply;~~**

**~~(iv) where the financial market participant has voluntarily taken measures to ensure that similar infringement cannot be committed in the future, a coefficient of 0.6 shall apply.~~**

**~~5. Notwithstanding paragraphs 2 and 3, the total fine shall not exceed 20% of the annual turnover of the financial market participant concerned in the preceding business year unless the financial market participant has directly or indirectly benefitted financially from the infringement. In that case, the total fine shall be at least equal to that financial benefit.~~**

***~~Article 35e~~***

***~~Periodic penalty payments~~***

**~~1. The Authority shall adopt decisions to impose a periodic penalty payment in order to compel financial market participants referred to in Article 35b(1) to provide information requested by decision in accordance with Article 35b(3).~~**

**~~2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed on a daily basis until the financial market participant concerned complies with the relevant decision referred to in paragraph 1.~~**

**~~3. Notwithstanding paragraph 2, the amount of a periodic penalty payment shall be 3% of the average daily turnover of the financial market participant in the preceding business year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.~~**

**~~4. A periodic penalty payment may be imposed for a period of no more than six months following the notification of the Authority's decision.~~**

***~~Article 35f~~***

***~~Right to be heard~~***

**~~1. Before taking any decision to impose a fine and periodic penalty payment under Articles 35d and 35e, the Authority shall give the financial market participant subject to the request for information the opportunity to be heard.~~**

**~~The Authority shall base its decisions only on the findings on which the financial market participants concerned have had the opportunity to comment.~~**

**~~2. The rights of defence of the financial market participant referred to in paragraph 1 shall be fully respected during the procedure. The financial market participant shall be entitled to have access to the Authority's file, subject to the legitimate interest of other persons in protecting their business secrets. The right of access to the file shall not extend to confidential information or internal preparatory documents of the Authority.~~**

***~~Article 35g~~***

***~~Disclosure, nature, enforcement and allocation of fines and periodic penalty payments~~***

**~~1. Fines and periodic penalty payments imposed pursuant to Articles 35d and 35e shall be of an administrative nature and shall be enforceable.~~**

**~~2. Enforcement of the fine and periodic penalty payment shall be governed by the rules of procedure in force in the Member State in the territory of which the enforcement is carried out. The enforcement order shall be appended to the decision imposing a fine or a periodic penalty payment without the requirement for any other formality than the verification of the authenticity of the decision by an authority which each Member State shall designate for that purpose and shall make known to the Authority and to the Court of Justice of the European Union.~~**

**~~3. Where the formalities referred to in paragraph 2 have been completed on application by the party concerned, the party concerned may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent body.~~**

**~~4. Enforcement of the fine or periodic penalty payment may only be suspended by a decision of the Court of Justice of the European Union. However, the courts of the Member State concerned shall have jurisdiction over complaints that the enforcement of the fine or periodic penalty payment is being carried out in an irregular manner.~~**

**~~5. The Authority shall disclose to the public every fine and periodic penalty payment that has been imposed pursuant to Articles 35d and 35e, unless such disclosure to the public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.~~**

**~~6. The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the European Union.~~**

***~~Article 35h~~***

***~~Review by the Court of Justice of the European Union~~***

**~~The Court of Justice of the European Union shall have unlimited jurisdiction to review decisions whereby the Authority has imposed a fine or a periodic penalty payment. It may annul, reduce or increase the fine or periodic penalty payment imposed by the Authority.";~~**

1. In paragraph 5 of Article 36, the first subparagraph is replaced by the following:

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

1. Article 37 is amended as follows:

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

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

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

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

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

1. Article 39 is replaced by the following:

*"Article 39*

*Decision making procedure*

"1. The Authority shall act in accordance with paragraphs 2 to 6 when adopting decisions provided for in this Regulation**~~, save for those decisions adopted in accordance with Articles 35b, 35d and 35e.~~**

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

3. The decisions of the Authority shall state the reasons on which they are based.

4. The addressees of decisions of the Authority shall be informed of the legal remedies available under this Regulation.

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

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

1. Article 40 is amended as follows:

paragraph 1 is amended as follows:

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

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

in paragraph 6, the second subparagraph is deleted;

the following paragraph 7 is added:

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

1. Article 41 is replaced by the following:

*"Article 41*

*Internal committees*

1. The Board of Supervisors may establish internal committees for specific tasks attributed to it. The Board of Supervisors may provide for the delegation of certain clearly defined tasks and decisions to internal committees, **~~to the Executive Management Board or to the Chairperson.";~~ or to the Management Board. Where internal committees have been established in relation to Art 17 and Art. 19, they shall be chaired by the Vice-Chair of the Management Board**
2. in Article 42, the first paragraph is replaced by the following:

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

1. Article 43 is amended as follows:

paragraph 1 is replaced by the following:

"The Board of Supervisors shall give guidance to the work of the Authority. It shall adopt the opinions, recommendations, guidelines and decisions of the Authority, and issue the advice referred to in Chapter II**~~, except for those tasks and powers for which the CCP Executive Session is responsible pursuant to Article 44b~~** and the **~~Executive~~ Management** Board is responsible pursuant to Article 47. It shall act on a proposal from the **~~Executive~~ Management** Board."; **~~to the Executive Management Board or to the Chairperson.";~~ or to the Management Board. Where internal committees have been established in relation to Art 17 and Art. 19, they shall be chaired by the Vice-Chair of the Management Board.**

paragraphs 2 and 3 are deleted;

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

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

Paragraph 5 is replaced by the following:

"5. The Board of Supervisors shall adopt, on the basis of a proposal by the **~~Executive~~ Management** Board, the annual report on the activities of the Authority, including on the performance of the Chairperson’s duties, on the basis of the draft report referred to in Article 53(7) and shall transmit that report to the European Parliament, the Council, the Commission, the Court of Auditors and the European Economic and Social Committee by 15 June each year. The report shall be made public.";

paragraph 8 is deleted.

1. Article 44 is amended as follows:

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

**~~"The full time members of the Executive Management Board and the Chairperson shall not vote on those decisions.";~~**

in paragraph 1, the third and fourth sub-paragraphs are deleted.

paragraph 4 is replaced by the following:

"4. 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 ten (10) working days to vote.  The proposed decision will be considered  adopted unless a simple majority of voting members of the Board of Supervisors objects.  Abstentions will not be counted as approvals or as objections, and will not be considered when calculating the number of votes cast. If [three] /[five] voting members of the Board of Supervisors object to the written procedure, the draft decision will be discussed and decided on by the Board of Supervisors in accordance with the procedure set out in paragraph 1 [of this Article].**

**~~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 Chairperson, the members that are also members of the **~~Executive~~ Management** Board and the European Central Bank representative nominated by its Supervisory Board.";

1. in Chapter III, the title of Section 2 is replaced by the following:

" **~~Executive~~ Management** Board";

1. Article 45 is replaced by the following:

*"Article 45*

*Composition*

1. [The **~~Executive~~ Management** Board shall be composed of the Chairperson and [**three] members of the Board of Supervisors, elected by and from the voting members of the Board of Supervisors, and [three] full -time members** three full time members.]

The Chairperson shall assign clearly defined policy and managerial tasks to each of the full time members. One of the full time members shall be assigned responsibilities for budgetary matters and for matters relating to the work programme of the Authority ("Member in charge"). One of the full time members shall act as a Vice Chairperson and carry out the tasks of the Chairperson in his or her absence or reasonable impediment, in accordance with this Regulation. **~~The Head of the CCP Executive Session shall participate as observer to all meetings of the Executive Management Board.~~**

2. The full time members shall be selected on the basis of merit, skills, knowledge of financial market participants and markets, and experience relevant to financial supervision and regulation. The full time members shall have extensive management experience. The selection shall be based on an open call for candidates, to be published in the Official Journal of the European Union, following which the Commission shall draw up a shortlist of qualified candidates.

The **Board of Supervisors shall apoint the full-time member. Before taking up his duties, and up to 1 month after the selection by the Board of Supervisors, the European Parliament and the Council may, after having heard the candidate selected by the Board of Supervisors, object to the designation of the selected person.** ~~Commission shall submit the shortlist to the European Parliament for approval. Following the approval of that shortlist, the Council shall adopt a decision to appoint the full time members of the~~ **~~ExecutiveManagement~~** ~~Board including the Member in charge.~~ **~~The Executive Board shall be balanced and proportionate and shall reflect the Union as a whole.3~~**

3. Where a full time member of the **~~Executive~~ Management** Board no longer fulfil the conditions set out in Article 46 or has been found guilty of serious misconduct, the Council may, on a proposal from the Commission which has been approved by the European Parliament, adopt a decision to remove him or her from office.

4. The term of office of the full time members shall be 5 years and shall be renewable once. In the course of the 9 months preceding the end of the 5-year term of office of the full time member, the Board of Supervisors shall evaluate:

(a) the results achieved in the first term of office and the way in which they were achieved;

(b) the Authority’s duties and requirements in the coming years.

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

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

**The term of office of the members elected by the Board of Supervisors shall be two-and-a-half years. 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.”**

1. the following Article 45a is inserted:

["Article 45a

Decision-making

1. Decisions by the **~~Executive~~ Management** Board shall be adopted by simple majority of its members. Each member shall have one vote. In the event of a tie, the Chairperson shall have a casting vote.

2. The representative of the Commission shall participate in meetings of the **~~Executive~~ Management** Board without the right to vote save in respect of matters referred to in Article 63.

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

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

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

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

1. the following Article 45b is inserted:

*"Article 45b*

*Internal committees*

The **~~Executive~~ Management** Board may establish internal committees for specific tasks attributed to it **and may provide for the delegation of certain clearly defined tasks and decisions to internal committees. Where internal committees have been established in relation to Article ~~16~~ 17 and Article 19, they shall be chaired by the Vice-Chair of the Management Board**.";

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

***“Art 45c***

***Coordination Groups***

**The Management Board may set up coordination *groups* ~~platforms~~ on its own initiative or on the request by a competent authority. All competent authorities shall be participants of the coordination groups. The meetings shall be based on submissions from the competent authorities and any issues identified by the Authority. In relation to Article 29(1)aa, the *groud* ~~platform~~ shall be chaired by the Vice-Chair 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.”**

1. Article 46 is replaced by the following:

*"Article 46*

*Independence*

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

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

1. Article 47 is replaced by the following:

*"Article 47*

*Tasks*

"1. The **~~Executive~~ 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 **~~Executive~~ Management** Board shall propose, for adoption by the Board of Supervisors, an annual and multi-annual work programme, **~~which includes a part on CCP matters.~~**

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

**~~For the purposes of Articles 17, 19, 22, 29a, 30, 31a, 32 and 35b to 35h, the Executive Management Board shall be competent to act and to take decisions, except with regard to CCP matters for which the CCP Executive Session shall be competent. The Executive Board shall keep the Board of Supervisors informed of the decisions it takes.~~**

3a. The **~~Executive~~ Management** Board ***may* ~~shall~~** 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 **~~Executive~~ Management** Board shall examine and prepare decisions for adoption by the Board of Supervisors on all matters where acts referred to in Article 1(2) have conferred functions of authorisation or supervision and corresponding powers upon the Authority.4. The **~~Executive~~ 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 **~~Executive~~ Management** Board shall adopt the special provisions on right of access to the documents of the Authority, in accordance with Article 72.

6. The **~~Executive~~ Management** Board shall propose an annual report on the activities of the Authority, including on the Chairperson’s duties, on the basis of the draft report referred to in Article 53(7) to the Board of Supervisors for approval.

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

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

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

(a) to implement the annual work programme of the Authority under the guidance of the Board of Supervisors**~~, and of the CCP Executive Session for the tasks and powers referred to in Article 44b(1)~~**, and under the control of the **~~Executive~~ Management** Board;

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

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

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

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

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

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

**~~However, in respect of the part on CCP matters, as referred to in paragraph 2, the CCP Executive Session shall carry out the tasks referred to in points (c) and (d) of the first subparagraph.~~**

**~~In respect of the annual draft report referred to in point (f) of the first subparagraph, the CCP Executive Session shall carry out the tasks referred to therein with regard to CCP matters.~~**

.";

1. The title of Section III of Chapter III is replaced by the following:

"Chairperson, **~~Head of CCP Executive Session and Directors of CCP Executive Management Session~~**";

1. Article 48 is amended as follows:

in paragraph 1, the second sub-paragraph is replaced by the following:

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

paragraph 2 is replaced by the following:

"2. The Chairperson shall be **~~selected~~ appointed** **by the Board of Supervisors** on the basis of merit, skills, knowledge of financial institutions and markets, and of experience relevant to financial supervision and regulation, following an open call for candidates to be published in the Official Journal of the European Union. The **Management Board** **~~Commission~~**shall submit **~~in cooperation with the Board of Supervisors~~** a shortlist of candidates for the position of the Chairperson to the **Board of Supervisors** **~~European Parliament~~** for **selection ~~approval.~~**   
**Before taking up his duties, and up to 1 month after the selection by the Board of Supervisors, the European Parliament and the Council may, after having heard the candidate selected by the Board of Supervisors, object to the designation of the selected person ~~Following the approval of that shortlist, the Council shall adopt a decision to appoint the Chairperson~~.**

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.";

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

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

paragraph 5 is deleted;

1. the following Article 49a is inserted:

*"Article 49a*

*Expenses*

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

1. Articles 51, 52 and 53 are deleted;
2. Article 54 is amended as follows:
   * + 1. in paragraph 2 of Article 54, the following indent is added:

" — consumer and investor protection issues;" ;

* + - 1. in paragraph 2, the fifth indent is deleted;
      2. the following paragraph 2a is inserted:

"2a. The Joint Committee shall serve as a forum in which the Authority shall cooperate with the European Banking Authority and the European Insurance and Occupational Pensions Authority on matters relating to the interaction between the tasks of the Authority and of the European Insurance and Occupational Pensions Authority and the specific tasks referred to in point (l) of Article 8(1) of Regulation (EU) No 1093/2010 conferred on the European Banking Authority.";

1. in Article 55, paragraph 2 is replaced by the following:

"2. One member of the **~~Executive~~ 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.";

1. Article 58 is amended as follows:

paragraph 3 is replaced by the following:

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

paragraph 5 is replaced by the following:

"5. A member of the Board of Appeal appointed by the **~~Executive~~ 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 **~~Executive~~ Management** Board takes a decision to that effect after consulting the Board of Supervisors.";

1. in Article 59, paragraph 1 is replaced by the following:

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

1. in Article 60, paragraph 1 is replaced by the following:

"1. Any natural or legal person, including competent authorities, may appeal against a decision of the Authority referred to in Articles 17, 18, 19 and 35 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.";

1. Article 62 is amended as follows:
   * + 1. paragraph 1 is replaced by the following:

"1. The revenues of the Authority shall consist, without prejudice to other types of revenue, of any combination of the following:

(a) a balancing contribution from the Union, entered in the General Budget of the Union (Commission section) which shall not ***amount to less than [25%]*** ***and shall not*** exceed 40% of the estimated revenues of the Authority;

**~~(b) annual contributions from financial institutions, based on the annual estimated expenditure relating to the activities required by this Regulation and by the Union Acts referred to in Article 1(2) for each category of participants within the remit of the Authority;~~**

(c) any fees paid to the Authority in the cases specified in the relevant instruments of Union law.

(d) any voluntary contribution from Member States or observers; ***Voluntary contributions from Members States and observers as referred to in point (d) of paragraph 1 shall not be accepted if such acceptance would cast doubt on the independence and impartiality of the Authority***

**~~(e) charges for publications, training and for any other services requested by competent authorities.";~~**

* + - 1. **~~the following paragraphs 5 and 6 are added:~~**

**~~"5. The annual contributions referred to in paragraph 1(b) shall be collected each year from individual financial institutions by the authorities designated by each Member State. By 31 March of each financial year, each Member State shall pay to the Authority the amount that it is required to collect in accordance with the criteria set out in the delegated act referred in to Article 62a.~~**

**~~6. Voluntary contributions from Members States and observers as referred to in point (d) of paragraph 1 shall not be accepted if such acceptance would cast doubt on the independence and impartiality of the Authority.";~~**

1. **~~the following Article 62a is inserted:~~**

***~~"Article 62a~~***

***~~Delegated acts on the calculation of annual contributions by financial institutions~~***

**~~The Commission shall be empowered, in accordance with Article 75a, to adopt delegated acts determining how annual contributions by individual financial institutions referred to in point (e) of Article 62 are to be calculated, establishing the following:~~**

**~~(a) a methodology to allocate the estimated expenditure to categories of financial institutions as a basis for determining the share of contributions to be made by financial institutions of each category;~~**

**~~(b) appropriate and objective criteria to determine the annual contributions payable by individual financial institutions within the scope of the Union Acts referred to in Article 1(2) based on their size so as to approximately reflect their importance in the market.~~**

**~~The criteria referred to in point (b) of the first paragraph may establish either~~ *~~de minimis~~* ~~thresholds below which no contribution is due or minima below which contributions must not fall.";~~**

1. Article 63 is replaced by the following:

*"Article 63*

*Establishment of the Budget*

1. Each year, the Member in charge shall draw up a provisional draft single programming document of the Authority for the three following financial years setting out the estimated revenue and expenditure, as well as information on staff, from its annual and multi-annual programming and shall forward it to the **~~Executive~~ 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**~~. Prior to the adoption of that statement of estimates, the draft prepared by the Member in charge relating to such expenditure and fees shall be approved by the CCP Executive Session Session.~~**

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 **~~Executive~~ Management** Board shall, on the basis of the draft which has been approved by the Board of Supervisors **~~and by the CCP Executive Session Session for expenditures and fees relating to tasks and powers referred to in Article 44b(1),~~** adopt the draft single programming document for the three following financial years..

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

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

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

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

5. The **~~Executive~~ 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.";

1. Article 64 is replaced by the following:

*"Article 64*

*Implementation and control of the budget*

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

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

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

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

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

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

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

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

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

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

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

1. Article 65 is replaced by the following:

*"Article 65*

*Financial Rules*

The financial rules applicable to the Authority shall be adopted by the **~~Executive~~ 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).";

1. 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).";

1. Article 68 is amended as follows:

paragraphs 1 and 2 is replaced by the following:

"1. The Staff Regulations, the Conditions of Employment of Other Servants and the rules adopted jointly by the Union institutions for the purpose of applying them shall apply to the staff of the Authority, including the full time members of the **~~Executive~~ Management** Board, the Chairperson, **~~the Head of the CCP Executive Session Session and the Directors referred to in point (i) of Article 44a(1)(a).~~**

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

paragraph 4 is replaced by the following:

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

1. Article 70 is amended as follows:

paragraph 1 is replaced by the following:

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

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

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

the following paragraph 2a is inserted:

"2a. The **~~Executive~~ Management** Board, **~~the CCP Executive Session~~** and the Board of Supervisors shall ensure that individuals who provide any service, directly or indirectly, permanently or occasionally, relating to the tasks of the Authority, including officials and other persons authorised by the **~~Executive~~ 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 **~~Executive~~ Management** Board, the **~~CCP Executive Session~~** and the Board of Supervisors who take part in the activities of the Authority.";

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

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

1. Article 71 is replaced by the following:

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

1. in Article 72, paragraph 2 is replaced by the following:

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

1. in Article 73, paragraph 2 is replaced by the following:

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

1. 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 **~~Executive~~ Management** Board.";

1. the following Article 75a is inserted:

*"Article 75a*

*Exercise of the delegation*

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

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

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

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

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

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

1. 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."

1. new Article 77a is inserted:

*Article 77a*

*Transitional provisions*

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

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

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

*Article 4*

***~~Amendments to Regulation (EU) No 345/2013 on European venture capital funds~~***

**~~Regulation (EU) No 345/2013 is amended as follows:~~**

**~~(1) Article 2 is amended as follows:~~**

**~~in paragraph 1, point (c) is deleted;~~**

**~~paragraph 2 is replaced by the following:~~**

**~~“2. Articles 3 to 6, Article 12, points (c) and (i) of Article 13(1), Articles 14a to 19, 19a to 19c, 20, 20a to 20c, 21, 21a to 21d, and 25 of this Regulation shall apply to managers of collective investment undertakings authorised under Article 6 of Directive 2011/61/EU that manage portfolios of qualifying venture capital funds and intend to use the designation ‘EuVECA’ in relation to the marketing of those funds in the Union.”;~~**

**~~in Article 3, the first paragraph is amended as follows:~~**

**~~point (m) is replaced by the following:~~**

**~~“(m) ‘competent authority’ means any competent authority referred to in points (f) and (h) of Article 4(1) of Directive 2011/61/EU;”;~~**

**~~point (n) is deleted;~~**

**~~in Article 7 the following subparagraphs are added:~~**

**~~“ESMA shall develop draft regulatory technical standards specifying the criteria to be used to assess whether managers of qualifying venture capital funds comply with their obligations under points (a) to (g) of paragraph 1, ensuring consistency with Article 12(1) of Directive 2011/61/EU.~~**

**~~ESMA shall submit those draft regulatory technical standards to the Commission by [[PO: Please insert date 24 months after the date of entry into force]].~~**

**~~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.”;~~**

**~~in Article 8, the following paragraph 3 is added:~~**

**~~“3. The Commission shall adopt delegated acts in accordance with Article 25 specifying the requirements for the delegation of functions referred to in paragraph 2, ensuring consistency with the requirements applicable to the delegation of functions set out in Article 20 of Directive 2011/61/EU.”;~~**

**~~Article 10 is amended as follows:~~**

**~~in the second and in the last sentence of paragraph 3, the words “the competent authority of their home Member State” are replaced by the words “ESMA”;~~**

**~~in paragraph 5 the words “the competent authority of their home Member State” are replaced by the word “ESMA”;~~**

**~~the following paragraph 7 is added:~~**

**~~“7. ESMA shall develop draft regulatory technical standards specifying the appropriate human and technical resources necessary for the proper management of the qualifying venture capital funds referred to in paragraph 1.~~**

**~~ESMA shall submit those draft regulatory technical standards to the Commission by [PO: Please insert date 24 months after the date of entry into force].~~**

**~~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.”;~~**

**~~in Article 11, the following paragraphs 3 and 4 are added:~~**

**~~“3. ESMA shall develop draft regulatory technical standards specifying the rules and procedures for the valuation of assets referred to in paragraph 1, ensuring consistency with the requirements applicable to the valuation of assets set out in Article 19 of Directive 2011/61/EU.~~**

**~~ESMA shall submit those draft regulatory technical standards to the Commission by [PO: Please insert date 24 months after the date of entry into force].~~**

**~~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 12 is amended as follows:~~**

**~~in paragraph 1, in the first sentence of the first subparagraph, the words “the competent authority of the home Member State” are replaced by the word “ESMA”;~~**

**~~paragraph 4 is replaced by the following:~~**

**~~“4. ESMA shall make available, upon request, information gathered under this Article to competent authorities in a timely manner.”;~~**

**~~Article 14 is amended as follows:~~**

**~~paragraph 1 is amended as follows:~~**

**~~(i) in the introductory words, the words “the competent authority of their home Member State” are replaced by the word “ESMA”;~~**

**~~(ii) the following point (-a) is inserted:~~**

**~~“(-a) the Member State in which the manager of a qualifying venture capital fund has its registered office”;~~**

**~~(iii) point (b) is re2placed by the following:~~**

**~~“(b) the identity and the domicile of the qualifying venture capital funds the units or shares of which are to be marketed and their investment strategies”;~~**

**~~in the introductory words of paragraph 2 , the words “the competent authority of the home Member State” are replaced by the word “ESMA”;~~**

**~~paragraph 4 is replaced by the following:~~**

**~~“4. ESMA shall inform all of the following whether the manager referred to in paragraph 1 have been registered as a manager of a qualifying venture capital fund no later than two months after it has provided all the information referred to in that paragraph:~~**

**~~(a) the manager referred to in paragraph 1;~~**

**~~(b) the competent authorities of the Member States referred to in point (-a) of paragraph 1;~~**

**~~(c) the competent authorities of the Member States refer to in point (d) of paragraph 1.";~~**

**~~paragraph 6 is amended as follows:~~**

**~~(i) in the first subparagraph, the words “the competent authority of their home Member State” are replaced by the word “ESMA”;~~**

**~~(ii) the second subparagraph is replaced by the following:~~**

**~~“Where ESMA objects to the changes referred to in the first subparagraph, it shall inform the manager of the qualifying venture capital fund within two months of the notification of those changes and shall state the reasons for the objection. The changes referred to in the first subparagraph may only be implemented provided that ESMA does not object to those changes within that period.”;~~**

**~~paragraphs 7 and 8 are replaced by the following:~~**

**~~“7. ESMA shall develop draft regulatory technical standards specifying the criteria to assess the sufficient good repute and the sufficient experience referred to in point (a) of paragraph 2.~~**

**~~ESMA shall submit those draft regulatory technical standards to the Commission by [PO: Please insert date 24 months after the date of entry into force].~~**

**~~Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~**

**~~8. ESMA shall develop draft implementing technical standards on specifying the forms, templates and procedures for the provision of the information referred to in paragraph 1, including the information to be provided for the purposes of point (a) of paragraph 2.~~**

**~~ESMA shall submit those draft implementing technical standards to the Commission by [PO: Please insert date 24 months after the date of entry into force].~~**

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

**~~Article 14a is amended as follows:~~**

**~~in the introductory words of paragraph 2, the words “the competent authority of the qualifying venture capital fund” are replaced by the word “ESMA”;~~**

**~~paragraph 3 is replaced by the following:~~**

**~~“3. For the purposes of assessing an application for registration pursuant to paragraph 1, ESMA shall ask the competent authority of the manager submitting the application whether the qualifying venture capital fund falls within the scope of that manager's authorisation to manage collective investment undertakings and whether the conditions laid down in point (a) of Article 14(2) are fulfilled.~~**

**~~ESMA may request clarification and information as regards the documentation and information provided under the first subparagraph.~~**

**~~The competent authority of the manager shall provide an answer within one month of the date of receipt of a request submitted by ESMA pursuant to first or second subparagraphs.”;~~**

**~~in paragraph 5 the words “the competent authority of the qualifying venture capital fund” are replaced by the word “ESMA”;~~**

**~~paragraph 6 is replaced by the following:~~**

**~~“6. ESMA shall inform all of the following whether a fund has been registered as a qualifying venture capital fund no later than two months after the managers of those funds have provided all the documentation referred to in paragraph 2:~~**

**~~(a) the manager referred to in paragraph 1;~~**

**~~(b) the competent authorities of the Member State referred to in Article 14(1)(-a);~~**

**~~(c) the competent authorities of the Member States referred to in Article 14(1)(d);~~**

**~~(d) the competent authorities of the Member States referred to in Article 14a(2)(d).”;~~**

**~~paragraph 8 is replaced by the following:~~**

**~~“8. ESMA shall develop draft implementing technical standards to specify the standard forms, templates and procedures for the provision of the information referred to in accordance with paragraph 2.~~**

**~~ESMA shall submit those draft implementing technical standards to the Commission by [PO: Please insert date 24 months after the date of entry into force].~~**

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

**~~paragraphs 9 and 10 are deleted;~~**

**~~Article 14b is replaced by the following:~~**

***~~“Article 14b~~***

**~~ESMA shall notify any decision refusing to register a manager referred to in Article 14 or a fund referred to in Article 14a to the managers referred to in those Articles.”;~~**

**~~the following Article 14c is inserted:~~**

***~~“Article 14c~~***

**~~1. Without prejudice to Article 20, ESMA shall withdraw the registration for an EuVECA where the manager of that EuVECA meets any of the following conditions:~~**

**~~(a) the manager has expressly renounced the authorisation or has not made use of the authorisation within six months after the authorisation has been granted;~~**

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

**~~(c) the EuVECA no longer meets the conditions under which it was authorised.~~**

**~~2. The withdrawal of the authorisation shall have immediate effect throughout the Union.”;~~**

**~~in Article 15, the words “the competent authority of the home Member State” are replaced by the word “ESMA”;~~**

**~~Article 16 is amended as follows:~~**

**~~paragraph 1 is replaced by the following:~~**

**~~“1. ESMA shall notify the competent authorities referred to in point (4) of Article 14 and in point (6) of Article 14a immediately of any registration or removal from the register of a manager of a qualifying venture capital fund, any addition to or removal from the register of a qualifying venture capital fund and any addition to or removal from the list of Member States in which a manager of a qualifying venture capital fund intends to market those funds.”;~~**

**~~paragraph 3 is replaced by the following:~~**

**~~“3. In order to ensure uniform application of this Article, ESMA shall develop draft implementing technical standards to determine the format of notification under this Article.~~**

**~~ESMA shall submit those draft implementing technical standards to the Commission by [PO: Please insert date 24 months after the date of entry into force].~~**

**~~Power is conferred on the Commission to adopt the implementing technical standards referred to in paragraph 3 of this Article in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1095/2010.”;~~**

**~~paragraphs 4 and 5 are deleted:~~**

**~~Article 16a is deleted;~~**

**~~Article 18 is replaced by the following:~~**

***~~“Article 18~~***

**~~1. ESMA shall ensure that this Regulation is applied on an ongoing basis.~~**

**~~2. For the managers referred to in Article 2(1), ESMA shall supervise compliance with the requirements laid down in this Regulation.~~**

**~~3. For the managers referred to in Article 2(2), ESMA shall supervise the compliance with the rules laid down in provisions listed in Article 2(2) and the relevant requirements of Directive 2011/61/EU in respect of the qualifying venture capital fund.~~**

**~~ESMA shall be responsible for supervising the qualifying venture capital fund´s compliance with the obligations set out in the fund's rules and instruments of incorporation.~~**

**~~4. For the purposes of carrying out the tasks conferred on it by this Regulation, and with the objective of ensuring high standards of supervision, ESMA shall apply all relevant Union law, and where that Union law is composed of directives, the national legislation transposing those directives.~~**

**~~5. Competent authorities shall monitor that collective investment undertakings established or marketed in their territories do not use the designation ‘EuVECA’ or do not suggest that they are an EuVECA unless they are registered in accordance with this Regulation.~~**

**~~Where a competent authority believes that a collective investment undertaking uses the designation ‘EuVECA’, or suggests that it is an EuVECA without having been registered in accordance with this Regulation, it shall promptly inform ESMA thereof.”;~~**

**~~Article 19 is replaced by the following:~~**

***~~“Article 19~~***

**~~The powers conferred on ESMA or any official of or other person authorised by ESMA by Articles 19a to 19c shall not be used to require the disclosure of information or documents which are subject to legal privilege.”;~~**

**~~the following Articles 19a, 19b and 19c are inserted:~~**

***~~“Article 19a~~***

**~~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) managers of qualifying venture capital funds;~~**

**~~(b) persons involved in the management of qualifying venture capital funds;~~**

**~~(c) third parties to whom a manager of an qualifying venture capital fund has delegated functions;~~**

**~~(d) persons otherwise closely and substantially related or connected to the management of qualifying venture capital funds.~~**

**~~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;~~**

**~~(e) indicate the amount of the fine to be issued in accordance with Article 20a 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 20b where the production of the required information is incomplete;~~**

**~~(f) indicate the fine provided for in Article 20a, 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, 4. 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 19b~~***

**~~1. In order to carry out its duties under this Regulation, ESMA may conduct necessary investigations of persons referred to in Article 19a(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 19a(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 20b 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 19a(1) are not provided or are incomplete, and the fines provided for in Article 20, where the answers to questions asked to persons referred to in Article 19a(1) are incorrect or misleading.~~**

**~~3. The persons referred to in Article 19a(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 20b, 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 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 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.~~**

**~~7. 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 19c~~***

**~~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 19a(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 19b(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 20b where the persons concerned do not submit to the inspection.~~**

**~~5. The persons referred to in Article 19a(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 20b, 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 19b(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 19b(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.~~**

**~~11. 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 20 is replaced by the following:~~**

***~~“Article 20~~***

**~~1. Where, in accordance with Article 21(5), ESMA finds that a person has committed one of the infringements listed in Article 20a(2), it shall take one or more of the following actions:~~**

**~~(a) withdraw the registration of the manager of the qualifying venture capital fund or the qualifying venture capital fund;~~**

**~~(b) adopt a decision requiring the person to bring the infringement to an end;~~**

**~~(c) adopt a decision imposing fines;~~**

**~~(d) 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.~~**

**~~4. 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 1095/20101.”;~~**

**~~the following Articles 20a, 20b, and 20c are inserted:~~**

***~~“Article 20a~~***

**~~1. Where, in accordance with Article 21(8), 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:~~**

**~~(a) failure to comply with the requirements that apply to portfolio composition, in breach of Article 5;~~**

**~~(b) marketing, in breach of Article 6, the units and shares of a qualifying venture capital fund to non-eligible investors;~~**

**~~(c) using the designation ‘EuVECA’ without having been registered in accordance with Article 14, or without having registered a collective investment undertaking in accordance with Article 14a;~~**

**~~(d) using the designation ‘EuVECA’ for the marketing of funds which are not established in accordance with point (b)(iii) of the first paragraph of Article 3;~~**

**~~(e) obtaining registration through false statements or any other irregular means, in breach of Article 14 or Article 14a;~~**

**~~(f) failure to act honestly, fairly or with due skill, care or diligence, in conducting business, in breach of point (a) of the first paragraph of Article 7;~~**

**~~(g) failure to apply appropriate policies and procedures for preventing malpractices, in breach of point (b) of the first paragraph of Article 7;~~**

**~~(h) repeated failure to comply with the requirements under Article 12 regarding the annual report;~~**

**~~(i) repeated failure to comply with the obligation to inform investors in accordance with Article 13.~~**

**~~3. The amount of the fines referred to in paragraph 1 shall amount to at least EUR 500 000 and shall not exceed EUR 5 million for the infringements referred to in points (a) to (i) of paragraph 2.~~**

**~~4. When determining the level of a fine pursuant to paragraph 3, ESMA shall take into account the criteria set out in Article 20(2).~~**

**~~5. Notwithstanding paragraph 3, where a person has directly or indirectly benefited financially from the infringement, the amount of the fine shall be at least equal to that benefit.~~**

**~~Where an act or omission of a person constitutes more than one infringement listed in paragraph 2, only the higher fine calculated in accordance with paragraph 4 and relating to one of those infringements shall apply.~~**

***~~Article 20b~~***

**~~1. ESMA shall, by decision, impose periodic penalty payments in order to compel:~~**

**~~(a) a person to put an end to an infringement in accordance with a decision taken pursuant to Article 20(1)(b);~~**

**~~(b) a person referred to in Article 19a(1):~~**

**~~(i) to supply complete information which has been requested by a decision pursuant to Article 19a;~~**

**~~(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 19b;~~**

**~~(iii) to submit to an on-site inspection ordered by a decision taken pursuant to Article 19c.~~**

**~~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.~~**

**~~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 20c~~***

**~~1. ESMA shall disclose to the public every fine and periodic penalty payment that has been imposed pursuant to Articles 20a and 20b unless such disclosure to the public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.~~**

**~~2. Fines and periodic penalty payments imposed pursuant to Articles 20a and 20b 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 20a and 20b shall be enforceable.~~**

**~~Enforcement shall be governed by the rules of civil procedure in force in the Member State or third-country in which it is carried out.~~**

**~~5. The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the European Union.";~~**

**~~Articles 21 and 21a are replaced by the following:~~**

***~~"Article 21~~***

**~~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 20a(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 approval of the prospectus 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, 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'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 19a and to conduct investigations and on-site inspections in accordance with Articles 19b and 19c.~~**

**~~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'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 subject to the investigations, after having heard those persons in accordance with Article 20b, ESMA shall decide if one or more of the infringements listed in Article 20a(2) has been committed by the persons subject to the investigations and, in such a case, shall take a supervisory measure in accordance with Article 20.~~**

**~~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 25 by [PO: Please insert date 24 months after the date of entry into force] 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 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 21a~~***

**~~1. Before taking any decision pursuant to Articles 20, 20a and 20b ESMA shall give the persons subject to proceedings the opportunity to be heard on its findings. ESMA shall base its decisions only on findings on which the persons subject to proceedings have had an opportunity to comment.~~**

**~~The first subparagraph shall not apply where urgent action pursuant to Article 20 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 defence of the persons subject to proceedings 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.~~**

**~~the following Articles 21b, 21c, and 21d are inserted;~~**

***~~“Article 21b~~***

**~~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 21c~~***

**~~1. ESMA shall charge fees to managers of qualifying venture capital funds 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 registration authorisation and supervision of managers of qualifying venture capital funds and qualifying venture capital funds 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 21d.~~**

**~~2. The amount of an individual fee charged to a particular manager of a qualifying venture capital fund shall cover all administrative costs incurred by ESMA for its activities in relation to registration and on-going supervision of a manager of qualifying venture capital funds and a qualifying venture capital fund. It shall be proportionate to assets under management of the qualifying venture capital fund concerned or, where relevant, own funds of the manager of qualifying venture capital fund.~~**

**~~3. The Commission shall adopt delegated acts in accordance with Article 25 by [PO: Please insert date 24 months after the date of entry into force] 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 21d~~***

**~~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 19a and to conduct investigations and on-site inspections in accordance with Article 19b and Article 19c.~~**

**~~By way of derogation from the first subparagraph, the registrations pursuant to Articles 14 and 14a 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 delegated act referred to in Article 21c(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 25 is replaced by the following:~~**

***~~“Article 25~~***

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

**~~2. The power to adopt delegated acts referred to in Articles 8(3), 21(10) and 21c(3) shall be conferred on the Commission for an indeterminate period of time from [PO: Please insert date of entry into force].~~**

**~~3. The delegation of power referred to in Articles 8(3), 21(10) and 21c(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.~~**

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

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

**~~6. A delegated act adopted pursuant to Articles 8(3), 21(10) and 21c(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 [two months] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.";~~**

**~~Article 26 is amended as follows:~~**

**~~in paragraph 1,~~**

**~~(i) point (f) is replaced by the following:~~**

**~~"(f) the effectiveness, proportionality and application of fines and periodic penalty payments provided for in accordance with this Regulation;"~~**

**~~(ii) the following point (k) is added:~~**

**~~"(k) an evaluation of the role of ESMA, its investigatory powers, the delegation of tasks to competent authorities, and the effectiveness of supervisory measures taken.";~~**

**~~in paragraph 2, t he following point (c) is added:~~**

**~~"(c) by [PO: Please insert date 84 months after entry into force] as regards points (f) and (k).";~~**

**~~the following Article 27a is inserted:~~**

***~~“Article 27a~~***

**~~1. All competences and duties related to the supervisory and enforcement activity in the field of qualifying venture capital funds that are conferred on competent authorities shall be terminated on [PO: Please insert date 36 months after entry into force]. Those competences and duties shall be taken-up by ESMA on the same date.~~**

**~~2. Any files and working documents related to the supervisory and enforcement activity in the field of qualifying venture capital funds, 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 registration that has been received by competent authorities before [PO: Please insert date 30 months after entry into force] shall not be transferred to ESMA, and the decision to register or refuse registration shall be taken by the relevant authority.~~**

**~~3. The competent authorities referred to in paragraph 1 shall ensure that any existing records and working papers, or certified copies thereof, shall be transferred to ESMA as soon as possible and in any event by qualifying venture capital funds. 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 qualifying venture capital funds.~~**

**~~4. ESMA shall act as the legal successor of 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 registration of a manager of a qualifying venture capital fund or of a qualifying venture capital fund granted by a competent authority referred to in paragraph 1 shall remain valid after the transfer of competences to ESMA..”.~~**

***~~Article 5~~***

***~~Amendments to Regulation (EU) No 346/2013 on European social entrepreneurship funds~~***

**~~Regulation (EU) No 346/2013 is amended as follows:~~**

**~~(1) Article 2 is amended as follows:~~**

**~~in paragraph 1, point (c) is deleted;~~**

**~~paragraph 2 is replaced by the following:~~**

**~~“2. Articles 3 to 6, Articles 10 and 13, points (d), (e) and (f) of Article 14(1), Articles 15a to 20, 20a to 20c, 21, 21a to 21c, 22, 22a to 22d and 26 of this Regulation shall apply to managers of collective investment undertakings authorised under Article 6 of Directive 2011/61/EU that manage portfolios of qualifying social entrepreneurship funds and intend to use the designation ‘EuSEF’ in relation to the marketing of those funds in the Union.”;~~**

**~~in Article 3, the first paragraph is amended as follows:~~**

**~~point (m) is replaced by the following:~~**

**~~“(m) ‘competent authority’ means any competent authority referred to in points (f) and (h) of Article 4(1) of Directive 2011/61/EU;”;~~**

**~~point (n) is deleted;~~**

**~~Article 7 the following subparagraphs  are added:~~**

**~~“ESMA shall develop draft regulatory technical standards specifying the criteria to be used to assess whether managers of qualifying social entrepreneurship funds comply with their obligations under points (a) to (g) of paragraph 1, ensuring consistency with Article 12(1) of Directive 2011/61/EU.~~**

**~~ESMA shall submit those draft regulatory technical standards to the Commission by [PO: Please insert date 24 months after the date of entry into force ].~~**

**~~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.”;~~**

**~~in Article 8, the following paragraph 3 is added:~~**

**~~“3. The Commission shall adopt delegated acts in accordance with Article 26 specifying the requirements for the delegation of functions referred to in paragraph 2, ensuring consistency with the requirements applicable to the delegation of functions set out in Article 20 of Directive 2011/61/EU.”;~~**

**~~Article 11 is amended as follows:~~**

**~~in the second and in the last sentence of paragraph 3, the words “the competent authority of their home Member State” are replaced by the words “ESMA”;~~**

**~~in paragraph 5 the words “the competent authority of their home Member State” are replaced by the word “ESMA”;~~**

**~~the following paragraph 7 is added:~~**

**~~“7. ESMA shall develop draft regulatory technical standards specifying the appropriate human and technical resources necessary for the proper management of the qualifying social entrepreneurship funds referred to in paragraph 1 .~~**

**~~ESMA shall submit those draft regulatory technical standards to the Commission by [PO: Please insert date 24 months after the date of entry into force].~~**

**~~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.”;~~**

**~~in Article 12, the following paragraphs 3 and 4 are added:~~**

**~~“3. ESMA shall develop draft regulatory technical standards specifying the rules and procedures for the valuation of assets referred to in paragraph 1, ensuring consistency with the requirements applicable to the valuation of assets set out in Article 19 of Directive 2011/61/EU.~~**

**~~ESMA shall submit those draft regulatory technical standards to the Commission by [PO: Please insert date 24 months after the date of entry into force].~~**

**~~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 13 is amended as follows:~~**

**~~in paragraph 1, in the first sentence of the first subparagraph, the words “the competent authority of the home Member State” are replaced by the word “ESMA”;~~**

**~~paragraph 4 is replaced by the following:~~**

**~~“4. ESMA shall make available, upon request, information gathered under this Article to competent authorities in a timely manner.”;~~**

**~~Article 15 is amended as follows:~~**

**~~paragraph 1 is amended as follows:~~**

**~~(i) in the introductory words, the words “the competent authority of their home Member State” are replaced by the word “ESMA”;~~**

**~~(ii) the following point (-a) is inserted:~~**

**~~“(-a) the Member State in which the manager of a qualifying social entrepreneurship fund has its registered office”;~~**

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

**~~“(b) the identity and the domicile of the qualifying social entrepreneursh2ip funds the units or shares of which are to be marketed and their investment strategies”;~~**

**~~in the introductory words of paragraph 2, the words “the competent authority of the home Member State” are replaced by the word “ESMA”;~~**

**~~paragraph 4 is replaced by the following:~~**

**~~“4. ESMA shall inform all of the following whether the manager referred to in paragraph 1 have been registered as a manager of a qualifying social entrepreneurship fund no later than two months after it has provided all the information referred to in that paragraph:~~**

**~~(a) the manager referred to in paragraph 1;~~**

**~~(b) the competent authorities of the Member States referred to in point (-a) of paragraph 1;~~**

**~~(c) the competent authorities of the Member States refer to in point (d) of paragraph 1.";~~**

**~~paragraph 6 is amended as follows:~~**

**~~(i) in the first subparagraph, the words “the competent authority of their home Member State” are replaced by the word “ESMA”;~~**

**~~(ii) the second subparagraph is replaced by the following:~~**

**~~“Where ESMA objects to the changes referred to in the first subparagraph, it shall inform the manager of the qualifying social entrepreneurship fund within two months of the notification of those changes and shall state the reasons for the objection. The changes referred to in the first subparagraph may only be implemented provided that ESMA does not object to those changes within that period.”;~~**

**~~paragraphs 7 and 8 are replaced by the following:~~**

**~~“7. ESMA shall develop draft regulatory technical standards specifying the criteria to assess the sufficient good repute and the sufficient experience referred to in point (a) of paragraph 2.~~**

**~~ESMA shall submit those draft regulatory technical standards to the Commission by [PO: Please insert date 24 months after the date of entry into force of this Regulation].~~**

**~~Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~**

**~~8. ESMA shall develop draft implementing technical standards on specifying the forms, templates and procedures for the provision of the information referred to in paragraph 1, including the information to be provided for the purposes of point (a) of paragraph 2.~~**

**~~ESMA shall submit those draft implementing technical standards to the Commission by [PO: Please insert date 24 months after the date of entry into force of this Regulation].~~**

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

**~~Article 15a is amended as follows:~~**

**~~in the introductory words of paragraph 2, the words “the competent authority of the qualifying social entrepreneurship fund” are replaced by the word “ESMA”;~~**

**~~paragraph 3 is replaced by the following:~~**

**~~“3. For the purposes of assessing an application for registration pursuant to paragraph 1, ESMA shall ask the competent authority of the manager submitting the application whether the qualifying social entrepreneurship fund falls within the scope of that manager's authorisation to manage collective investment undertakings and whether the conditions laid down in point (a) of Article 15(2) are fulfilled.~~**

**~~ESMA may request clarification and information as regards the documentation and information provided under the first subparagraph.~~**

**~~The competent authority of the manager shall provide an answer within one month of the date of receipt of a request submitted by ESMA pursuant to first or second subparagraphs.”;~~**

**~~in paragraph 5 the words “the competent authority of the qualifying social entrepreneurship fund” are replaced by the word “ESMA”;~~**

**~~paragraph 6 is replaced by the following:~~**

**~~“6. ESMA shall inform all of the following whether a fund has been registered as a qualifying social entrepreneurship fund no later than two months after the managers of those funds have provided all the documentation referred to in paragraph 2:~~**

**~~(a) the manager referred to in paragraph 1;~~**

**~~(b) the competent authorities of the Member State referred to in Article 15(1)(-a);~~**

**~~(c) the competent authorities of the Member States referred to in Article 15(1)(d);~~**

**~~(d) the competent authorities of the Member States referred to in Article 15a(2)(d).”;~~**

**~~the first subparagraph of paragraph 8 is replaced by the following:~~**

**~~“8. ESMA shall develop draft regulatory technical standards to specify the information to be provided pursuant to paragraph 2.~~**

**~~ESMA shall submit those draft regulatory technical standards to the Commission by [PO: Please insert date 24 months after the date of entry into force of this Regulation].~~**

**~~Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.”;~~**

**~~paragraphs 9 and 10 are deleted;~~**

**~~Article 15b is replaced by the following:~~**

***~~“Article 15b~~***

**~~ESMA shall notify any decision refusing to register a manager referred to in Article 15 or a fund referred to in Article 15a to the managers referred to in those Articles.”;~~**

**~~the following Article 15c is inserted:~~**

***~~“Article 15c~~***

**~~1. Without prejudice to Article 21, ESMA shall withdraw the registration for an EuSEF where the manager of that EuSEF meets any of the following conditions:~~**

**~~(a) the manager has expressly renounced the authorisation or has not made use of the authorisation within six months after the authorisation has been granted;~~**

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

**~~(c) the EuSEF no longer meets the conditions under which it was authorised.~~**

**~~2. The withdrawal of the authorisation shall have immediate effect throughout the Union.”;~~**

**~~in Article 16, the words “the competent authority of the home Member State” are replaced by the word “ESMA”;~~**

**~~Article 17 is amended as follows:~~**

**~~paragraph 1 is replaced by the following:~~**

**~~“1. ESMA shall notify the competent authorities referred to in point (4) of Article 15 and in point (6) of Article 15a immediately of any registration or removal from the register of a manager of a qualifying social entrepreneurship fund, any addition to or removal from the register of a qualifying social entrepreneurship fund and any addition to or removal from the list of Member States in which a manager of a qualifying social entrepreneurship fund intends to market those funds.”;~~**

**~~paragraph 3 is replaced by the following:~~**

**~~“3. In order to ensure uniform application of this Article, ESMA shall develop draft implementing technical standards to determine the format of notification under this Article.~~**

**~~ESMA shall submit those draft implementing technical standards to the Commission by [PO: Please insert date 24 months after the date of entry into force of this Regulation].~~**

**~~Power is conferred on the Commission to adopt the implementing technical standards referred to in paragraph 3 of this Article in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1095/2010.”;~~**

**~~paragraphs 4 and 5 are deleted;~~**

**~~Article 17a is deleted;~~**

**~~Article 19 is replaced by the following:~~**

**~~“~~*~~Article 19~~***

**~~1. ESMA shall ensure that this Regulation is applied on an ongoing basis.~~**

**~~2. For the managers referred to in Article 2(1), ESMA shall supervise compliance with the requirements laid down in this Regulation.~~**

**~~3. For the managers referred to in Article 2(2), ESMA shall supervise the compliance with the rules laid down in provisions listed in Article 2(2) and the relevant requirements of Directive 2011/61/EU in respect of the qualifying social entrepreneurship fund.~~**

**~~ESMA shall be responsible for supervising the qualifying social entrepreneurship fund´s compliance with the obligations set out in the fund's rules and instruments of incorporation.~~**

**~~4. For the purposes of carrying out the tasks conferred on it by this Regulation, and with the objective of ensuring high standards of supervision, ESMA shall apply all relevant Union law, and where that Union law is composed of directives, the national legislation transposing those directives.~~**

**~~5. Competent authorities shall monitor that collective investment undertakings established or marketed in their territories do not use the designation ‘EuSEF’ or do not suggest that they are a EuSEF unless they are registered in accordance with this Regulation.~~**

**~~Where a competent authority believes that a collective investment undertaking uses the designation ‘EuSEF’, or suggests that it is a EuSEF without having been registered in accordance with this Regulation, it shall promptly inform ESMA thereof.”;~~**

**~~Article 20 is replaced by the following:~~**

***~~“Article 20~~***

**~~The powers conferred on ESMA or any official of or other person authorised by ESMA by Articles 20a to 20c shall not be used to require the disclosure of information or documents which are subject to legal privilege.”;~~**

**~~the following Articles 20a, 20b and 20c are inserted:~~**

***~~“Article 20a~~***

**~~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) managers of qualifying social entrepreneurship funds;~~**

**~~(b) persons involved in the management of qualifying social entrepreneurship funds;~~**

**~~(c) third parties to whom a manager of an qualifying social entrepreneurship fund has delegated functions;~~**

**~~(d) persons otherwise closely and substantially related or connected to the management of qualifying social entrepreneurship funds.~~**

**~~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 21a 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 21b where the production of the required information is incomplete;~~**

**~~(f) indicate the fine provided for in Article 21a, 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 20b~~***

**~~1. In order to carry out its duties under this Regulation, ESMA may conduct necessary investigations of persons referred to in Article 20a(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 20a(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 21b 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 20a(1) are not provided or are incomplete, and the fines provided for in Article 21, where the answers to questions asked to persons referred to in Article 20a(1) are incorrect or misleading.~~**

**~~3. The persons referred to in Article 20a(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 21b, 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 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 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 Article 61 of Regulation (EU) No 1095/2010.~~**

***~~Article 20c~~***

**~~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 20a(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 20b(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 21b where the persons concerned do not submit to the inspection.~~**

**~~5. The persons referred to in Article 20a(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 21b, 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 20b(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 20b(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.~~**

**~~11. 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 21 is replaced by the following:~~**

***~~“Article 21~~***

**~~1. Where, in accordance with Article 22(5), ESMA finds that a person has committed one of the infringements listed in Article 21a(2), it shall take one or more of the following actions:~~**

**~~(a) withdraw the registration of the manager of the qualifying social entrepreneurship fund or the qualifying social entrepreneurship fund;~~**

**~~(b) adopt a decision requiring the person to bring the infringement to an end;~~**

**~~(c) adopt a decision imposing fines;~~**

**~~(d) 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.~~**

**~~4. 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 1095/20101.”;~~**

**~~the following Articles 21a, 21b, and 21c are inserted:~~**

***~~“Article 21a~~***

**~~1. Where, in accordance with Article 22(8), 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.~~**

**~~3. The list of infringements referred to in paragraph 1 shall be the following:~~**

**~~(a) failure to comply with the requirements that apply to portfolio composition, in breach of Article 5;~~**

**~~(b) marketing, in breach of Article 6, the units and shares of a qualifying social entrepreneurship fund to non-eligible investors;~~**

**~~(c) using the designation ‘EuSEF’ without having been registered in accordance with Article 15, or without having registered a collective investment undertaking in accordance with Article 15a;~~**

**~~(d) using the designation ‘EuSEF’ for the marketing of funds which are not established in accordance with point (b)(iii) of the first paragraph of Article 3;~~**

**~~(e) obtaining registration through false statements or any other irregular means, in breach of Article 15 or Article 15a;~~**

**~~(f) failure to act honestly, fairly or with due skill, care or diligence, in conducting business, in breach of point (a) of the first paragraph of Article 7;~~**

**~~(g) failure to apply appropriate policies and procedures for preventing malpractices, in breach of point (b) of the first paragraph of Article 7;~~**

**~~(h) repeated failure to comply with the requirements under Article 13regarding the annual report;~~**

**~~(i) repeated failure to comply with the obligation to inform investors in accordance with Article 14.~~**

**~~3. The amount of the fines referred to in paragraph 1 shall amount to at least EUR 500 000 and shall not exceed EUR 5 million for the infringements referred to in points (a) to (i) of paragraph 2..~~**

**~~4. When determining the level of a fine pursuant to paragraph 3, ESMA shall take into account the criteria set out in Article 21(2).~~**

**~~5. Notwithstanding paragraph 3, where a 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 paragraph 2, only the higher fine calculated in accordance with paragraph 4 and relating to one of those infringements shall apply.~~**

***~~Article 21b~~***

**~~1. ESMA shall, by decision, impose periodic penalty payments in order to compel:~~**

**~~(a) a person to put an end to an infringement in accordance with a decision taken pursuant to Article 21(1)(b);~~**

**~~(b) a person referred to in Article 20a(1):~~**

**~~(i) to supply complete information which has been requested by a decision pursuant to Article 20a;~~**

**~~(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 20b;~~**

**~~(iii) to submit to an on-site inspection ordered by a decision taken pursuant to Article 20c.~~**

**~~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.~~**

**~~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 21c~~***

**~~1. ESMA shall disclose to the public every fine and periodic penalty payment that has been imposed pursuant to Articles 21a and 21b unless such disclosure to the public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.~~**

**~~2. Fines and periodic penalty payments imposed pursuant to Articles 21a and 21b 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 21a and 21b shall be enforceable.~~**

**~~Enforcement shall be governed by the rules of civil procedure in force in the Member State or third-country in which it is carried out.~~**

**~~5. The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the European Union.";~~**

**~~Articles 22 and 22a are replaced by the following:~~**

***~~"Article 22~~***

**~~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 21a(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 approval of the prospectus 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, 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'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 20a and to conduct investigations and on-site inspections in accordance with Articles 20b and 20c.~~**

**~~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'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 subject to the investigations, after having heard those persons in accordance with Article 21b, ESMA shall decide if one or more of the infringements listed in Article 21a(2) has been committed by the persons subject to the investigations and, in such a case, shall take a supervisory measure in accordance with Article 21.~~**

**~~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 26 by [PO: Please insert date 24 months after entry into force] 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 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 22a~~***

**~~1. Before taking any decision pursuant to Articles 21, 21a and 21b ESMA shall give the persons subject to proceedings the opportunity to be heard on its findings. ESMA shall base its decisions only on findings on which the persons subject to proceedings have had an opportunity to comment.~~**

**~~2. The first subparagraph shall not apply where urgent action pursuant to Article 21 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 defence of the persons subject to proceedings 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.”;~~**

**~~the following Articles 22b, 22c, and 22d are inserted:~~**

***~~“Article 22b~~***

**~~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 22c~~***

**~~1. ESMA shall charge fees to managers of qualifying social entrepreneurship funds 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 registration authorisation and supervision of managers of qualifying social entrepreneurship funds and qualifying social entrepreneurship funds 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 22d.~~**

**~~2. The amount of an individual fee charged to a particular manager of a qualifying social entrepreneurship fund shall cover all administrative costs incurred by ESMA for its activities in relation to registration and on-going supervision of a manager of qualifying social entrepreneurship funds and a qualifying social entrepreneurship fund. It shall be proportionate to assets under management of the qualifying social entrepreneurship fund concerned or, where relevant, own funds of the manager of qualifying social entrepreneurship fund.~~**

**~~3. The Commission shall adopt delegated acts in accordance with Article 26 by [PO: Please insert date 24 months after entry into force] 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 22d~~***

**~~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 20a and to conduct investigations and on-site inspections in accordance with Article 20b and Article 20c.~~**

**~~By way of derogation from the first subparagraph, the registrations pursuant to Articles 15 and 15a 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 delegated act referred to in Article 22c(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 26 is replaced by the following:~~**

***~~“Article 26~~***

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

**~~2. The power to adopt delegated acts referred to in Articles 8(3), 22(10) and 22c(3) shall be conferred on the Commission for an indeterminate period of time from [PO: Please insert date of entry into force].~~**

**~~3. The delegation of power referred to in Articles 8(3), 22(10) and 22c(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.~~**

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

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

**~~6. A delegated act adopted pursuant to Articles 8(3), 22(10) and 22c(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 [two months] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.";~~**

**~~Article 27 is amended as follows:~~**

**~~in paragraph 1,~~**

**~~(i) point (n) is added:~~**

**~~"(n) the effectiveness, proportionality and application of fines and periodic penalty payments provided for in accordance with this Regulation;"~~**

**~~(ii) the following point (o) is added:~~**

**~~"(o) an evaluation of the role of ESMA, its investigatory powers, the delegation of tasks to competent authorities, and the effectiveness of supervisory measures taken.";~~**

**~~(b) in paragraph 2, the following point (c) is added:~~**

**~~"(c) by [PO: Please insert date 84 months after entry into force] as regards points (n) and (o).";~~**

**~~the following Article 28a is inserted:~~**

***~~“Article 28a~~***

**~~1. All competences and duties related to the supervisory and enforcement activity in the field of qualifying social entrepreneurship funds that are conferred on competent authorities shall be terminated on [PO: Please insert date 36 months after entry into force]. Those competences and duties shall be taken-up by ESMA on the same date.~~**

**~~2. Any files and working documents related to the supervisory and enforcement activity in the field of qualifying social entrepreneurship funds, 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 registration that has been received by competent authorities before [PO: Please insert date 30 months after entry into force] shall not be transferred to ESMA, and the decision to register or refuse registration shall be taken by the relevant authority.~~**

**~~3. The competent authorities referred to in paragraph 1 shall ensure that any existing records and working papers, or certified copies thereof, shall be transferred to ESMA as soon as possible and in any event by qualifying social entrepreneurship funds. 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 qualifying social entrepreneurship funds.~~**

**~~4. ESMA shall act as the legal successor of 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 registration of a manager of a qualifying social entrepreneurship fund or of a qualifying social entrepreneurship fund granted by a competent authority referred to in paragraph 1 shall remain valid after the transfer of competences to ESMA..".~~**

”.

*Article 6*

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

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

Article 1 is amended as follows:

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

'(g) the authorisation and supervision of **CTP ~~data reporting service providers'~~**;

**~~in Article 1, the following paragraph 5a is inserted:~~**

**~~‘‘5a. Articles 40 and 42 also apply to in respect of management companies of undertakings for collective investment in transferable securities (UCITS) and UCITS investment companies authorised in accordance with Directive 2009/65/EC and of managers of alternative investment funds (AIFMs) authorized in accordance with Directive 2011/61/EU .";~~**

Article 2(1) is amended as follows:

**~~points (34), (35) and (36) are replaced by the following:~~**

**~~"(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;";~~**

**~~the following point (36a) is inserted:~~**

**~~'(36a) ‘data reporting service providers’ means the persons referred to in points (34) to (36) and persons referred to in Article 38a27a(2)];';~~**

**~~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.';~~**

**~~Article 26 is replaced by the following:~~**

***~~'Article 26~~***

***~~Obligation to report transactions~~***

**~~1. Investment firms which execute transactions in financial instruments shall report complete and accurate details of such transactions to ESMA as quickly as possible, and no later than the close of the following working day.~~**

**~~ESMA shall make available to the competent authorities any information reported in accordance with this Article.~~**

**~~2. The obligation laid down in paragraph 1 shall apply to:~~**

**~~(a) financial instruments which are admitted to trading or traded on a trading venue or for which a request for admission to trading has been made;~~**

**~~(b) financial instruments where the underlying is a financial instrument traded on a trading venue; and~~**

**~~(c) financial instruments where the underlying is an index or a basket composed of financial instruments traded on a trading venue~~**

**~~The obligation shall apply to transactions in financial instruments referred to in points (a) to (c) irrespective of whether or not such transactions are carried out on the trading venue.~~**

**~~3. The reports shall, in particular, include details of the names and numbers of the financial instruments bought or sold, the quantity, the dates and times of execution, the transaction prices, a designation to identify the clients on whose behalf the investment firm has executed that transaction, a designation to identify the persons and the computer algorithms within the investment firm responsible for the investment decision and the execution of the transaction, a designation to identify the applicable waiver under which the trade has taken place, means of identifying the investment firms concerned, and a designation to identify a short sale as defined in Article 2(1)(b) of Regulation (EU) No 236/2012 in respect of any shares and sovereign debt within the scope of Articles 12, 13 and 17 of that Regulation. For transactions not carried out on a trading venue, the reports shall include a designation identifying the types of transactions in accordance with the measures to be adopted pursuant to Article 20(3)(a) and Article 21(5)(a). For commodity derivatives, the reports shall indicate whether the transaction reduces risk in an objectively measurable way in accordance with Article 57 of Directive 2014/65/EU.~~**

**~~4. Investment firms which transmit orders shall include in the transmission of that order all the details as specified in paragraphs 1 and 3. Instead of including the mentioned details when transmitting orders, an investment firm may choose to report the transmitted order, if it is executed, as a transaction in accordance with the requirements under paragraph 1. In that case, the transaction report by the investment firm shall state that it pertains to a transmitted order.~~**

**~~5. The operator of a trading venue shall report details of transactions in financial instruments traded on its platform which are executed through its systems by a firm which is not subject to this Regulation in accordance with paragraphs 1 and 3.~~**

**~~6. In reporting the designation to identify the clients as required under paragraphs 3 and 4, investment firms shall use a legal entity identifier established to identify clients that are legal persons.~~**

**~~ESMA shall develop by [PO: Please insert date 24 months after date of entry into force] guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 to ensure that the application of legal entity identifiers within the Union complies with international standards, in particular those established by the Financial Stability Board.~~**

**~~7. The reports shall be made to ESMA either by the investment firm itself, an ARM acting on its behalf or by the trading venue through whose system the transaction was completed, in accordance with paragraphs 1, 3 and 9.~~**

**~~Investment firms shall have responsibility for the completeness, accuracy and timely submission of the reports which are submitted to ESMA.~~**

**~~By way of derogation from that responsibility, where an investment firm reports details of those transactions through an ARM which is acting on its behalf or a trading venue, the investment firm shall not be responsible for failures in the completeness, accuracy or timely submission of the reports which are attributable to the ARM or trading venue. In those cases and subject to Article 66(4) of Directive 2014/65/EU the ARM or trading venue shall be responsible for those failures.~~**

**~~Investment firms must nevertheless take reasonable steps to verify the completeness, accuracy and timeliness of the transaction reports which were submitted on their behalf.~~**

**~~The home Member State shall require the trading venue, when making reports on behalf of the investment firm, to have sound security mechanisms in place designed to guarantee the security and authentication of the means of transfer of information, to minimise the risk of data corruption and unauthorised access and to prevent information leakage maintaining the confidentiality of the data at all times. The home Member State shall require the trading venue to maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.~~**

**~~Trade-matching or reporting systems, including trade repositories registered or recognised in accordance with Title VI of Regulation (EU) No 648/2012, may be approved by ESMA as an ARM in order to transmit transaction reports to ESMA in accordance with paragraphs 1, 3 and 9.~~**

**~~Where transactions have been reported to a trade repository in accordance with Article 9 of Regulation (EU) No 648/2012 which is approved as an ARM and where those reports contain the details required under paragraphs 1, 3 and 9 and are transmitted to ESMA by the trade repository within the time limit set in paragraph 1, the obligation on the investment firm laid down in paragraph 1 shall be considered to have been complied with.~~**

**~~Where there are errors or omissions in the transaction reports, the ARM, investment firm or trading venue reporting the transaction shall correct the information and submit a corrected report to ESMA.~~**

**~~8. When, in accordance with Article 35(8) of Directive 2014/65/EU, reports provided for under this Article are transmitted to ESMA, it shall transmit that information to the competent authorities of the home Member State of the investment firm, unless the competent authorities of the home Member State decide that they do not want to receive that information.~~**

**~~9. ESMA shall develop draft regulatory technical standards to specify:~~**

**~~(a) data standards and formats for the information to be reported in accordance with paragraphs 1 and 3, including the methods and arrangements for reporting financial transactions and the form and content of such reports;~~**

**~~(b) the criteria for defining a relevant market in accordance with paragraph 1;~~**

**~~(c) the references of the financial instruments bought or sold, the quantity, the dates and times of execution, the transaction prices, the information and details of the identity of the client, a designation to identify the clients on whose behalf the investment firm has executed that transaction, a designation to identify the persons and the computer algorithms within the investment firm responsible for the investment decision and the execution of the transaction, a designation to identify the applicable waiver under which the trade has taken place, the means of identifying the investment firms concerned, the way in which the transaction was executed, data fields necessary for the processing and analysis of the transaction reports in accordance with paragraph 3; and~~**

**~~(d) the designation to identify short sales of shares and sovereign debt as referred to in paragraph 3;~~**

**~~(e) the relevant categories of financial instrument to be reported in accordance with paragraph 2;~~**

**~~(f) the conditions upon which legal entity identifiers are developed, attributed and maintained, by Member States in accordance with paragraph 6, and the conditions under which those legal entity identifiers are used by investment firms so as to provide, pursuant to paragraphs 3, 4 and 5, for the designation to identify the clients in the transaction reports they are required to establish pursuant to paragraph 1;~~**

**~~(g) the application of transaction reporting obligations to branches of investment firms;~~**

**~~(h) what constitutes a transaction and execution of a transaction for the purposes of this Article.~~**

**~~(i) when an investment firm is deemed to have transmitted an order for the purposes of paragraph 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.~~**

**~~10. By [PO: Please insert date 24 months after date of entry into force], ESMA shall submit a report to the Commission on the functioning of this Article, including its interaction with the related reporting obligations under Regulation (EU) No 648/2012, and whether the content and format of transaction reports received and transmitted to competent authorities comprehensively enables monitoring of the activities of investment firms in accordance with Article 24 of this Regulation. The Commission may take steps to propose any changes in this regard. The Commission shall forward ESMA’s report to the European Parliament and to the Council.';~~**

**~~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.~~**

the following Title IVa is inserted:

*‘*TITLE IVa

**~~DATA REPORTING SERVICES~~**

***CONSOLIDATED TAPE PROVIDER***

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.~~**

**~~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 ESMA that the investment firm or the market operator comply with this Title. The provision of those services shall be included in their authorisation.~~**

**~~3. ESMA shall establish a register of all 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 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. ESMA shall regularly review the compliance of data reporting services providers with this Title. ESMA shall monitor that data reporting services providers comply at all times with the conditions for initial authorisation established under this Title.~~**

**1. The operation of a CTP as a regular occupation or business shall be subject to prior authorisation by ESMA in accordance with this Title.**

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

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

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

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

Article 27b is replaced by the following:

***Article 27b***

***Authorisation of CTPs***

***~~Authorisation of data reporting service providers~~***

**~~1. Data reporting service providers shall be authorised by ESMA for the purposes of Title IVa where:~~**

**~~(a) the data service provider is a legal person established in the Union; and~~**

**~~(b) the data 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 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 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.~~**

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

**(a) the CTP is a legal person established in the Union; and**

**(b) the CTP meets the requirements laid down in Title IVa.**

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

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

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

*Article 27c*

*Procedures for granting and refusing applications for authorisation*

1. The applicant **consolidated tape provider ~~data reporting service provider~~** shall submit an application providing all information necessary to enable ESMA to confirm that the **consolidated tape provider ~~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 shall assess whether the application for authorisation is complete within 20 working days of receipt of the application.

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

After assessing an application as complete, ESMA shall notify the **consolidated tape provider** **~~data reporting service provider~~** accordingly.

3. ESMA shall, within six months from the receipt of a complete application, assess the compliance of the **consolidated tape provider ~~data reporting service pr~~**ovider with this Title and shall adopt a fully reasoned decision granting or refusing authorisation and shall notify the applicant **consolidated tape provider** **~~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 6, including the programme of operations;

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

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

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

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

*Article 27d*

*Withdrawal of authorisation*

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

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

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

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

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

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

*Article 27e*

*Requirements for the management body of a* **consolidated tape provider *~~data reporting services provider~~***

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

The management body shall possess adequate collective knowledge, skills and experience to be able to understand the activities of the **consolidated tape provider** **~~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. **Consolidated tape provider** **~~Data reporting services provider~~** shall notify to ESMA all members of its management body and of any changes to its membership, along with all information needed to assess whether the entity complies with paragraph 1.

3. The management body of a **consolidated tape provider** **~~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 shall refuse authorisation if it is not satisfied that the person or the persons who shall effectively direct the business of the **consolidated tape provider ~~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 [PO: Please insert date 24 months after entry into force] for the assessment of the suitability of the members of the management body described in paragraph 1, taking into account different roles and functions carried out by them and the need to avoid conflicts of interest between members of the management body and users of the **~~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.~~**

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 4 is authentic;

(b) any measures to be taken are proportionate and not arbitrary or excessive.

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

*Article 38e*

*Exchange of information*

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

*Article 38f*

*Professional secrecy*

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

*Article 38g*

*Supervisory measures by ESMA*

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

(a) adopt a decision requiring the person to bring the infringement to an end;

(b) adopt a decision imposing fines pursuant to Articles 38h and 38i;

(c) issue public notices.

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

(a) the duration and frequency of the infringement;

(b) whether financial crime has been occasioned, facilitated or otherwise attributable to the infringement;

(c) whether the infringement has been committed intentionally or negligently.

(d) the degree of responsibility of the person responsible for the infringement;

(e) the financial strength of the person responsible for the infringement, as indicated by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;

(f) the impact of the infringement on investors’ interests;

(g) the importance of the profits gained, losses avoided by the person responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;

(h) the level of cooperation of the person responsible for the infringement with ESMA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(i) previous infringements by the person responsible for the infringement;

(j) measures taken after the infringement by the person responsible for the infringement to prevent its repetition.

3. Without undue delay, ESMA shall notify any action taken pursuant to paragraph 1 to the person responsible for the infringement, and shall communicate it to the competent authorities of the Member States and to the Commission. It shall publicly disclose any such decision on its website within 10 working days from the date when it was adopted.

The disclosure to the public referred to in the first subparagraph shall include the following:

(a) a statement affirming the right of the person responsible for the infringement to appeal the decision;

(b) where relevant, a statement affirming that an appeal has been lodged and specifying that such an appeal does not have suspensive effect;

(c) a statement asserting that it is possible for ESMA’s Board of Appeal to suspend the application of the contested decision in accordance with Article 60(3) of Regulation (EU) No 1095/2010.

*CHAPTER 2*

**ADMINISTRATIVE SANCTIONS AND OTHER MEASURES**

*Article 38h*

*Fines*

1. Where in accordance with Article 38k(5), ESMA finds that any person has, intentionally or negligently, committed one of the infringements listed in Title IVa, it shall adopt a decision imposing a fine in accordance with paragraph 2 of this Article..

An infringement shall be considered to have been committed intentionally if ESMA finds objective factors which demonstrate that a person acted deliberately to commit the infringement.

2. The maximum amount of the fine referred to in paragraph 1 shall be EUR 200 000 or, in the Member States whose currency is not the euro, the corresponding value in the national currency. .

3. When determining the level of a fine pursuant to paragraph 1, ESMA shall take into account the criteria set out in Article 38g(2).

*Article 38i*

*Periodic penalty payments*

1. ESMA shall, by decision, impose periodic penalty payments in order to compel:

(a) a person to put an end to an infringement in accordance with a decision taken pursuant to Article 38b(1)(a);

(b) a person referred to in Article 38b(1):

to supply complete information which has been requested by a decision pursuant to Article 38b;

to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by a decision pursuant to Article 38c;

to submit to an on-site inspection ordered by a decision taken pursuant to Article 38d.

2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed for each day of delay.

3. Notwithstanding paragraph 2, the amount of the periodic penalty payments shall be 3 % of the average daily turnover in the preceding business year, or, in the case of natural persons, 2 % of the average daily income in the preceding calendar year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.

4. A periodic penalty payment shall be imposed for a maximum period of six months following the notification of ESMA’s decision. Following the end of the period, ESMA shall review the measure.

*Article 38j*

*Disclosure, nature, enforcement and allocation of fines and periodic penalty payments*

1. ESMA shall disclose to the public every fine and periodic penalty payment that has been imposed pursuant to Articles 38h and 38i unless such disclosure to the public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved. Such disclosure shall not contain personal data within the meaning of Regulation (EC) No 45/2001.

2. Fines and periodic penalty payments imposed pursuant to Articles 38h and 38i shall be of an administrative nature.

3. Where ESMA decides to impose no fines or penalty payments, it shall inform the European Parliament, the Council, the Commission, and the competent authorities of the Member State concerned accordingly and shall set out the reasons for its decision.

4. Fines and periodic penalty payments imposed pursuant to Articles 38h and 38i shall be enforceable.

5. Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out.

6. The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the European Union.

*Article 38k*

*Procedural rules for taking supervisory measures and imposing fines*

1. Where, in carrying out its duties under this Regulation, ESMA finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in Title IVa, ESMA shall appoint an independent investigation officer within ESMA to investigate the matter. The appointed officer shall not be involved or have been directly or indirectly involved in the supervision or the authorisation process of the **consolidated tape provider** **~~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 [PO: Please insert date 24 months after entry into force] by to specifying further the rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on the rights of the defence, temporal provisions, and the collection of fines or periodic penalty payments, and the limitation periods for the imposition and enforcement of fines and periodic penalty payments.

11. ESMA shall refer matters for criminal prosecution to the relevant national authorities where, in carrying out its duties under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. In addition, ESMA shall refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from identical fact or facts which are substantially the same has already acquired the force of *res judicata* as the result of criminal proceedings under national law.

*Article 38l*

*Hearing of the persons concerned*

1. Before taking any decision pursuant to Articles 38g, 38h and 38i, ESMA shall give the persons subject to the proceedings the opportunity to be heard on its findings. ESMA shall base its decisions only on findings on which the persons subject to the proceedings have had an opportunity to comment.

The first subparagraph shall not apply if urgent action is needed in order to prevent significant and imminent damage to the financial system. In such a case ESMA may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.

2. The rights of the defence of the persons subject to investigations shall be fully respected in the proceedings. They shall be entitled to have access to ESMA’s file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or ESMA’s internal preparatory documents.

*Article 38m*

*Review by the Court of Justice*

The Court of Justice shall have unlimited jurisdiction to review decisions whereby ESMA has imposed a fine or a periodic penalty payment. It may annul, reduce or increase the fine or periodic penalty payment imposed.

*Article 38n*

*Authorisation and supervisory fees*

1. ESMA shall charge fees to the **~~data reporting service~~ consolidated tape provider** s in accordance with this Regulation and in accordance with the delegated acts adopted pursuant to paragraph 3. Those fees shall fully cover ESMA’s necessary expenditure relating to the authorisation and supervision of **consolidated tape provider ~~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 **consolidated tape provider ~~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 [PO: Please insert date 24 months after entry into force] by to specifying further the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid.'

*Article 38o*

*Delegation of tasks by ESMA to competent authorities*

1. Where necessary for the proper performance of a supervisory task, ESMA may delegate specific supervisory tasks to the competent authority of a Member State in accordance with the guidelines issued by ESMA pursuant to Article 16 of Regulation (EU) No 1095/2010. Such specific supervisory tasks may, in particular, include the power to carry out requests for information in accordance with Article 38b and to conduct investigations and on-site inspections in accordance with Article 38c and Article 38d.

2. Prior to delegation of a task, ESMA shall consult the relevant competent authority about:

(a) the scope of the task to be delegated;

(b) the timetable for the performance of the task; and

(c) the transmission of necessary information by and to ESMA.

3. In accordance with the regulation on fees adopted by the Commission pursuant to Article 38n(3), ESMA shall reimburse a competent authority for costs incurred as a result of carrying out delegated tasks.

4. ESMA shall review the decision referred to in paragraph 1 at appropriate intervals. A delegation may be revoked at any time.

5. A delegation of tasks shall not affect the responsibility of ESMA and shall not limit ESMA’s ability to conduct and oversee the delegated activity."; Article 50 is amended as follows:

paragraph 2 is replaced by the following:

'2. The power to adopt delegated acts referred to in Article 1(9), Article 2(2), Article 13(2), Article 15(5), Article 17(3), Article 19(2) and (3), Article 27c, Article 31(4), Article 40(8), Article 41(8), Article 42(7), Article 45(10) and Article 52(10) and (12) shall be conferred for an indeterminate period of time from 2 July 2014.';

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

'The delegation of power referred to in Article 1(9), Article 2(2), Article 13(2), Article 15(5), Article 17(3), Article 19(2) and (3), Article 27c, Article 31(4), Article 40(8), Article 41(8), Article 42(7), Article 45(10) and Article 52(10) and (12) may be revoked at any time by the European Parliament or by the Council.';

in paragraph 5, the first sentence is replaced by the following:

'A delegated act adopted pursuant to Article 1(9), Article 2(2), Article 13(2), Article 15(5), Article 17(3), Article 19(2) and (3), Article 27c, Article 31(4), Article 40(8), Article 41(8), Article 42(7), Article 45(10) and Article 52(10) or (12) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object.';

in Article 52, the following paragraphs 13 and 14 are added:

'13. The Commission shall, after consulting ESMA, present reports to the European Parliament and the Council on the functioning of the consolidated tape established in accordance with Title IVa. The report relating to Article 27d(1) shall be presented by 3 September 2019. The report relating to Article 27d(2) shall be presented by 3 September 2021.

The reports referred to in the first subparagraph shall assess the functioning of the consolidated tape against the following criteria:

(a) the availability and timeliness of post trade information in a consolidated format capturing all transactions irrespective of whether they are carried out on trading venues or not;

(b) the availability and timeliness of full and partial post trade information that is of a high quality, in formats that are easily accessible and usable for market participants and available on a reasonable commercial basis.

Where the Commission concludes that the CTPs have failed to provide information in a way that meets the criteria set out in the second subparagraph, the Commission shall attach a request to its report for ESMA to launch a negotiated procedure for the appointment though a public procurement process run by ESMA of a commercial entity operating a consolidated tape. ESMA shall launch the procedure after receiving the request from the Commission on the conditions specified in the Commission’s request and in accordance with Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (\*\*).

14. The Commission shall, where the procedure outlined in paragraph 13 is initiated, adopt delegated acts in accordance with Article 50, by specifying measures in order to:

(a) provide for the contract duration of the commercial entity operating a consolidated tape and the process and conditions for renewing the contract and the launching of new public procurement;

(b) provide that the commercial entity operating a consolidated tape shall do so on an exclusive basis and that no other entity shall be authorised as a CTP in accordance with Article 27a;

(c) empower ESMA to ensure adherence with tender conditions by the commercial entity operating a consolidated tape appointed through a public procurement;

(d) ensure that the post-trade information provided by the commercial entity operating a consolidated tape is of a high quality, in formats that are easily accessible and usable for market participants and in a consolidated format capturing the entire market;

(e) ensure that the post trade information is provided on a reasonable commercial basis, on both a consolidated and unconsolidated basis, and meets the needs of the users of that information across the Union;

(f) ensure that trading venues and APAs shall make their trade data available to the commercial entity operating a consolidated tape appointed through a public procurement process run by ESMA at a reasonable cost;

(g) specify arrangements applicable where the commercial entity operating a consolidated tape appointed through a public procurement fails to fulfil the tender conditions;

(h) specify arrangements under which CTPs authorised under Article 27a may continue to operate a consolidated tape where the empowerment provided for in point (b) of this paragraph is not used or, where no entity is appointed through the public procurement, until such time as a new public procurement is completed and a commercial entity is appointed to operate a consolidated tape.

\* Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

\*\* Regulation (EU, Euroatom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euroatom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).';

the following Articles 54a and 54b are inserted:

*'Article 54a  
Transitional measures related to ESMA*

1. All competences and duties related to the supervisory and enforcement activity in the field of **consolidated tape provider** **~~data reporting services providers~~** that are conferred on competent authorities pursuant to Article 67 of Directive 2014/65/EU shall be terminated on [PO: Please insert date 36 months after entry into force]. Those competences and duties shall be taken-up by ESMA on the same date.

2. Any files and working documents related to the supervisory and enforcement activity in the field of **consolidated tape provider ~~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 [PO: Please insert date 30 months after entry into force] shall not be transferred to ESMA, and the decision to register or refuse registration shall be taken by the relevant authority.

3. The competent authorities referred to in paragraph 1 shall ensure that any existing records and working papers, or certified copies thereof, shall be transferred to ESMA as soon as possible and in any event by **consolidated tape provider ~~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 **consolidated tape provider ~~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 **consolidated tape provider** **~~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.

\* Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).'.

***~~Article 7~~***

***~~Amendments to Regulation (EU) No 2015/760 on European long-term investment funds~~***

**~~Regulation (EU) 2015/760 is amended as follows:~~**

**~~(1) Article 2 is amended as follows:~~**

**~~point (10) is replaced by the following:~~**

**~~“(10) ‘competent authority’ means any competent authority referred to in points (f) and (h) of Article 4(1) of Directive 2011/61/EU;”;~~**

**~~point (11) is deleted;~~**

**~~in Article 3, paragraph 3 is replaced by the following:~~**

**~~“3. ESMA shall keep a central public register identifying each ELTIF authorised under this Regulation and the manager of the ELTIF. The register shall be made available in electronic format.”;~~**

**~~Article 5 is amended as follows:~~**

**~~paragraph 1 is amended as follows:~~**

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

**~~“An application for authorisation as an ELTIF shall be made to ESMA.”;~~**

**~~(ii) in the second subparagraph, the following point (e) is added:~~**

**~~“(e) a list of Member States where the ELTIF is intended to be marketed.”;~~**

**~~(iii) the third subparagraph is replaced by the following:~~**

**~~“ESMA may request clarification and information as regards the documentation and information provided under the second subparagraph.”;~~**

**~~paragraph 2 is amended as follows:~~**

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

**~~“Only an EU AIFM authorised in accordance with Directive 2011/61/EU may apply to ESMA for approval to manage an ELTIF for which authorisation is requested in accordance with paragraph 1.”;~~**

**~~(ii) the last subparagraph is replaced by the following:~~**

**~~“ESMA may ask the competent authority of the EU AIFM for clarification and information as regards the documentation referred to in the second subparagraph or an attestation as to whether ELTIFs fall within the scope of the EU AIFM's authorisation to manage AIFs. The competent authority of the EU AIFM shall provide an answer within 10 working days from the date on which it received the request submitted by ESMA.”;~~**

**~~paragraph 4 is replaced by the following:~~**

**~~“4. Any subsequent modifications to the documentation referred to in paragraphs 1 and 2 shall be immediately notified to ESMA.”;~~**

**~~paragraph 5 is replaced by the following:~~**

**~~“5. By way of derogation from paragraphs 1 to 3, an EU AIF the legal form of which permits internal management and the governing body of which chooses not to appoint an external AIFM shall apply to ESMA simultaneously for authorisation as an ELTIF in accordance with this Regulation and as an AIFM in accordance with Directive 2011/61/EU.~~**

**~~The application for authorisation as an internally managed ELTIF shall include the following:~~**

**~~(a) the fund rules or instruments of incorporation;~~**

**~~(b) information on the identity of the depositary;~~**

**~~(c) a description of the information to be made available to investors, including a description of the arrangements for dealing with complaints submitted by retail investors;~~**

**~~(e) a list of Member States where the ELTIF is intended to be marketed;~~**

**~~(f) the information referred to in points (a) to (e) of Article 7(2) of Directive 2011/61/EU.~~**

**~~ESMA shall inform the EU AIF about whether the authorisations referred to in the first subparagraph have been granted within three months from the date of submission of a complete application.”;~~**

**~~the following paragraphs 6 and 7 are added:~~**

**~~“6. ESMA shall notify without delay the competent authorities of the Member States in which the ELTIF is intended to be marketed of the authorisations granted pursuant to Article 6 in accordance with Article 31(2).~~**

**~~7. The notification referred to in paragraph 6 shall comprise the following information :~~**

**~~(a) the identification of the manager of the ELTIF, of the ELTIF and of the Member State in which the ELTIF has its registered office or head office;~~**

**~~(b) the ELTIF rules or instruments of incorporation;~~**

**~~(c) the identification of the depositary of the ELTIF;~~**

**~~(d) a description of the information to be made available to investors;~~**

**~~(e) a description of the arrangements for dealing with complaints submitted by retail investors;~~**

**~~(f) the prospectus and, where relevant, the key information document referred to in Regulation (EU) No 1286/2014;~~**

**~~(g) information on the facilities referred to in Article 26.”;~~**

**~~Article 6 is amended as follows:~~**

**~~paragraphs 1 to 3 are replaced by the following:~~**

**~~“1. An EU AIF shall be authorised as an ELTIF only where ESMA:~~**

**~~(a) is satisfied that the EU AIF is able to meet all the requirements of this Regulation;~~**

**~~(b) has approved the application of an EU AIFM authorised in accordance with Directive 2011/61/EU to manage the ELTIF, the fund rules or instruments of incorporation, and the choice of the depositary.~~**

**~~2. In the event that an EU AIF makes an application pursuant to Article 5(5) of this Regulation, ESMA shall authorise the EU AIF as an ELTIF only where it:~~**

**~~(a) is satisfied that the EU AIF complies with this Regulation;~~**

**~~(b) is satisfied that the EU AIF complies with the requirements of Directive 2011/61/EU;~~**

**~~(c) has approved the fund rules or instruments of incorporation, and the choice of the depositary.~~**

**~~3. ESMA may refuse to approve the application of an EU AIFM to manage an ELTIF only where the EU AIFM:~~**

**~~(a) does not comply with this Regulation;~~**

**~~(b) does not comply with Directive 2011/61/EU in respect of the ELTIF it intends to manage;~~**

**~~(c) is not authorised by the competent authority of the manager of the EU AIFM to manage AIFs that follow investment strategies of the type covered by this Regulation;~~**

**~~(d) has not provided the documentation referred to in Article 5(2), or any clarification or information requested thereunder.~~**

**~~ESMA shall consult the competent authority of the EU AIFM before refusing to approve an application.”;~~**

**~~paragraph 4 is deleted;~~**

**~~paragraph 5 is replaced by the following:~~**

**~~“5. ESMA shall communicate to the EU AIF the reason for its refusal to grant authorisation as an ELTIF.”;~~**

**~~paragraphs 6 and 7 are deleted;~~**

**~~the following Article 6a is inserted:~~**

***~~“Article 6a~~***

***~~Withdrawal of authorisation~~***

**~~1. Without prejudice to Article 35, ESMA shall withdraw the authorisation for an ELTIF where the manager of that ELTIF meets any of the following conditions:~~**

**~~(a) the manager has expressly renounced the authorisation or has not made use of the authorisation within six months after the authorisation has been granted;~~**

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

**~~(c) the ELTIF no longer meets the conditions under which it was authorised.~~**

**~~2. The withdrawal of the authorisation shall have immediate effect throughout the Union.”;~~**

**~~in Article 7, paragraph 3 is replaced by the following:~~**

**~~“3. The manager of the ELTIF shall be responsible for ensuring compliance with this Regulation and with the relevant requirements of Directive 2011/61/EU in respect of the ELTIF. The manager of the ELTIF shall also be liable for losses or damages resulting from non-compliance with this Regulation.”;~~**

**~~in paragraph 1 of Article 17 the second subparagraph is replaced by the following:~~**

**~~“The date referred to in point (a) of the first subparagraph shall take account of the particular features and characteristics of the assets to be invested by the ELTIF, and shall be no later than either five years after the date of the authorisation as an ELTIF, or half the life of the ELTIF as determined in accordance with Article 18(3), whichever is the earlier. In exceptional circumstances, ESMA, upon submission of a duly justified investment plan, may approve an extension of that time limit by no more than one additional year.”;~~**

**~~in paragraph 2 of Article 18, point (b) is replaced by the following:~~**

**~~“(b) at the time of authorisation and throughout the life of the ELTIF, the manager of the ELTIF is able to demonstrate to ESMA that an appropriate liquidity management system and effective procedures for monitoring the liquidity risk of the ELTIF are in place, which are compatible with the long-term investment strategy of the ELTIF and the proposed redemption policy;”;~~**

**~~in Article 21, paragraph 1 is replaced by the following:~~**

**~~“1. An ELTIF shall adopt an itemised schedule for the orderly disposal of its assets in order to redeem investors' units or shares after the end of the life of the ELTIF, and shall disclose this to ESMA at the latest one year before the date of the end of the life of the ELTIF.”;~~**

**~~in paragraph 3 of Article 23, point (f) is replaced by the following:~~**

**~~“(f) any other information considered by ESMA to be relevant for the purposes of paragraph 2.”;~~**

**~~in Article 24, paragraph 1 is replaced by the following:~~**

**~~“1. An ELTIF shall send its prospectus and any amendments thereto, as well as its annual report, to ESMA. Upon request, an ELTIF shall provide that documentation to the competent authority of the manager of the ELTIF. That documentation shall be provided by the ELTIF within the time period specified by ESMA and the competent authority of the manager of the ELTIF.”;~~**

**~~in Article 28, paragraph 3 is added:~~**

**~~“3. The Commission shall adopt delegated acts in accordance with Article 36a by [PO: Please insert date 24 months after date of entry into force] to specify the internal process for the assessment whether the ELTIF is suitable for marketing to retail investors referred to in paragraph 1, ensuring consistency with provisions regarding the assessment of suitability and appropriateness provided for in Article 25 of Directive 2014/65/EU\*.~~**

**~~\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_~~**

**~~\* Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).";~~**

**~~Articles 31 32, 33 and 34 are replaced by the following:~~**

***~~“Article 31~~***

***~~Marketing of units or shares of ELTIFs~~***

**~~The manager of an ELTIF shall be allowed to market the units or shares of that ELTIF immediately after the manager has been informed by ESMA of the notification referred to in Article 5(6).~~**

***~~Article 32~~***

***~~Supervision by ESMA~~***

**~~1. ESMA shall ensure that this Regulation is applied on an ongoing basis.~~**

**~~2. ESMA shall supervise compliance with the rules or instruments of incorporation of the ELTIF and with the obligations set out in the prospectus, which shall comply with this Regulation.~~**

**~~3. For the purposes of carrying out the tasks conferred on it by this Regulation, and with the objective of ensuring high standards of supervision, ESMA shall apply all relevant Union law, and where that Union law is composed of directives, the national legislation transposing those directives.~~**

**~~4. Competent authorities shall monitor that collective investment undertakings established or marketed in their territories do not use the designation ‘ELTIF’ or do not suggest that they are an ELTIF unless they are authorised in accordance with this Regulation.~~**

**~~Where a competent authority believes that a collective investment undertaking uses the designation ‘ELTIF’, or suggests that it is an ELTIF without having been authorised in accordance with this Regulation, it shall promptly inform ESMA thereof.~~**

***~~Article 33~~***

***~~Exercise of the powers referred to in Articles 34, 34a and 34b~~***

**~~The powers conferred on ESMA, any of its officials or any other person authorised by ESMA by Articles 34, 34a and 34b shall not be used to require the disclosure of information or documents that are subject to legal privilege.~~**

***~~Article 34~~***

***~~Requests for information~~***

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

**~~(a) managers of ELTIFs;~~**

**~~(b) persons involved in the management of ELTIFs;~~**

**~~(c) third parties to whom a manager of an ELTIF has delegated functions;~~**

**~~(d) persons otherwise closely and substantially related or connected to the management of ELTIFs.~~**

**~~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 Article 35a, where the information provided is incorrect or misleading.~~**

**~~3. When requiring to supply of 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 35b where the production of the required information is incomplete;~~**

**~~(f) indicate the fine provided for in Article 35a(3), in conjunction with point (n) of Article 35a(2), where the answers to questions asked are incorrect or misleading;~~**

**~~(g) indicate the right to appeal the decision before the Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union 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 who are concerned by the request for information are domiciled or established.”;~~**

**~~the following Articles 34a, 34b, 34c and 34d are inserted:~~**

***~~“Article 34a~~***

***~~General investigations~~***

**~~1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary investigations of persons referred to in Article 34(1). To that end, the officials of 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 34(1) or their representatives or staff for oral or written explanations on facts or documents related to the subject matter and purpose of the inspection and to record the answers;~~**

**~~(d) interview any other natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;~~**

**~~(e) request records of telephone and data traffic.~~**

**~~2. The officials of 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 35b where the production of the required records, data, procedures or any other material, or the answers to questions asked of the persons referred to in Article 34(1) are not provided or are incomplete, and the fines provided for in Article 35a(3), in conjunction with point (o) of Article 35a(2), where the answers to questions asked of the persons referred to in Article 34(1) are incorrect or misleading.~~**

**~~3. The persons referred to in Article 34(1) shall 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 35b, the legal remedies available under Regulation (EU) No 1095/2010 and the right to have the decision reviewed by the Court of Justice of the European Union.~~**

**~~4. In good time before the investigation, 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 national rules, 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 Article 61 of Regulation (EU) No 1095/2010.~~**

***~~Article 34b~~***

***~~On-site inspections~~***

**~~1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary on-site inspections at the business premises of the legal persons referred to in Article 34(1).~~**

**~~2. The officials of and other persons authorised by ESMA to conduct an on-site inspection may enter any business premises and land of the legal persons subject to an investigation decision adopted by ESMA and shall have all the powers stipulated in Article 34a(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 of 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 35b where the persons concerned do not submit to the inspection.~~**

**~~5. The persons referred to in Article 34(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 35b, 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 of the European Union.~~**

**~~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 of 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 34a(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 34a(1).~~**

**~~8. Where the officials of 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 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 in paragraph 7, that authority shall verify the following:~~**

**~~(a) the decision adopted by ESMA referred to in paragraph 4 is authentic;~~**

**~~(b) any measures to be taken are proportionate and not arbitrary or excessive.~~**

**~~For the purposes of point (b), the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on ESMA’s file. The lawfulness of ESMA’s decision shall be subject to review only by the Court of Justice following the procedure set out in Article 61 of Regulation (EU) No 1095/2010.~~**

***~~Article 34c~~***

***~~Exchange of information~~***

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

***~~Article 34d~~***

***~~Professional secrecy~~***

**~~1. The obligation of professional secrecy shall apply to ESMA, the competent authorities, and all persons who work or who have worked for ESMA, for the competent authorities or for any other person to whom ESMA has delegated tasks, including auditors and experts contracted by ESMA. Information covered by professional secrecy shall not be disclosed to another person or authority except where such disclosure is necessary for legal proceedings.~~**

**~~2. All the information that, under this Regulation, is acquired by, or exchanged between, ESMA and the competent authorities shall be considered confidential, except where ESMA or the competent authority states at the time of communication that such information may be disclosed or where such disclosure is necessary for legal proceedings.”;~~**

**~~the following Chapter VIa is inserted:~~**

***~~“CHAPTER VIa~~***

***~~ADMINISTRATIVE SANCTIONS AND OTHER MEASURES”~~***

**~~Article 35 is replaced by the following;~~**

***~~“Article 35~~***

***~~Supervisory measures by ESMA~~***

**~~1. Where, in accordance with Article 35d(8), ESMA finds that a person has committed one of the infringements listed in Article 35a(2), it shall take one or more of the following actions:~~**

**~~(a) withdraw the authorisation as an ELTIF;~~**

**~~(b) temporarily prohibit the manager of the ELTIF from marketing the ELTIF throughout the Union, until the infringement has been brought to an end;~~**

**~~(c) adopt a decision requiring the person to bring the infringement to an end;~~**

**~~(d) adopt a decision imposing fines pursuant to Article 35a;~~**

**~~(e) issue public notices.~~**

**~~2. When taking the decisions 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.”;~~**

**~~the following Articles 35a, 35b, 35c, 35d, 35e, 35f, 35g and 35h are added:~~**

***~~“Article 35a~~***

***~~Fines~~***

**~~1. Where, in accordance with Article 35d(8), ESMA finds that a manager of an ELTIF, persons referred to in Article 34(1) or a collective investment undertaking have, 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:~~**

**~~(a) failure to comply with the requirements set out in Article 8;~~**

**~~(b) investing, in breach of Articles 9 to 12, in non-eligible investments;~~**

**~~(c) composing and diversifying the portfolio in breach of Articles 13 and 17 or composing and diversifying the portfolio in breach of Articles 13 and 17 and taking no measures pursuant to Article 14;~~**

**~~(e) failure to comply with the concentration requirements set out in Article 15;~~**

**~~(f) failure to comply with the requirements on borrowing the cash set out in Article 16;~~**

**~~(g) failure to comply with the requirements on redemptions and life of the ELTIF set out in Article 18;~~**

**~~(h) failure to disclose information in accordance with Article 19(3) and (4);~~**

**~~(i) failure to offer new units or shares to existing investors in ELTIF in accordance with Article 20(2);~~**

**~~(j) disposing, in breach of Article 21, of ELTIF assets or distributes, in breach of Article 22, proceeds and capital;~~**

**~~(k) failure to comply with the transparency requirements set out in Articles 23 to 25;~~**

**~~(l) failure to comply with the requirements on marketing of units or shares of ELTIFs set out in Articles 26 to 31;~~**

**~~(m) obtaining authorisation through false statements or any other irregular means;~~**

**~~(n) failure to provide information in response to a decision requiring information pursuant to Article 34(2) and (3), or providing incorrect or misleading information in response to a simple request for information or a decision;~~**

**~~(o) infringing point (c) of Article 34a(1) by failing to provide an explanation, or by providing an incorrect or misleading explanation, on facts or documents related to the subject matter and purpose of an inspection;~~**

**~~(p) using the designation ‘ELTIF’ without having been authorised in accordance with this Regulation.~~**

**~~3. The amount of the fines referred to in paragraph 1 shall amount to at least EUR 500 000 and shall not exceed EUR 5 million for the infringements referred to in points (a) to (p) of paragraph 2.~~**

**~~4. When determining the level of a fine pursuant to paragraph 3, ESMA shall take into account the criteria set out in Article 35(2).~~**

**~~5. Notwithstanding paragraph 3, where a 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 paragraph 2, only the higher fine calculated in accordance with paragraph 4 and relating to one of those infringements shall apply.~~**

***~~Article 35b~~***

***~~Periodic penalty payments~~***

**~~1. ESMA shall, by decision, impose a periodic penalty payment in order to compel:~~**

**~~(a) a person to put an end to an infringement, in accordance with a decision taken pursuant to point (c) of Article 35(1);~~**

**~~(b) a person referred to in Article 34(1):~~**

**~~(i) to supply complete information which has been requested by a decision pursuant to Article 34;~~**

**~~(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 34a;~~**

**~~(iii) to submit to an on-site inspection ordered by a decision taken pursuant to Article 34b.~~**

**~~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 35c~~***

***~~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 35a and 35b, unless such disclosure to the public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.~~**

**~~2. Fines and periodic penalty payments imposed pursuant to Articles 35a and 35b 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 35a and 35b shall be enforceable.~~**

**~~Enforcement shall be governed by the rules of civil procedure in force in the Member~~~~State or third-country in which it is carried out.~~**

**~~4. The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the European Union.~~**

***~~Article 35d~~***

***~~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 35a(2), ESMA shall appoint an independent investigating officer within ESMA to investigate the matter. The investigating officer shall not be involved or have been involved in the direct or indirect supervision or registration process of the credit rating agency concerned and shall perform his functions independently from ESMA's Board of Supervisors.~~**

**~~2. The investigating officer shall investigate the alleged infringements, taking into account any comments submitted by the persons subject to investigation, and shall submit a complete file with his findings to ESMA's Board of Supervisors.~~**

**~~3. In order to carry out his tasks, the investigating officer may exercise the power to require information in accordance with Article 34 and to conduct investigations and on-site inspections in accordance with Articles 34a and 34b. When using those powers, the investigating officer shall comply with Article 33.~~**

**~~4. Where carrying out his tasks, the investigating 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's Board of Supervisors, the investigating officer shall give the persons subject to investigation the opportunity to be heard on the matters being investigated. The investigating officer shall base his findings only on facts on which the persons subject to investigation have had the opportunity to comment.~~**

**~~6. The rights of defence of the persons concerned 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 investigating officer shall notify that fact to the persons who are subject to investigations. The persons subject to 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 investigating officer's findings and, when requested by the persons concerned, after having heard those persons in accordance with Article 35e, ESMA shall decide if one or more of the infringements listed in Article 35a(2) has been committed by the persons subject to investigation, and in such case, shall take a supervisory measure in accordance with Article 35 and impose a fine in accordance with Article 35a.~~**

**~~9. The investigating 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 36a by [PO: Please insert date 24 months after date of entry into force] to further specify the procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on rights of defence, temporal provisions, the collection of fines or periodic penalty payments, and detailed rules on the limitation periods for the imposition and enforcement of penalties.~~**

**~~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 facts, or from facts which are substantially the same, has acquired the force of~~ *~~res judicata~~* ~~as the result of criminal proceedings under national law.~~**

***~~Article 35e~~***

***~~Hearing of the persons subject to the proceedings~~***

**~~1. Before taking any decision pursuant to Articles 35, 35a or points (a) and (b) of Article 35b(1), ESMA shall give the persons subject to the proceedings the opportunity to be heard on ESMA's findings. ESMA shall base its decisions only on findings on which the persons subject to the proceedings have had the opportunity to comment.~~**

**~~The first subparagraph shall not apply if urgent action pursuant to Article 35 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 defence of the persons subject to the proceedings shall be fully respected during 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 internal preparatory documents of ESMA.~~**

***~~Article 35f~~***

***~~Review by the Court of Justice of the European Union~~***

**~~The Court of Justice of the European Union shall have unlimited jurisdiction to review decisions whereby ESMA has imposed a fine or a periodic penalty payment. It may annul, reduce or increase the fine or periodic penalty payment imposed.~~**

***~~Article 35g~~***

***~~Authorisation and supervisory fees~~***

**~~1. ESMA shall charge fees to managers of ELTIFs 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 ELTIFs 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 35h.~~**

**~~2. The amount of an individual fee charged to a particular manager of ELTIF shall cover all administrative costs incurred by ESMA for its activities in relation to authorisation and supervision of a manager of ELTIF and ELTIF. It shall be proportionate to assets under management of the ELTIF concerned or, where relevant, own funds of the manager of ELTIF.~~**

**~~3. The Commission shall adopt delegated acts in accordance with Article 36a by [PO: Please insert date 24 months after date of entry into force] 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 35h~~***

***~~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 request information in accordance with Article 34 and to conduct investigations and on-site inspections in accordance with Article 34a and Article 34b.~~**

**~~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 to be delegated;~~**

**~~(c) the transmission of necessary information by and to ESMA.~~**

**~~3. In accordance with the delegated act referred to in Article 35g(3), ESMA shall reimburse a competent authority for the costs incurred as a result of carrying out delegated tasks.~~**

**~~4. ESMA shall review the delegation referred to in paragraph 1 at appropriate intervals. A delegation of tasks may be revoked at any time.~~**

**~~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. Supervisory responsibilities under this Regulation, including registration decisions, final assessments and follow-up decisions concerning infringements, shall not be delegated.”;~~**

**~~the following Articles 36a and 36b are inserted:~~**

***~~“Article 36a~~***

***~~Exercise of the delegation~~***

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

**~~2. The power to adopt delegated acts referred to in referred to in Articles 28(3), 35d(10) and 35g(3) shall be conferred on the Commission for an indeterminate period of time from [PO: Please insert date of entry into force].~~**

**~~3. The delegation of power referred to in Articles 28(3), 35d(10) and 35g(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.~~**

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

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

**~~6. A delegated act adopted pursuant to Articles 28(3), 35d(10) and 35g(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 [two months] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.~~**

***~~Article 36b~~***

***~~Transitional measures related to ESMA~~***

**~~1. All competences and duties related to the supervisory and enforcement activity in the field of ELTIFs that are conferred on competent authorities shall be terminated on [PO: Please insert date 36 months after entry into force]. Those competences and duties shall be taken-up by ESMA on the same date.~~**

**~~2. Any files and working documents related to the supervisory and enforcement activity in the field of ELTIFs, 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 as an ELTIF that has been received by competent authorities before [PO: Please insert date 30 months after entry into force] shall not be transferred to ESMA, and the decision to register or refuse authorsation shall be taken by the relevant 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 [PO: Please insert date 36 months after entry into force]. Those competent authorities shall also render all necessary assistance and advice to ESMA to facilitate effective and efficient transfer and taking-up of supervisory and enforcement activity in the field of ELTIFs.~~**

**~~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 an ELTIF granted by a competent authority referred to in paragraph 1 shall remain valid after the transfer of competences to ESMA.";";~~**

**~~Article 37 is amended as follows:~~**

**~~the following paragraph 1a is inserted:~~**

**~~"1a. By [[PO: Please insert date 84 months after entry into force], the Commission shall start a review of the application of this Regulation. The review shall analyse, in particular:~~**

**~~(a) the effectiveness, proportionality and application of fines and periodic penalty payments provided for in accordance with this Regulation;~~**

**~~(b) the role of ESMA, its investigatory powers, the delegation of tasks to competent authorities, and the effectiveness of supervisory measures taken.";~~**

**~~in paragraph 2, the introductory words: "Following the review referred to in paragraph 1 of this Article" are replaced by the following: "Following the reviews referred to in paragraphs 1 or 1a of this Article".~~**

*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 4, the following paragraph is added:~~**

**~~“9. The Commission shall adopt delegated acts in accordance with Article 49 to specify the requirements to ensure that the governance arrangements referred to in paragraph 1 are sufficiently robust.”;~~**

**~~in Article 12, the following paragraph is added:~~**

**~~“4. The Commission shall adopt delegated acts in accordance with Article 49 to specify the conditions to ensure that the methodology referred to in paragraph 1 complies with points (a) to (e) of that paragraph.”;~~**

**~~in Article 14, the following paragraph is added:~~**

**~~“4. The Commission shall adopt delegated acts in accordance with Article 49 to specify the characteristics of the systems and controls referred to in paragraph 1.”;~~**

**~~Article 20 is replaced by the following:~~**

***~~"Article 20~~***

***~~Critical benchmarks~~***

**~~1. The Commission shall designate as critical benchmark any benchmark provided by an administrator located within the Union and used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investment funds having a total value of at least EUR 500 billion on the basis of all the range of maturities or tenors of the benchmark, where applicable.~~**

**~~Where a competent authority of a Member State or ESMA is of the opinion that a benchmark should be designated as a critical benchmark in accordance with the first sub-paragraph, that competent authority or ESMA, as appropriate, shall notify the Commission thereof and substantiate its opinion in writing.~~**

**~~The Commission shall review its assessment of the criticality of the benchmarks at least every two years.~~**

**~~2. ESMA shall designate as critical any benchmarks referenced by financial instruments or financial contracts or for measuring the performance of investment funds having a total value of less than EUR 500 billion as set out in paragraph (1) that fulfil criterion (a) and either criterion (b) or (c) below:~~**

**~~(a) the benchmark has no, or very few, appropriate market-led substitutes;~~**

**~~(b) there would be significant and adverse impacts on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in more than one Member State in the event that the benchmark ceased to be provided, was provided on the basis of input data no longer fully representative of the underlying market or economic reality, or was provided on the basis of unreliable input data;~~**

**~~(c)(i) the benchmark is based on submissions by contributors the majority of which are located in that Member State, and~~**

**~~(c)(ii) there would be significant and adverse impacts on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in one Member State, in the event that the benchmark ceased to be provided, was provided on the basis of input data no longer fully representative of the underlying market or economic reality, or was provided on the basis of unreliable input data.~~**

**~~3. When assessing whether the criteria laid down in points (a) and (b) are fulfilled, ESMA shall take into account all of the consideration:~~**

**~~(i) the value of financial instruments and financial contracts that reference the benchmark and the value of investment funds referencing the benchmark for measuring their performance and their relevance in terms of the total value of financial instruments and of financial contracts outstanding, and of the total value of investment funds, in the Member States concerned;~~**

**~~(ii) the value of financial instruments and financial contracts that reference the benchmark and the value of investment funds referencing the benchmark for measuring their performance within the Member States concerned and their relevance in terms of the gross national product of those Member States;~~**

**~~(iii) any other figure to assess on objective grounds the potential impact of the discontinuity or unreliability of the benchmark on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in the Member States concerned.~~**

**~~4. Before designating a benchmark as a critical benchmark, ESMA shall consult the competent authority of the administrator of that benchmark and take into account the assessment made by that competent authority.~~**

**~~ESMA shall review its assessment of the criticality of the benchmark at least every two years.~~**

**~~ESMA shall notify the Commission without undue delay of any designation of a benchmark as a critical benchmark and of any decision to revise a designation of a benchmark as a critical benchmark in case the review referred to in the fourth subparagraph of this paragraph leads to the conclusion that a benchmark ESMA had designated as critical is no longer assessed as critical.~~**

**~~Where a competent authority of a Member State is of the opinion that a benchmark should be designated as a critical benchmark in accordance with this paragraph, that competent authority shall notify ESMA thereof and substantiate its opinion in writing. ESMA shall provide that competent authority with a reasoned opinion if it decides not to designate that benchmark as critical benchmark.~~**

**~~3. The Commission shall adopt implementing acts in accordance with the examination procedure referred to in Article 50(2) to establish a list of benchmarks which have been designated as critical benchmarks in accordance with paragraphs 1 and 2. The Commission shall adopt implementing acts in accordance with the examination procedure referred to in Article 50(2) to update that list without undue delay in the following situations:~~**

**~~(a) the Commission designates a benchmark as a critical benchmark or reviews that designation in accordance with paragraph 1;~~**

**~~(b) the Commission receives notifications from ESMA as referred to in the fifth subparagraph of paragraph 2.~~**

**~~4. The Commission shall be empowered to adopt delegated acts in accordance with Article 49 in order to:~~**

**~~(a) specify how the nominal amount of financial instruments other than derivatives, the notional amount of derivatives and the net asset value of investment funds are to be assessed, including in the event of an indirect reference to a benchmark within a combination of benchmarks, in order to be compared with the thresholds referred to in paragraph 1 of this Article and in point (a) of Article 24(1);~~**

**~~(b) review the calculation method used to determine the thresholds referred to in paragraph 1 of this Article in the light of market, price and regulatory developments as well as the appropriateness of the classification of benchmarks with a total value of financial instruments, financial contracts, or investment funds referencing them that is close to the thresholds; such review shall take place at least every two years as from ... [18 months after the date of entry into force of this Regulation];~~**

**~~(c) specify how the criteria laid down in points (i) to (iii) in the second subparagraph paragraph 2 of this Article are to be applied, taking into consideration any data which help assess on objective grounds the potential impact of the discontinuity or unreliability of the benchmark concerned on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in one or more Member States.~~**

**~~The Commission shall take into account relevant market or technological developments..”;~~**

**~~Article 21 is amended as follows:~~**

**~~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 thereof;~~**

**~~(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.”~~**

“3. Following completion of the assessment referred to in point (b) of paragraph 2, the competent authority shall have the power to compel the administrator to continue publishing the benchmark until such time as:

(a) the provision of the benchmark has been transitioned to a new administrator;

(b) the benchmark can be ceased to be provided in an orderly fashion; or

(c) the benchmark is no longer critical.

For the purposes of the first subparagraph, the period for which the competent authority may compel the administrator to continue to publish the benchmark shall not exceed 12 months.

**~~By the end of that period, the competent authority shall review its decision to compel the administrator to continue to publish the benchmark and may, where necessary, extend the time period by an appropriate period not exceeding a further 12 months. The maximum period of mandatory administration shall not exceed 24 months in total.~~**

**By the end of that period, the competent authority shall review its decision to compel the administrator to continue to publish the benchmark and may, where necessary, extend the time period by an appropriate period not exceeding a further 12 months. The maximum period of mandatory administration shall not exceed 5 years in total.”**

**~~a new paragraph 5 is added:~~**

**~~“5. The Commission shall be empowered to adopt delegated acts in accordance with Article 49 to specify the criteria on which the assessment referred to in point (b) of paragraph 2 is to be based.”;~~**

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 **~~ESMA~~** thereof without delay **its competent authority which .**

**ESMA** shall inform the competent authority of that supervised contributor,**and where applicable ESMA**  thereof without delay. The administrator shall submit to **~~ESMA~~** **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 adminstrator ~~ESMA~~** shall **where applicable, promptly inform ESMA or the college established under Article 46 and shall,** on the basis of that assessment make its own assessment on the capability of the benchmark to measure the underlying market and economic reality, taking into account the administrator's procedure for cessation of the benchmark established in accordance with Article 28(1).”;

paragraph 6 is amended as follows:

6. In the event that the competent authority, after the period specified in paragraph 5 and on the basis of its own assessment referred to in paragraph 4, considers that the representativeness of a critical benchmark is put at risk, it shall have the power to:

(a) require supervised entities selected in accordance with paragraph 7 of this Article, including entities that are not yet contributors to the relevant critical benchmark, to contribute input data to the administrator in accordance with the administrator's methodology, the code of conduct referred to in Article 15 and other rules. Such requirement shall be in place for an appropriate period of time not exceeding 12 months from the date on which the initial decision requiring mandatory contribution was taken pursuant to paragraph 5 or, for those entities that are not yet contributors, from the date on which the decision requiring mandatory contribution is taken under this point;

(b) extend the period of mandatory contribution by an appropriate period of time not exceeding 12 months, following a review under paragraph 9 of any measures adopted pursuant to point (a) of this paragraph;

(c) determine the form in which, and the time by which, any input data is to be contributed without imposing an obligation on supervised entities to either trade or commit to trade;

(d) require the administrator to change the methodology, the code of conduct referred to in Article 15 or other rules of the critical benchmark.

**~~The maximum period of mandatory contribution under points (a) and (b) of the first subparagraph shall not exceed 24 months in total.~~** **The maximum period of mandatory contribution under points (a) and (b) of the first subparagraph shall not exceed 5 years in total.**

**~~in Article 26, the following paragraph is added:~~**

**~~“6. The Commission shall be empowered to adopt delegated acts in accordance with Article 49 to specify the criteria under which competent authorities may require changes to the compliance statement as referred to in paragraph 4.”;~~**

**~~Article 30 is amended as follows:~~**

**~~paragraph 2 is replaced by the following:~~**

**~~“2. The Commission may adopt an implementing decision stating that the legal framework and supervisory practice of a third country ensures the following:~~**

**~~(a) administrators authorised or registered in that third country comply with binding requirements which are equivalent to the requirements under this Regulation. When assessing the equivalence the Commission may take into account whether the legal framework and supervisory practice of that third country ensures compliance with the IOSCO principles for financial benchmarks or with the IOSCO principles for PRAs;~~**

**~~(b) those binding requirements are subject to effective supervision and enforcement on an on-going basis in that third country.~~**

**~~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 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.~~**

**~~That implementing decision shall be adopted in accordance with the examination procedure referred to in Article 50(2) of this Regulation.”;~~**

**~~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.”;~~**

**~~paragraph 3 is replaced by the following:~~**

**~~“3. Where no implementing decision has been adopted pursuant to paragraph 2, the Commission may adopt an implementing decision stating all of the following:~~**

**~~(a) binding requirements in a third country with respect to specific administrators, benchmarks or families of benchmarks, are equivalent to the requirements under this Regulation taking into account, in particular, whether the legal framework and supervisory practice of that third country ensures compliance with the IOSCO principles for financial benchmarks or with the IOSCO principles for PRAs;~~**

**~~(b) those specific administrators, benchmarks or families of benchmarks are subject to effective supervision and enforcement on an on-going basis in that third country.~~**

**~~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 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.~~**

**~~That implementing decision shall be adopted in accordance with the examination procedure referred to in Article 50(2) of this Regulation.”;~~**

**~~the following paragraph 3a 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.”;~~**

**~~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 unless that 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. Such arrangements shall specify at least:";~~**

**~~in paragraph 4, the following point (d) is added:~~**

**~~“(d) the procedures for the exchange of information on a regular basis, and at least quarterly, about benchmarks provided in that third country that fulfil any of the conditions set out in points (a) or (c) of Article 20(1).”;~~**

**~~the second subparagraph of paragraph 5 is replaced by the following:~~**

**~~“ESMA shall submit those draft regulatory technical standards to the Commission by [PO: please insert date 24 months after the date of entry into force of this Regulation].”;~~**

**~~Article 32 is amended as follows:~~**

**~~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.”;~~**

**~~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.”;~~**

**~~paragraph 3 is replaced by the following:~~**

**~~“3. 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.”;~~**

**~~paragraph 4 is deleted;~~**

**~~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.”;~~**

**~~paragraphs 6 and 7 are deleted;~~**

**~~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.”;”;~~**

**~~Article 33 is replaced by the following :~~**

***~~Article 33  
Endorsement of benchmarks provided in a third country~~***

**~~1. An administrator located in the Union and authorised or registered in accordance with Article 34, or any other supervised entity located in the Union with a clear and well-defined role within the control or accountability framework of a third country administrator, which is able to monitor effectively the provision of a benchmark, may apply to ESMA to endorse a benchmark or a family of benchmarks provided in a third country for their use in the Union, provided that all of the following conditions are fulfilled:~~**

**~~(a) the endorsing administrator or other supervised entity has verified and is able to demonstrate on an on-going basis to ESMA that the provision of the benchmark or family of benchmarks to be endorsed fulfils, on a mandatory or on a voluntary basis, requirements which are at least as stringent as the requirements of this Regulation;~~**

**~~(b) the endorsing administrator or other supervised entity has the necessary expertise to monitor effectively the activity of the provision of a benchmark in a third country and to manage the associated risks;~~**

**~~(c) there is an objective reason to provide the benchmark or family of benchmarks in a third country and for said benchmark or family of benchmarks to be endorsed for their use in the Union.~~**

**~~For the purpose of point (a), when assessing whether the provision of the benchmark or family of benchmarks to be endorsed fulfils requirements which are at least as stringent as the requirements of this Regulation, ESMA may take into account whether the compliance of the provision of the benchmark or family of benchmarks with the IOSCO principles for financial benchmarks or the IOSCO principles for PRAs, as applicable, would be equivalent to compliance with the requirements of this Regulation.~~**

**~~2. An administrator or other supervised entity that makes an application for endorsement as referred to in paragraph 1 shall provide all information necessary to satisfy ESMA that, at the time of application, all the conditions referred to in that paragraph are fulfilled.~~**

**~~3. Within 90 working days of receipt of the application for endorsement referred to in paragraph 1, ESMA shall examine the application and adopt a decision either to authorise the endorsement or to refuse it and inform the applicant accordingly.~~**

**~~4. An endorsed benchmark or an endorsed family of benchmarks shall be considered to be a benchmark or family of benchmarks provided by the endorsing administrator or other supervised entity. The endorsing administrator or other supervised entity shall not use the endorsement with the intention of avoiding the requirements of this Regulation.~~**

**~~5. An administrator or other supervised entity that has endorsed a benchmark or a family of benchmarks provided in a third country shall remain fully responsible for such a benchmark or family of benchmarks and for compliance with the obligations under this Regulation.~~**

**~~6. Where ESMA has well-founded reasons to consider that the conditions laid down under paragraph 1 are no longer fulfilled, it shall have the power to require the endorsing administrator or other supervised entity to cease the endorsement. Article 28 shall apply in case of cessation of the endorsement.~~**

**~~7. The Commission shall be empowered to adopt delegated acts in accordance with Article 49 concerning measures to determine the conditions under which ESMA may assess whether there is an objective reason for the provision of a benchmark or family of benchmarks in a third country and their endorsement for their use in the Union. The Commission shall take into account elements such as the specificities of the underlying market or economic reality the benchmark intends to measure, the need for proximity of the provision of the benchmark to such market or economic reality, the need for proximity of the provision of the benchmark to contributors, the material availability of input data due to different time zones, and specific skills required in the provision of the benchmark.";~~**

in Article 34, the following paragraph 1a is inserted:

“1a. Where one or more of the indices provided by the person referred to in paragraph 1 would qualify as critical benchmarks, the application shall be addressed to ESMA.”;

Article 40 is replaced by the following:

“1. For the purposes of this Regulation, ESMA shall be the competent authority for:

**~~(a)~~** administrators of critical benchmarks as referred to in **~~paragraphs (1) and (2) of Article 20~~ Article 20, paragraph 1(a) and (c)**;

**~~(b) administrators of the benchmarks referred to in Articles 30 and 32;~~**

**~~(c) administrators or other supervised entities that apply for the endorsement or have endorsed a benchmark provided in a third country in accordance with Article 33;~~**

**~~(d) supervised contributors to critical benchmarks as referred to in Article 20(1);~~**

**~~(e) supervised contributors to the benchmarks referred to in Articles 30, 32 and 33.~~**

2. Each Member State shall designate the relevant competent authority responsible for carrying out the duties under this Regulation **~~concerning administrators and supervised entities~~** 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.”;

**~~Article 41 is amended as follows:~~**

**~~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:”;~~**

**~~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:”;~~**

**~~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:”;~~**

**~~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.”;~~**

**~~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.”;~~**

**~~Article 46 is deleted;~~**

**~~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 [To be checked against the amendments to ESMA's Regulation].”;~~**

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, or the contribution of input data to, the benchmarks referred to in Article 40;

(b) entities using the benchmarks referred to under (a) and related third parties;

(c) third parties to whom the persons referred to under (a) have outsourced functions or activities;

(d) persons otherwise closely and substantially related or connected to the persons referred to under (a).

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

(a) refer to this Article as the legal basis of that request;

(b) state the purpose of that request;

(c) specify what information is required;

(d) include a time limit within which the information is to be provided;

(e) include a statement that there is no obligation on the person from whom the information is requested to provide that information but that in case of a voluntary reply to the request, the information provided must not be incorrect or misleading;

(f) indicate the amount of the fine to be issued in accordance with Article [48f] where information provided is incorrect or misleading.

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

(a) refer to this Article as the legal basis of that request;

(b) state the purpose of that request;

(c) specify what information is required;

(d) set a time limit within which the information is to be provided;

(e) indicate the periodic penalty payments provided for in Article [48g] where the required information is incomplete;

(f) indicate the fine provided for in Article [48f], where the answers to the questions asked are incorrect or misleading;

(g) indicate the right to appeal the decision before ESMA’s Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union (‘Court of Justice’) in accordance with Articles [ex60 Appeals] and [ex61 Action before the Court…] of Regulation (EU) No 1095/2010.

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

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

*Article 48c*

*General investigations*

1. In order to carry out its duties under this Regulation, ESMA may conduct necessary investigations of the persons referred to in Article 48b(1). To that end, the officials and other persons authorised by ESMA shall be empowered to:

(a) examine any records, data, procedures and any other material relevant to the execution of its tasks, irrespective of the medium on which they are stored;

(b) take or obtain certified copies of or extracts from such records, data, procedures and other material;

(c) summon and ask any of those persons or their representatives or staff for oral or written explanations on facts or documents relating to the subject matter and purpose of the inspection and to record the answers;

(d) interview any other natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;

(e) request records of telephone and data traffic.

2. The officials and other persons authorised by ESMA for the purposes of the investigations referred to in paragraph 1 shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the investigation. That authorisation shall indicate the periodic penalty payments provided for in Article [48g] where the production of the required records, data, procedures or any other material, or the answers to questions asked to the persons referred to in Article 48b(1) or are incomplete, and the fines provided for in Article [48f], where the answers to questions asked to those persons are incorrect or misleading.

3. The persons referred to in Article 48b(1) are required to submit to investigations launched on the basis of a decision of ESMA. The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article [48g], the legal remedies available under Regulation (EU) No 1095/2010 and the right to have the decision reviewed by the Court of Justice.

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

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

6. Where a national judicial authority receives an application for the authorisation of a request for records of telephone or data traffic referred to in point (e) of paragraph 5 that authority shall verify the following:

(a) the decision referred to in paragraph 3 is authentic;

(b) any measures to be taken are proportionate and not arbitrary or excessive.

For the purposes of point (b), the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on ESMA’s file. The lawfulness of ESMA’s decision shall be subject to review only by the Court of Justice following the procedure set out in Article [61] of Regulation (EU) No 1095/2010.

*Article 48d*

*On-site inspections*

1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary on-site inspections at any business premises of the persons referred to in Article 48b(1).

2. The officials and other persons authorised by ESMA to conduct an on-site inspection may enter any business premises of the persons subject to an investigation decision adopted by ESMA and shall have all the powers stipulated in Article 48c(1). They shall have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.

3. In sufficient time before the inspection, ESMA shall give notice of the inspection to the competent authority of the Member State where the inspection is to be conducted. Where the proper conduct and efficiency of the inspection so require, ESMA, after informing the relevant competent authority, may carry out the on-site inspection without prior notice. Inspections in accordance with this Article shall be conducted provided that the relevant authority has confirmed that it does not object to those inspections.

4. The officials and other persons authorised by ESMA to conduct an on-site inspection shall exercise their powers upon production of a written authorisation, specifying the subject matter and purpose of the inspection and the periodic penalty payments provided for in Article [48g] where the persons concerned do not submit to the inspection.

5. The persons referred to in Article 48b(1)shall submit to on-site inspections ordered by a decision of ESMA. That decision shall specify the subject matter and purpose of the inspection, the date on which it is to begin and indicate the periodic penalty payments provided for in Article [48g], the legal remedies available under Regulation (EU) No 1095/2010 as well as the right to have the decision reviewed by the Court of Justice.

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

7. ESMA may also require competent authorities to carry out specific investigatory tasks and on-site inspections as provided for in this Article and in Article 48c(1) on its behalf. To that end, competent authorities shall enjoy the same powers as ESMA as set out in this Article and in Article 48c(1).

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

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

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

(a) the decision adopted by ESMA referred to in paragraph 4 is authentic;

(b) any measures to be taken are proportionate and not arbitrary or excessive.

For the purposes of point (b), the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity of the investigation or demand that it be provided with the information on ESMA’s file. The lawfulness of ESMA’s decision shall be subject to review only by the Court of Justice following the procedure set out in Article 61 Regulation (EU) No 1095/2010.

*SECTION 2*

**ADMINISTRATIVE SANCTIONS AND OTHER MEASURES**

*Article 48e*

*Supervisory measures by ESMA*

1. Where, in accordance with Article 48i(5), ESMA finds that a person has committed one of the infringements listed in Article 48f(2), it shall take one or more of the following actions:

(a) adopt a decision requiring the person to bring the infringement to an end;

(b) adopt a decision imposing fines pursuant to Article 48f;

(c) issue public notices.

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

(a) the duration and frequency of the infringement;

(b) whether financial crime has been occasioned, facilitated or otherwise attributable to the infringement;

(c) whether the infringement has been committed intentionally or negligently.

(d) the degree of responsibility of the person responsible for the infringement;

(e) the financial strength of the person responsible for the infringement, as indicated by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;

(f) the impact of the infringement on retail investors’ interests;

(g) the importance of the profits gained, losses avoided by the person responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;

(h) the level of cooperation of the person responsible for the infringement with ESMA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(i) previous infringements by the person responsible for the infringement;

(j) measures taken after the infringement by the person responsible for the infringement to prevent its repetition.

3. Without undue delay, ESMA shall notify any action taken pursuant to paragraph 1 to the person responsible for the infringement, and shall communicate it to the competent authorities of the Member States and to the Commission. It shall publicly disclose any such action on its website within 10 working days from the date when it was adopted.

The disclosure to the public referred to in the first subparagraph shall include the following:

(a) a statement affirming the right of the person responsible for the infringement to appeal the decision;

(b) where relevant, a statement affirming that an appeal has been lodged and specifying that such an appeal does not have suspensive effect;

(c) a statement asserting that it is possible for ESMA’s Board of Appeal to suspend the application of the contested decision in accordance with Article 60(3) of Regulation (EU) No 1095/2010.

*Article 48f*

*Fines*

1. Where, in accordance with Article 48i(5), ESMA finds that any person has, intentionally or negligently, committed one or more of the infringements listed in paragraph 2, it shall adopt a decision imposing a fine in accordance with paragraph 3 of this Article.

An infringement shall be considered to have been committed intentionally if ESMA finds objective factors which demonstrate that a person acted deliberately to commit the infringement

2. The list of infringements referred to in paragraph 1 shall be the following: Infringements of Articles 4 - 16, 21, 23 - 29 and 34 of Regulation (EU) 2016/1011.

3. The maximum amount of the fine referred to in paragraph 1 shall be:

(67) (i) in the case of a legal person, EUR 1 000 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 30 June 2016, or 10 % of the total annual turnover of that legal person according to the last available financial statements approved by the management body, whichever is the higher;

(68) (ii) in the case of a natural person, EUR 500 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 30 June 2016.

Notwithstanding the first subparagraph, The maximum amount of the fine for infringements of point (d) of Article 11(1) or of Article 11(4) of Regulation (EU) 2016/1011 shall be EUR 250 000 or, in the Member States whose official currency is not the euro, the corresponding value in the national currency on 30 June 2016 or 2 % of the total annual turnover of that legal person according to the last available financial statements approved by the management body, whichever is the higher for legal persons, and EUR 100 000 or, in the Member States whose official currency is not the euro, the corresponding value in the national currency on 30 June 2016 for natural persons.

For the purposes of point (i), where the legal person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial accounts in accordance with Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

4. When determining the level of a fine pursuant to paragraph 1, ESMA shall take into account the criteria set out in Article 48e(2).

5. Notwithstanding paragraph 4, where the legal person has directly or indirectly benefited financially from the infringement, the amount of the fine shall be at least equal to that benefit.

6. Where an act or omission of an person constitutes more than one infringement listed in Article 48f(2), only the higher fine calculated in accordance with paragraph 3 and relating to one of those infringements shall apply.

*Article 48g*

*Periodic penalty payments*

1. ESMA shall, by decision, impose periodic penalty payments to compel:

(a) a person to put an end to an infringement in accordance with a decision taken pursuant to Article [48e(1)(a)];

(b) persons referred to in Article 48b(1):

(i) to supply complete information which has been requested by a decision pursuant to Article [48b];

(ii) to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by a decision pursuant to Article [48c];

(iii) to submit to an on-site inspection ordered by a decision taken pursuant to Article [48d].

2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed for each day of delay.

3. Notwithstanding paragraph 2, the amount of the periodic penalty payments shall be 3 % of the average daily turnover in the preceding business year, or, in the case of natural persons, 2 % of the average daily income in the preceding calendar year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.

4. A periodic penalty payment shall be imposed for a maximum period of six months following the notification of ESMA’s decision. Following the end of the period, ESMA shall review the measure.

*Article 48h*

*Disclosure, nature, enforcement and allocation of fines and periodic penalty payments*

1. ESMA shall disclose to the public every fine and every periodic penalty payment that has been imposed pursuant to Articles 48f and 48g, unless such disclosure to the public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved. Such disclosure shall not contain personal data within the meaning of Regulation (EC) No 45/2001.

2. Fines and periodic penalty payments imposed pursuant to Articles [48f] and [48g] shall be of an administrative nature.

3. Where ESMA decides not to impose any fines or penalty payments, it shall inform the European Parliament, the Council, the Commission and the competent authorities of the Member State concerned thereof and shall set out the reasons for its decision.

4. Fines and periodic penalty payments imposed pursuant to Articles [48f] and [48g] shall be enforceable.

Enforcement shall be governed by the rules of civil procedure in force in the Member State or third country in which it is carried out.

5. The amounts of the fines and the periodic penalty payments shall be allocated to the general budget of the European Union.

*SECTION 3*

**PROCEDURES AND REVIEW**

*Article 48i*

*Procedural rules for taking supervisory measures and imposing fines*

1. Where, in carrying out its duties under this Regulation, ESMA finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in Article 48f(2), ESMA shall appoint an independent investigation officer within ESMA to investigate the matter. The appointed officer shall not be involved or have been directly or indirectly involved in the supervision of the benchmarks to which the infringement relates and shall perform his functions independently from ESMA's Board of Supervisors.

2. The investigation officer referred to in paragraph 1 shall investigate the alleged infringements, take into account any comments submitted by the persons who are subject to the investigations, and shall submit a complete file with his findings to ESMA's Board of Supervisors.

3. In order to carry out his tasks, the investigation officer shall have the power to request information in accordance with Article 48b and to conduct investigations and on-site inspections in accordance with Articles 48c and 48d.

4. Where carrying out those tasks, the investigation officer shall have access to all documents and information that have been gathered by ESMA in its supervisory activities.

5. Upon completion of his investigation and before submitting the file with his findings to ESMA's Board of Supervisors, the investigation officer shall give the persons subject to the investigations the opportunity to be heard on the matters being investigated. The investigation officer shall base his findings only on facts on which the persons concerned have had the opportunity to comment.

6. The rights of the defence of the persons subject to the investigations shall be fully respected during investigations under this Article.

7. Upon submission of the file with his findings to ESMA's Board of Supervisors, the investigation officer shall notify the persons who are subject to the investigations. The persons subject to the investigations shall be entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information affecting third parties.

8. On the basis of the file containing the investigation officer’s findings and, when requested by the persons concerned, after having heard those persons in accordance with Article [48j], ESMA shall decide if one or more of the infringements listed in Article 48f(1) has been committed by the persons subject to the investigations and, in such case, shall take a supervisory measure in accordance with Article 48e and impose a fine in accordance with Article [48f].

9. The investigation officer shall not participate in the deliberations of ESMA's Board of Supervisors or in any other way intervene in the decision-making process of ESMA’s Board of Supervisors.

10. The Commission shall adopt delegated acts in accordance with Article 49 to specify the rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on rights of defence, temporal provisions, and the collection of fines or periodic penalty payments, and the limitation periods for the imposition and enforcement of fines and periodic penalty payments.

11. ESMA shall refer matters for criminal prosecution to the relevant national authorities where, in carrying out its tasks under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. In addition, ESMA shall refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from an identical fact or facts which are substantially the same has already acquired the force of res judicata as the result of criminal proceedings under national law.

*Article 48j*

*Hearing of the persons subject to investigations*

1. Before taking any decision pursuant to Articles 48f, 48g and 48e, ESMA shall give the persons subject to the proceedings the opportunity to be heard on its findings. ESMA shall base its decisions only on findings on which the persons subject to the proceedings have had an opportunity to comment.

2. The first subparagraph shall not apply if urgent action pursuant to Article 48e is needed in order to prevent significant and imminent damage to the financial system. In such a case ESMA may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.

3. The rights of the defence of the persons subject to the proceedings shall be fully respected in the investigations. They shall be entitled to have access to ESMA’s file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or ESMA’s internal preparatory documents.

*Article 48k*

*Review by the Court of Justice*

The Court of Justice shall have unlimited jurisdiction to review decisions whereby ESMA has imposed a fine or a periodic penalty payment. It may annul, reduce or increase the fine or periodic penalty payment imposed.

*SECTION 4*

**FEES AND DELEGATION**

*Article 48l*

*Supervisory fees*

1. ESMA shall charge fees to administrators in accordance with this Regulation and in accordance with the delegated acts adopted pursuant to paragraph 3. Those fees shall fully cover ESMA’s necessary expenditure relating to the supervision of administrators and the reimbursement of any costs that the competent authorities may incur carrying out work pursuant to this Regulation in particular as a result of any delegation of tasks in accordance with Article 48m.

2. The amount of an individual fee charged to an administrator shall cover all administrative costs incurred by ESMA for its activities in relation to the supervision. It shall be proportionate to the turnover of the administrator.

3. The Commission shall adopt delegated acts in accordance with Article 49 to specify the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid.

*Article 48m*

*Delegation of tasks by ESMA to competent authorities*

1. Where necessary for the proper performance of a supervisory task, ESMA may delegate specific supervisory tasks to the competent authority of a Member State in accordance with the guidelines issued by ESMA pursuant to Article 16 of Regulation (EU) No 1095/2010. Such specific supervisory tasks may, in particular, include the power to carry out requests for information in accordance with Article 48b and to conduct investigations and on-site inspections in accordance with Article 48c and Article 48d.

By way of derogation from the first subparagraph, the authorisation of critical benchmarks shall not be delegated.

2. Prior to the delegation of a task in accordance with paragraph 1, ESMA shall consult the relevant competent authority about:

(a) the scope of the task to be delegated;

(b) the timetable for the performance of the task; and

(c) the transmission of necessary information by and to ESMA.

3. ESMA shall reimburse a competent authority for costs incurred as a result of carrying out delegated tasks in accordance with the regulation on fees adopted by the Commission pursuant to Article 48l(3).

4. ESMA shall review any delegation made in accordance with paragraph 1 at appropriate intervals. A delegation may be revoked at any time.

5. A delegation of tasks shall not affect the responsibility of ESMA and shall not limit ESMA’s ability to conduct and oversee the delegated activity."

*Article 48o*

*Transition measures related to ESMA*

1. All competences and duties related to the supervisory and enforcement activity regarding administrators referred to in Article 40(1) that are conferred on competent authorities shall be terminated on [PO: Please insert date 36 months after entry into force]. Those competences and duties shall be taken-up by ESMA on the same date.

2. Any files and working documents related to the supervisory and enforcement activity regarding administrators referred to in Article 40(1), including any ongoing examinations and enforcement actions, or certified copies thereof, shall be taken over by ESMA on the date referred to in paragraph 1.

**~~However, applications for authorisation by administrators of a critical benchmark, applications for recognition in accordance with Article 32 and applications for approval of endorsement in accordance with Article 33 that have been received by competent authorities before [PO: Please insert date 34 months after entry into force] shall not be transferred to ESMA, and the decision to authorise or refuse authorisation, recognition or approval of endorsement 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 [PO: Please insert date 36 months after entry into force]. Those competent authorities shall also render all necessary assistance and advice to ESMA to facilitate effective and efficient transfer and taking-up of supervisory and enforcement activity regarding administrators referred to in Article 40(1).

4. ESMA shall act as the legal successor to the competent authorities referred to in paragraph 1 in any administrative or judicial proceedings that result from supervisory and enforcement activity pursued by those competent authorities in relation to matters that fall under this Regulation.

5. Any authorisation of administrators of a critical benchmark, recognition in accordance with Article 32 and approval of endorsement in accordance with Article 33 granted by a competent authority referred to in paragraph 1 shall remain valid after the transfer of competences to ESMA.”;

**In Art 51, a new paragraph 4a is inserted:**

**“4a. An existing benchmark designated as critical by an implementing act adopted by the Commission in accordance with Article 20 that does not meet the requirements to obtain an authorisation in accordance with Article 34 of this Regulation by 1 January 2020 may, if the competent authority considers that its discontinuation would affect financial stability, be used until 31 December 2021.”**

**~~Article 53 is replaced by the following:~~**

***~~“Article 53~~***

***~~ESMA reviews~~***

**~~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(3), as well as for actions taken with regard to the enforcement of Article 24(1).”.~~**

***~~Article 9~~***

***~~Amendments to 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~~***

**~~Regulation (EU) 2017/1129 is amended as follows:~~**

**~~(1) Article 2 is amended as follows:~~**

**~~point (iii) of the definition of 'home Member State' under letter (m) is deleted.~~**

**~~the following definitions are inserted:~~**

**~~"(za) 'property companies' means an undertaking whose principal activities concern the economic activities listed in Section L of Annex I to Regulation (EC) No 1893/2006 of the European Parliament and of the Council\*.~~**

**~~(zb) 'mineral companies' means an undertaking whose principal activities concern the economic activities listed in Section B, Divisions 05 to 08 of Annex I to Regulation (EC) No 1893/2006.~~**

**~~(zc) 'scientific research based companies' means an undertaking whose principal activities concern the economic activities listed in Section M, Division 72, group 72.1 of Annex I to Regulation (EC) No 1893/2006.~~**

**~~(zd) 'shipping companies' means an undertaking whose principal activity concerns the economic activities listed in Section H, Division 50 of Annex I to Regulation (EC) No 1893/2006.~~**

**~~\* Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains, OJ L 393, 30.12.2006, p.1.";~~**

**~~in Article 4, paragraph 2 is replaced by the following:~~**

**~~"2. Such voluntarily drawn up prospectus approved by the competent authority of the home Member State, as determined in accordance with point (m) of Article 2, or by ESMA in accordance with Article 31a, shall entail all the rights and obligations provided for a prospectus required under this Regulation and shall be subject to all provisions of this Regulation, under the supervision of that competent authority." ;~~**

**~~in Article 20, paragraph 8 is replaced by the following:~~**

**~~"8. On request of the issuer, the offeror or the person asking for admission to trading on a regulated market, the competent authority of the home Member State may transfer the approval of a prospectus to the competent authority of another Member State, subject to the agreement of that competent authority and, unless ESMA assumes the role of competent authority of the home Member State in accordance with Article 31a, the prior notification to ESMA. The competent authority of the home Member State shall transfer the documentation filed, together with its decision to grant the transfer, in electronic format, to the competent authority of the other Member State on the date of its decision. Such a transfer shall be notified to the issuer, the offeror or the person asking for admission to trading on a regulated market within three working days from the date of the decision taken by the competent authority of the home Member State. The time limits set out in the first subparagraph of paragraph 2 and paragraph 3 shall apply from the date the decision was taken by the competent authority of the home Member State. Article 28(4) of Regulation (EU) No 1095/2010 shall not apply to the transfer of the approval of the prospectus in accordance with this paragraph. Upon completion of the transfer of the approval, the competent authority to whom the approval of the prospectus has been transferred shall be deemed to be the competent authority of the home Member State for that prospectus for the purposes of this Regulation.";~~**

**~~Article 22 is amended as follows:~~**

**~~the following paragraph 6a is inserted:~~**

**~~"6a. By derogation from paragraph 6, ESMA shall have the power to exercise control over compliance of advertising activity with the requirements set out in paragraphs 2 to 4 in each host Member State where advertisements are disseminated, in any of the following cases:.~~**

**~~(a) where ESMA is the competent authority in accordance with Article 31a;~~**

**~~(b) for any prospectus drawn up in accordance with the laws of a third country and used in the Union in accordance with Article 29.~~**

**~~Without prejudice to Article 32(1), scrutiny of the advertisements by ESMA shall not constitute a precondition for the offer of securities to the public or the admission to trading to a regulated market to take place in any host Member State.~~**

**~~The use of any of the supervisory and investigatory powers set out in Article 32 in relation to the enforcement of this Article by ESMA shall be communicated without undue delay to the competent authority of the relevant host Member State.~~**

**~~At the request of the competent authority of a Member State, ESMA shall exercise the control referred to in the first subparagraph for all advertisements disseminated in its jurisdiction in relation to all, or some, categories of prospectuses approved by ESMA in accordance with Article 31a. ESMA shall publish and regularly update a list of the Member States for which it exercises such control and the categories of prospectuses concerned. .";~~**

**~~paragraph 7 is replaced by the following:~~**

**~~"7. Competent authorities of host Member States and ESMA may only charge fees that are linked to the performance of their supervisory tasks pursuant to this Article. The level of fees shall be disclosed on the websites of the competent authorities and ESMA. Fees shall be non-discriminatory, reasonable and proportionate to the supervisory task. Competent authorities of host Member States and ESMA shall not impose any requirements or administrative procedures in addition to those required for the exercise of their supervisory tasks pursuant to this Article."~~**

**~~paragraph 8 is replaced by the following:~~**

**~~"8. By way of derogation from paragraphs 6 and 6a, any two competent authorities, including ESMA where applicable, may conclude an agreement whereby, for the purposes of exercising control over compliance of advertising activity in cross-border situations or in situations where paragraph 6a applies, the competent authority of the home Member State, or, where paragraph 6a applies, the competent authority of the host Member State, is to retain control over that compliance. Any such agreement shall be notified to ESMA, unless ESMA is a signatory to the agreement in its capacity of competent authority of the Home Member State in accordance with Article 31a. ESMA shall publish and regularly update a list of such agreements.";~~**

**~~Article 25 is amended as follows:~~**

**~~paragraph 4 is replaced by the following:~~**

**~~"4. Where the final terms of a base prospectus are neither included in the base prospectus, nor in a supplement, the competent authority of the home Member State shall communicate them electronically, as soon as practicable after they are filed, to ESMA and, where the base prospectus has been previously notified, to the competent authority of the host Member State(s)."~~**

**~~the following paragraph 6a is inserted:~~**

**~~"6a. For all prospectuses drawn up by a third country issuer in accordance with Article 29, the certificate of approval referred to in this article shall be replaced by a certificate of filing.";~~**

**~~in Article 27, the following paragraph 3a is inserted:~~**

**~~"3a. By way of derogation from paragraphs 1, 2 and 3, where ESMA is the competent authority in accordance with Article 31a, the prospectus shall be drawn up either in a language accepted by the competent authorities of each host Member State or in a language customary in the sphere of international finance, at the choice of the issuer, the offeror, or the person asking for admission to trading on a regulated market.~~**

**~~The competent authority of each host Member State shall require that the summary referred to in Article 7 be available in its official language, or at least one of its official languages, or in another language accepted by the competent authority of that Member State, but it shall not require the translation of any other part of the prospectus.";~~**

**~~Article 28 is replaced by the following:~~**

***~~"Article 28~~***

**~~Offer of securities to the public or admission to trading on a regulated market made under a prospectus drawn up in accordance with this Regulation~~**

**~~Where a third country issuer intends to offer securities to the public in the Union or to seek admission to trading of securities on a regulated market established in the Union under a prospectus drawn up in accordance with this Regulation, it shall obtain approval of its prospectus from ESMA in accordance with Article 20.~~**

**~~Once a prospectus is approved in accordance with the first subparagraph, it shall entail all the rights and obligations provided for a prospectus under this Regulation and the prospectus and the third country issuer shall be subject to all of the provisions of this Regulation under the supervision of ESMA.";~~**

**~~Article 29 is replaced by the following:~~**

***~~"Article 29~~***

***~~Offer of securities to the public or admission to trading on a regulated market made under a prospectus drawn up in accordance with the laws of a third country~~***

**~~1. A third country issuer may offer securities to the public in the Union or seek admission to trading of securities on a regulated market in the Union after prior publication of a prospectus drawn up and approved in accordance with, and which is subject to, the national laws of the third country issuer, provided that:~~**

**~~(a) the Commission has adopted an implementing decision in accordance with paragraph 3;~~**

**~~(b) the third country issuer has filed the prospectus with ESMA;~~**

**~~(c) the third country issuer has provided a written confirmation that the prospectus has been approved by a third country supervisory authority and has provided the contact details of that authority;~~**

**~~(d) the prospectus fulfils the language requirements set out in Article 27;~~**

**~~(e) all advertisements disseminated in the Union by the third country issuer in relation to the offer or admission to trading comply with the requirements set out in paragraphs 2 to 5 of Article 22;~~**

**~~(f) ESMA has concluded cooperation arrangements with the relevant supervisory authorities of the third country issuer in accordance with Article 30.~~**

**~~References to 'the competent authority of the home Member State' in this Regulation shall be understood as referring to ESMA with regard to any provision applied to prospectuses referred to in this paragraph.~~**

**~~2. The requirements set out in Articles 24 and 25 shall apply to the prospectus drawn up in accordance with the laws of a third country where the conditions set out in paragraph 1 are fulfilled.~~**

**~~3. The Commission is empowered to adopt delegated acts in accordance with Article 44 to supplement this Regulation by establishing general equivalence criteria, based on the requirements laid down in Articles 6, 7, 11, 12, 13 and in Chapter IV of this Regulation.~~**

**~~On the basis of the criteria set out in these delegated acts, the Commission may adopt an implementing decision stating that the legal and supervisory arrangements of a third country ensure that prospectuses drawn up in accordance with the national law of that third country comply with legally binding requirements which have an equivalent regulatory effect to the requirements set out in this Regulation. Such implementing decision shall be adopted in accordance with the examination procedure referred to in Article 45(2).~~**

**~~The Commission may make the application of the implementing decision subject to the effective fulfilment by a third country, on a continuous basis, of any requirements set out within that implementing decision and to ESMA's ability to effectively exercise its responsibilities in relation to monitoring referred to in paragraph 2a of Article 33 of Regulation (EU) No 1095/2010.";~~**

**~~Article 30 is amended as follows:~~**

**~~paragraph 1 is replaced by the following:~~**

**~~"1. For the purposes of Article 29, and, where deemed necessary, for the purposes of Article 28, ESMA shall conclude cooperation arrangements with supervisory authorities of third countries on the exchange of information with those third country authorities and the enforcement of obligations in third countries pursuant to this Regulation. Those cooperation arrangements shall ensure, at a minimum, the efficient exchange of information allowing ESMA to carry out their duties under this Regulation.~~**

**~~By way of derogation from the first subparagraph, where a third country is included in the list of jurisdictions which are considered to have national anti-money laundering policies and policies countering the financing of terrorism regimes with strategic deficiencies that pose significant threats to the financial system of the Union, as referred to in 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\*, ESMA shall not conclude cooperation arrangements with supervisory authorities of that third country.~~**

**~~ESMA shall inform all the competent authorities designated in accordance with Article 31(1) of any cooperation arrangement concluded in accordance with the first subparagraph.~~**

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

**~~paragraph 2 is deleted;~~**

**~~paragraph 3 is renumbered as paragraph 2 and is replaced by the following:~~**

**~~"2. ESMA shall conclude cooperation arrangements on exchange of information with the supervisory authorities of third countries only where the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 35.";~~**

**~~paragraph 4 is deleted;~~**

**~~in Chapter VII, the following Articles 31a and 31b are inserted:~~**

***~~"Article 31a~~***

***~~Supervision by ESMA of certain types of prospectuses~~***

**~~For the following prospectuses, including any supplement thereto, ESMA shall be the competent authority with regard to scrutiny and approval of those prospectuses as laid out in Article 20 and notifications to competent authorities of host Member States as laid out in Article 25:~~**

**~~(a) prospectuses drawn up by any legal entity or person established in the Union and relating to the admission to trading on a regulated market of non-equity securities which are to be traded only on a regulated market, or a specific segment thereof, to which only qualified investors can have access for the purposes of trading such securities;;~~**

**~~(b) prospectuses drawn up by any legal entity or person established in the Union and relating to asset backed securities;~~**

**~~(c) prospectuses drawn up by the following types of companies established in the Union:~~**

**~~(i) property companies;~~**

**~~(ii) mineral companies;~~**

**~~(iii) scientific research based companies;~~**

**~~(iv) shipping companies.~~**

**~~(d) prospectuses drawn up by third country issuers in accordance with Article 28 of this Regulation.~~**

**~~References to 'the competent authority of the home Member State' in this Regulation shall be understood as referring to ESMA with regard to any provision applied to prospectuses listed in the first subparagraph.";~~**

**~~a new Article 34 b is inserted:~~**

***~~"Article 31b~~***

***~~Transitional measures related to ESMA~~***

**~~1. Prospectuses listed in Article 31a which have been submitted to a competent authority for approval prior to [PO: Please insert date 36 months after entry into force] shall continue to be supervised by that competent authority, including where applicable as regards any supplements and final terms thereto, until the end of their validity.~~**

**~~The approval granted by a competent authority for those prospectuses prior to [PO: Please insert date 36 months after entry into force] shall remain valid after the transfer of competences to ESMA referred to in paragraph 2.~~**

**~~The supervision of those prospectuses, including where applicable as regards any supplements and final terms thereto, shall remain subject to the rules applicable at the time of submission to the competent authority.~~**

**~~2. All competences and duties related to the supervisory and enforcement activity of the prospectuses listed in Article 31a and submitted for approval from [PO: Please insert date 36 months after entry into force] shall be taken-up by ESMA~~**

**~~."~~**

**~~Article 32 is amended as follows:~~**

**~~the introductory sentence of the first subparagraph of paragraph 1 is replaced by the following:~~**

**~~"1. In order to fulfil their duties under this Regulation, competent authorities and ESMA shall have, in accordance with national law, at least the following supervisory and investigatory powers:";~~**

**~~point (j) of the first subparagraph of paragraph 1 is replaced by the following:~~**

**~~"(j) to suspend the scrutiny of a prospectus submitted for approval or suspend or restrict an offer of securities to the public or admission to trading on a regulated market where ESMA or the competent authority is making use of the power to impose a prohibition or restriction pursuant to Article 40 or 42 of Regulation (EU) No 600/2014 of the European Parliament and of the Council, until such prohibition or restriction has ceased;";~~**

**~~the second subparagraph of paragraph 1 is replaced by the following:~~**

**~~"Where necessary under national law, the competent authority or ESMA may ask the relevant judicial authority to decide on the use of the powers referred to in the first subparagraph.";~~**

**~~paragraph 2 is replaced by the following:~~**

**~~"2. Competent authorities and ESMA shall exercise their functions and powers referred to in paragraph 1 in any of the following ways:~~**

**~~(a) directly;~~**

**~~(b) in collaboration with other authorities or ESMA;~~**

**~~(c) under their responsibility by delegation to such authorities or ESMA;~~**

**~~(d) by application to the competent judicial authorities."~~**

**~~paragraph 5 is replaced by the following:~~**

**~~"5. A person making information available to the competent authority or ESMA in accordance with this Regulation shall not be considered to be infringing any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not be subject to liability of any kind related to such notification.";~~**

**~~the second paragraph of Article 35 is replaced by the following:~~**

**~~"2. The obligation of professional secrecy shall apply to all persons who work or who have worked for the competent authority, for ESMA or for any third party to whom the competent authority or ESMA has delegated its powers. Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of provisions laid down by Union or national law.";~~**

**~~the last subparagraph of paragraph 1 of Article 38 is replaced by the following:~~**

**~~"By 21 July 2019, Member States shall notify, in detail, the rules referred to in the first and second subparagraph to the Commission and to ESMA. They shall notify the Commission and ESMA of any subsequent amendment thereto without delay.";~~**

**~~the following chapter is inserted:~~**

***~~"~~*~~CHAPTER VIIIA~~**

**~~ESMA POWERS AND COMPETENCES~~**

***~~SECTION 1~~***

**~~COMPETENCES AND PROCEDURES~~**

***~~Article 43a~~***

***~~Exercise of the powers by ESMA~~***

**~~The powers conferred on ESMA or any official of or other person authorised by ESMA by Articles 43b to 43d shall not be used to require the disclosure of information or documents which are subject to legal privilege.~~**

***~~Article 43b~~***

***~~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) issuers, offerors or persons asking for admission to trading on a regulated market, and the persons that control them or are controlled by them;~~**

**~~(b) the managers of the persons referred to under (a);~~**

**~~(c) the auditors and advisors of the persons referred to under (a);~~**

**~~(d) the financial intermediaries commissioned by the persons referred to under (a) to carry out the offer of securities to the public or ask for admission to trading on a regulated market.~~**

**~~(e) the guarantor of the securities offered to the public or admitted to trading on a regulated market.~~**

**~~2. Any simple request for information referred to 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 43f 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 43g where the production of the required information is incomplete;~~**

**~~(f) indicate the fine provided for in Article 43f, 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 43c~~***

***~~General investigations~~***

**~~1. In order to carry out its duties under this Regulation, ESMA may conduct necessary investigations of persons referred to in Article 43b(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 43b(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 43g 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 43b(1) are not provided or are incomplete, and the fines provided for in Article 43f, where the answers to questions asked to persons referred to in Article 43b(1) are incorrect or misleading.~~**

**~~3. The persons referred to in Article 43b(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 43g, the legal remedies available under Regulation (EU) No 1095/2010 and the right to have the decision reviewed by the Court of Justice.~~**

**~~3. 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 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 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 Article 61 of Regulation (EU) No 1095/2010.~~**

***~~Article 43d~~***

***~~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 43b(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 43c(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 43g where the persons concerned do not submit to the inspection.~~**

**~~5. The persons referred to in Article 43b(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 43g, 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 43c(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 43c(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 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.~~**

***~~SECTION 2~~***

**~~ADMINISTRATIVE SANCTIONS AND OTHER MEASURES~~**

***~~Article 43e~~***

***~~Supervisory measures by ESMA~~***

**~~1. Where, in accordance with Article 43i(5), ESMA finds that a person has committed one of the infringements listed in point (a) of Article 38(1), 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 43f;~~**

**~~(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 43f~~***

***~~Fines~~***

**~~1. Where, in accordance with Article 43i(5), ESMA finds that any person has, intentionally or negligently, committed one or more of the infringements listed in point (a) of Article 38(1), 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:~~**

**~~(i) in the case of a legal person, EUR 10 000 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 20 July 2017, or 6 % of the total annual turnover of that legal person according to the last available financial statements approved by the management body.~~**

**~~(ii) in the case of a natural person, EUR 1 400 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 20 July 2017.~~**

**~~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.~~**

**~~3. When determining the level of a fine pursuant to paragraph 1, ESMA shall take into account the criteria set out in Article 43e(2).~~**

**~~4. Notwithstanding paragraph 3, where a person has directly or indirectly benefited financially from the infringement, the amount of the fine shall be at least equal to that benefit.~~**

**~~5. Where an act or omission of a person constitutes more than one infringement listed in point (a) of Article 38(1), only the higher fine calculated in accordance with paragraph 3 and relating to one of those infringements shall apply.~~**

***~~Article 43g~~***

***~~Periodic penalty payments~~***

**~~1. ESMA shall, by decision, impose periodic penalty payments in order to compel:~~**

**~~(a) a person to put an end to an infringement in accordance with a decision taken pursuant to Article 43e(1)(a);~~**

**~~(b) a person referred to in Article 43b(1):~~**

**~~(i) to supply complete information which has been requested by a decision pursuant to Article 43b;~~**

**~~(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 43c;~~**

**~~(iii) to submit to an on-site inspection ordered by a decision taken pursuant to Article 43d.~~**

**~~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 43h~~***

***~~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 43f and 43g unless such disclosure to the public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.~~**

**~~2. Fines and periodic penalty payments imposed pursuant to Articles 43f and 43g 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 43f and 43g shall be enforceable.~~**

**~~Enforcement shall be governed by the rules of civil procedure in force in the Member State or third-country in which it is carried out.~~**

**~~5. The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the European Union.~~**

***~~SECTION 3~~***

**~~PROCEDURES AND REVIEW~~**

***~~Article 43i~~***

***~~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 point (a) of Article 38(1), 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 approval of the prospectus 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, 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'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 43b and to conduct investigations and on-site inspections in accordance with Articles 43c and 43d.~~**

**~~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'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 subject to the investigations, after having heard those persons in accordance with Article 43j, ESMA shall decide if one or more of the infringements listed in point (a) of Article 38(1) has been committed by the persons subject to the investigations and, in such a case, shall take a supervisory measure in accordance with Article 43e and impose a fine in accordance with Article 43f.~~**

**~~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 44 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 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 43j~~***

***~~Hearing of the persons subject to investigations~~***

**~~1. Before taking any decision pursuant to Articles 43e, 43f and 43g, ESMA shall give the persons subject to investigations the opportunity to be heard on its findings. ESMA shall base its decisions only on findings on which the persons subject to investigations have had an opportunity to comment.~~**

**~~The first subparagraph shall not apply if urgent action pursuant to Article 43e 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 defence of the persons subject to investigations 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 43k~~***

***~~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 43l~~***

***~~Supervisory fees~~***

**~~1. ESMA shall charge fees to issuers, offerors or persons asking for admission to trading on a regulated market 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 scrutiny and approval of prospectuses, including supplements thereto, and to their notification to competent authorities of host Member States, 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 43m.~~**

**~~2. The amount of an individual fee charged to a particular issuer, offeror or person asking for admission to trading on a regulated market 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 delegated acts in accordance with Article 44 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 43m~~***

***~~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 43b and to conduct investigations and on-site inspections in accordance with Article 43c and Article 43d.~~**

**~~By way of derogation from the first subparagraph, the scrutiny, approval and notification of prospectuses, including supplements thereto, the final assessments and follow-up decisions concerning infringements 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 delegated act referred to in Article 43l(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 9bis  
Amendments to Directive (EU) 2015/849

Directive (EU) 2015/849 is amended as follows:

1. Article 6 is amended as follows:
   * + 1. paragraph 3 is replaced by the following:

"3. The Commission shall make the report referred to in paragraph 1 available to Member States and obliged entities in order to assist them to identify, understand, manage and mitigate the risk of money-laundering and terrorist financing, and to allow other stakeholders, including national legislators, the European Parliament, the European Banking Authority ('EBA'), and representatives from Financial Intelligence Units, to better understand the risks. Reports shall be made public at the latest six months after having been made available to Member States, except for the elements of the reports which contain classified information.";

* + - 1. in paragraph 5 the second sentence is replaced by the following:

"Thereafter, EBA shall issue an opinion every two years.";

1. Article 7 is amended as follows:
   * + 1. in paragraph 2 the second sentence is replaced by the following:

“The identity of that authority or the description of the mechanism shall be notified to the Commission, EBA, and other Member States.”;

* + - 1. paragraph 5 the first sentence is replaced by the following:

“5. Member States shall make the results of their risk assessments, including their updates, available to the Commission, EBA and the other Member States.”;

1. in Article 17 the first sentence is replaced by the following:

“By 26 June 2017, the ESAs, and thereafter EBA shall issue guidelines addressed to competent authorities and the credit institutions and financial institutions in accordance with Article 16 of Regulation (EU) No 1093/2010 on the risk factors to be taken into consideration and the measures to be taken in situations where simplified customer due diligence measures are appropriate.”;

1. in paragraph 4 of Article 18, the first sentence is replaced by the following:

“4. By 26 June 2017, the ESAs, and thereafter EBA shall issue guidelines addressed to competent authorities and the credit institutions and financial institutions, in accordance with Article 16 of Regulation (EU) No 1093/2010 on the risk factors to be taken into consideration and the measures to be taken in situations where enhanced customer due diligence measures are appropriate.”;

1. in Article 41, paragraph 1 is replaced by the following:

“1. The processing of personal data under this Directive is subject to Directive 95/46/EC, as transposed into national law. Personal data that is processed pursuant to this Directive by the Commission or by EBA is subject to Regulation (EC) No 45/2001.”;

1. Article 45 is amended as follows:
   * + 1. paragraph 4 is replaced by the following:

“4. The Member States and EBA shall inform each other of instances in which the law of a third country does not permit the implementation of the policies and procedures required under paragraph 1. In such cases, coordinated actions may be taken to pursue a solution. In the assessing which third countries do not permit the implementation of the policies and procedures required under paragraph 1, Member States and EBA shall take into account any legal constraints that may hinder proper implementation of those policies and procedures, including secrecy, data protection and other constraints limiting the exchange of information that may be relevant for that purpose.”;

* + - 1. paragraph 6 is replaced by the following:

“6. EBA shall develop draft regulatory technical standards specifying the type of additional measures referred to in paragraph 5 and the minimum action to be taken by credit institutions and financial institutions where a third country's law does not permit the implementation of the measures required under paragraphs 1 and 3.

EBA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 26 December 2016.”;

* + - 1. paragraph 10 is replaced by the following:

“10. EBA shall develop draft regulatory technical standards on the criteria for determining the circumstances in which the appointment of a central contact point pursuant to paragraph 9 is appropriate, and what the functions of the central contact points should be.

EBA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 26 June 2017.”

1. Article 48 is amended as follows:
   * + 1. in the second subparagraph of paragraph 1a the final sentence is replaced by the following:

“Financial supervisory authorities of the Member States shall also serve as a contact point for EBA.”;

* + - 1. in paragraph 10 the first sentence is replaced by the following:

“By 26 June 2017, the ESAs and thereafter EBA shall issue guidelines addressed to competent authorities in accordance with Article 16 of Regulation (EU) No 1093/2010, on the characteristics of a risk- based approach to supervision and the steps to be taken when conducting supervision on a risk-based basis.”;

1. in Section 3 the title of Subsection II is replaced by the following:

“Cooperation with EBA”;

1. Article 50 is replaced by the following:

“The competent authorities shall provide EBA with all the information necessary to allow it to carry out its duties under this Directive.”;

1. Article 62 is amended as follows:
   * + 1. paragraph 1 is replaced by the following:

“1. Member States shall ensure that their competent authorities inform EBA of all administrative sanctions and measures imposed in accordance with Articles 58 and 59 on credit institutions and financial institutions, including of any appeal in relation thereto and the outcome thereof.”;

* + - 1. paragraph 3 is replaced by the following:

“3. EBA shall maintain a website with links to each competent authority's publication of administrative sanctions and measures imposed in accordance with Article 60 on credit institutions and financial institutions, and shall show the time period for which each Member State publishes administrative sanctions and measures.”.]

Article 9c

*Amendments to DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCILamending Directive 2014/65/EU on markets in financial instruments and Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)*

**In Article 112(4), the following sub-paragraphs are deleted:**

**~~'Once the application is deemed complete by the supervisory authorities, they shall inform EIOPA of the application.~~**

**~~Upon request by EIOPA, the supervisory authorities shall provide EIOPA with all the documentation submitted by the undertaking in its application.~~**

**~~EIOPA may issue an Opinion to the supervisory authorities concerned in accordance with Article 21a(1)(a) and 29(1)(a) of Regulation (EU) No 1094/2010 within 4 months of receipt by the supervisory authority of the complete application.~~**

**~~Where such an Opinion is issued, the supervisory authority shall take its decision as referred to in the first subparagraph in conformity with that Opinion, or provide reasons in writing to EIOPA and to the applicant where the decision was not taken in conformity with that Opinion.';~~**

***The following Section 2a [of Title I, Chapter VIII] is inserted:***

***“Section 2a   
Notification and collaboration platforms”***

**the following Article 152a is inserted:**

**“Article 152a**

**Notification**

**(1) The supervisory authority of the home Member State shall notify both EIOPA and the supervisory authorities of the host Member States in the following cases:**

1. **the supervisory authority of the home Member State intends to authorise an insurance or reinsurance undertaking whose scheme of operations indicates that a significant part of its activities will be based on the freedom to provide services or the freedom of establishment;**
2. **the supervisory authority of the home Member State identifies deteriorating financial conditions or other emerging risks posed by an insurance or reinsurance undertaking carrying out activities based on the freedom to provide services or the freedom of establishment that may have a cross-border effect.**
   * 1. **These notifications shall be sufficiently detailed to allow for a proper assessment.”**

**The following Article 152b is inserted:**

**“Article 152b**

**Collaboration platforms**

**(1) Where an insurance or reinsurance undertaking carries out or intends to carry out activities which are based on the freedom to provide services or the freedom of establishment and which are significant with respect to the relevant market of a host Member State or could pose a systemic risk to this market, the Authority may, in case of justified concerns about negative effects on policyholders, on its own initiative or at the request of one or more of the relevant supervisory authorities, set up and coordinate a collaboration platform to strengthen the exchange of information and an enhanced collaboration between the relevant supervisory authorities.**

**(2) This does not prejudice the right of the relevant supervisory authorities to set up a collaboration platform where they all agree on its establishment.**

**(3) Without prejudice to Article 35 of Regulation (EU) No. 1094/2010, at the request of the Authority the relevant supervisory authorities shall provide all the necessary information in a timely manner to allow for a proper functioning of the collaboration platform.”**

**Article 231 is amended as follows:**

* + - 1. **~~paragraph 1 is amended as follows:~~**

**~~(i) the first sub-paragraph is replaced by the following:~~**

**~~'1. In the case of an application for permission to calculate the consolidated group Solvency Capital Requirement, as well as the Solvency Capital Requirement of insurance and reinsurance undertakings in the group, on the basis of an internal model, submitted by an insurance or reinsurance undertaking and its related undertakings, or jointly by the related undertakings of an insurance holding company, the supervisory authorities concerned shall cooperate with each other and with EIOPA, to decide whether or not to grant that permission and~~ ~~to determine the terms and conditions, if any, to which such permission is subject.';~~**

**~~(ii) the third sub-paragraph is replaced by the following:~~**

**~~'The group supervisor shall inform the other members of the college of supervisors of the receipt of the application and forward the complete application, including the documentation submitted by the undertaking, to college members, including EIOPA, without delay.';~~**

* + - 1. **~~A new paragraph 2b is added as follows~~**

**~~'2b. Where EIOPA considers that an application as referred to in the first paragraph presents particular issues with respect to consistency in internal model application approvals across the Union, EIOPA may issue an Opinion to the supervisory authorities concerned in accordance with Article 21a(1)(a) and 29(1)(a) of Regulation (EU) No 1094/2010 within 4 months of receipt by the group supervisor of the complete application.~~**

**~~Where such an Opinion is issued, the supervisory authorities shall take their joint decision as referred to in the second paragraph in conformity with that Opinion, or provide reasons in writing to EIOPA and the applicant where the joint decision was not taken in conformity with that Opinion.';~~**

* + - 1. **paragraph 3 is amended as follows:**

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

**~~'If, within the six-month period referred to in paragraph 2, any of the supervisory authorities concerned has referred the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010 or EIOPA is assisting the supervisory authorities on its own initiative in accordance with Article 19(1)(b) of that Regulation, the group supervisor shall defer its decision until EIOPA adopts a decision in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with EIOPA's adopted decision. The group supervisor's decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.~~**

**(i~~i~~) the first sentence of the third subparagraph is replaced by the following:**

**'Where EIOPA does not adopt a decision as referred to in the second subparagraph in accordance with Article 19(3) of Regulation (EU) No 1094/2010, the group supervisor shall take a final decision.';**

* + - 1. **~~In paragraph 6, the second sub-paragraph is replaced by the following:~~**

**~~'The group supervisor shall duly take into account any views and reservations of the other supervisory authorities concerned and of EIOPA expressed during that six-month period.';~~**

* + - 1. **~~In paragraph 6, the third sub-paragraph is replaced by the following:~~**

**~~'The group supervisor shall provide the applicant, the other supervisory authorities concerned and EIOPA with a document setting out its fully reasoned decision.';~~**

* + - 1. **~~A new paragraph 6a is added:~~**

**~~'6a. After the six month period referred to in paragraph 2 and before the group supervisor takes a decision as referred to in paragraph 6, the undertaking which submitted the application in accordance with paragraph 1 may request that EIOPA assist the supervisory authorities in reaching an agreement, in accordance with Article 19 of Regulation (EU) No 1094/2010.~~**

**~~The group supervisor shall defer its decision until EIOPA adopts a decision in accordance with Article 19(3) of Regulation (EU) No 1094/2010 and shall take its decision in conformity with EIOPA's adopted decision. The group supervisor's decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.~~**

**~~EIOPA shall adopt its decision within 1 month from the end of the conciliation period referred to in Article 19(2) of Regulation (EU) No 1094/2010.~~**

**~~Where EIOPA does not adopt a decision as referred to in the third subparagraph in accordance with Article 19(3) of Regulation (EU) 1094/2010 of that Regulation, the group supervisor shall take a final decision. The group supervisor's decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.';~~**

**Article 231a and 231b are deleted.**

*Article 10*

*Transitional provisions*

4. Article 1. The procedure for the appointment of the members of the **~~Executive~~ Management** Board shall be published following the entry into force of Articles 1, 2 and 3. Until such time as all members of the **~~Executive~~ Management** Board take up their duties the Board of Supervisors and the Management Board shall continue carry out their tasks.

5. The Chairpersons appointed before the entry into force of Articles 1, 2 and 3 shall continue carrying out their tasks and duties until the end of their mandate. The Chairpersons to be appointed after entry into force of Articles 1, 2 and 3 shall be selected and appointed in accordance to the new appointment procedure.

*Article 11*

*Entry into force and entry into application*

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from [24 months after entry into force]

Articles 1, 2 and 3 shall apply as from [PO: please insert date 3 months after the date of entry into force]. However, point [Article 62] of Article 1, point [Article 62] of Article 2 and point [Article 62] of Article 3 shall apply from 1 January [PO: please insert date of 1 January of the year following the expiry of a one-year period after date of entry into force].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament For the Council

The President The President

1. OJ C , , p. . [↑](#footnote-ref-2)
2. OJ C , , p. . [↑](#footnote-ref-3)
3. Position of the European Parliament of …(OJ…) and decision of the Council of … [↑](#footnote-ref-4)