

Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC

REGULATION (EU) No 1095/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 24 November 2010

establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC

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,

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

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

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

Whereas:

- (1) The financial crisis in 2007 and 2008 exposed important shortcomings in financial supervision, both in particular cases and in relation to the financial system as a whole. Nationally based supervisory models have lagged behind financial globalisation and the integrated and interconnected reality of European financial markets, in which many financial institutions operate across borders. The crisis exposed shortcomings in the areas of cooperation, coordination, consistent application of Union law and trust between national supervisors.
- (2) Before and during the financial crisis, the European Parliament has called for a move towards more integrated European supervision in order to ensure a true level playing field for all actors at the level of the Union and to reflect the increasing integration of financial markets in the Union (in its resolutions of 13 April 2000 on the Commission communication on implementing the framework for financial markets: Action Plan<sup>(4)</sup>, of 21 November 2002 on prudential supervision rules in the European Union<sup>(5)</sup>, of 11 July 2007 on financial services policy (2005 to 2010) – White Paper<sup>(6)</sup>, of 23 September 2008 with recommendations to the Commission on hedge funds and private equity<sup>(7)</sup> and of 9 October 2008 with recommendations to the Commission on Lamfalussy follow-up: future structure of supervision<sup>(8)</sup>, and in its positions of 22 April 2009 on the amended proposal for a directive of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)<sup>(9)</sup> and of 23 April

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2009 on the proposal for a regulation of the European Parliament and of the Council on Credit Rating Agencies<sup>(10)</sup>).

- (3) In November 2008, the Commission mandated a High-Level Group chaired by Jacques de Larosière to make recommendations on how to strengthen European supervisory arrangements with a view to better protecting the citizen and rebuilding trust in the financial system. In its final report presented on 25 February 2009 (the ‘de Larosière Report’), the High-Level Group recommended that the supervisory framework be strengthened to reduce the risk and severity of future financial crises. It recommended reforms to the structure of supervision of the financial sector in the Union. The group also concluded that a European System of Financial Supervisors should be created, comprising three European Supervisory Authorities, one for the banking sector, one for the securities sector and one for the insurance and occupational pensions sector and recommended the creation of a European Systemic Risk Council. The report represented the reforms the experts considered were needed and on which work had to begin immediately.
- (4) In its Communication of 4 March 2009 entitled ‘Driving European Recovery’, the Commission proposed to put forward draft legislation creating a European system of financial supervision and a European systemic risk board. In its Communication of 27 May 2009 entitled ‘European Financial Supervision’, it provided more detail about the possible architecture of such a new supervisory framework reflecting the main thrust of the de Larosière Report.
- (5) The European Council, in its conclusions of 19 June 2009, confirmed that a European System of Financial Supervisors, comprising three new European Supervisory Authorities, should be established. The system should be aimed at upgrading the quality and consistency of national supervision, strengthening oversight of cross-border groups and establishing a European single rule book applicable to all financial market participants in the internal market. It emphasised that the European Supervisory Authorities should also have supervisory powers in relation to credit rating agencies and invited the Commission to prepare concrete proposals on how the European System of Financial Supervisors could play a strong role in crisis situations, while stressing that decisions taken by the European Supervisory Authorities should not impinge on the fiscal responsibilities of Member States. The Commission has presented a Proposal for a Regulation amending Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies<sup>(11)</sup>. The European Parliament and the Council should consider that proposal in order to ensure that European Supervisory Authority (European Securities and Markets Authority) (hereinafter the Authority’) will have adequate supervisory powers over credit rating agencies, bearing in mind that the Authority should execute exclusive supervisory powers over Credit Rating Agencies entrusted to it in Regulation (EC) No 1060/2009. For that purpose, the Authority should have appropriate powers of investigation and enforcement as specified in the relevant legislation, as well as the possibility of charging fees.

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- (6) On 17 June 2010, the European Council agreed that ‘Member States should introduce systems of levies and taxes on financial institutions to ensure fair burden-sharing and to set incentives to contain systemic risk. Such levies or taxes should be part of a credible resolution framework. Further work is urgently required on their main features and issues of level playing field and cumulative impacts of various regulatory measures should be carefully assessed’.
- (7) The financial and economic crisis has created real and serious risks to the stability of the financial system and the functioning of the internal market. Restoring and maintaining a stable and reliable financial system is an absolute prerequisite to preserving trust and coherence in the internal market, and thereby to preserve and improve the conditions for the establishment of a fully integrated and functioning internal market in the field of financial services. Moreover, deeper and more integrated financial markets offer better opportunities for financing and risk diversification, and thus help to improve the capacity of the economies to absorb shocks.
- (8) The Union has reached the limits of what can be done with the present status of the Committees of European Supervisors. The Union cannot remain in a situation where there is no mechanism to ensure that national supervisors arrive at the best possible supervisory decisions for cross-border financial market participants; where there is insufficient cooperation and information exchange between national supervisors; where joint action by national authorities requires complicated arrangements to take account of the patchwork of regulatory and supervisory requirements; where national solutions are most often the only feasible option in responding to problems at the level of the Union; and where different interpretations of the same legal text exist. The European System of Financial Supervision (hereinafter the ESFS’) should be designed to overcome those deficiencies and provide a system that is in line with the objective of a stable and single Union financial market for financial services, linking national supervisors within a strong Union network.
- (9) The ESFS should be an integrated network of national and Union supervisory authorities, leaving day-to-day supervision to the national level. Greater harmonisation and the coherent application of rules for financial market participants across the Union should also be achieved. In addition to the Authority, a European Supervisory Authority (European Banking Authority) and a European Supervisory Authority (European Insurance and Occupational Pensions Authority) as well as a Joint Committee of the European Supervisory Authorities (hereinafter the Joint Committee’) should be established. A European Systemic Risk Board (hereinafter the ESRB’) should form part of the ESFS for the purposes of the tasks as specified in this Regulation and in Regulation (EU) No 1092/2010 of the European Parliament and of the Council<sup>(12)</sup>.
- (10) The European Supervisory Authorities (hereinafter collectively referred to as the ‘ESAs’) should replace the Committee of European Banking Supervisors established by Commission Decision 2009/78/EC<sup>(13)</sup>, the Committee of European Insurance and Occupational Pensions Supervisors established by Commission Decision 2009/79/EC<sup>(14)</sup> and the Committee of European Securities Regulators established by Commission Decision 2009/77/EC<sup>(15)</sup>, and should assume all of the tasks and competences of

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those committees including the continuation of ongoing work and projects, where appropriate. The scope of each European Supervisory Authority's action should be clearly defined. The ESAs should be accountable to the European Parliament and the Council. When that accountability relates to cross-sectoral issues that have been coordinated through the Joint Committee, the ESAs should be accountable, through the Joint Committee, for such coordination.

- (11) The Authority should act with a view to improving the functioning of the internal market, in particular by ensuring a high, effective and consistent level of regulation and supervision taking account of the varying interests of all Member States and the different nature of financial market participants. The Authority should protect public values such as the integrity and stability of the financial system, the transparency of markets and financial products and the protection of investors. The Authority should also prevent regulatory arbitrage and guarantee a level playing field, and strengthen international supervisory coordination, for the benefit of the economy at large, including financial institutions and other stakeholders, consumers and employees. Its tasks should also include promoting supervisory convergence and providing advice to the Union institutions in the areas of its responsibility. The Authority should also be entrusted with certain responsibilities for existing and new financial activities.
- (12) The Authority should also be able to temporarily prohibit or restrict certain financial activities that threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union in the cases specified and under the conditions laid down in the legislative acts referred to in this Regulation. If required to make such temporary prohibition in the case of an emergency situation, the Authority should do so in accordance with and under the conditions laid down in this Regulation. In cases where a temporary prohibition or restriction of certain financial activities has a cross-sectoral impact, sectoral legislation should provide that the Authority should consult and coordinate its action with, where relevant, the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Insurance and Occupational Pensions Authority), through the Joint Committee.
- (13) The Authority should take due account of the impact of its activities on competition and innovation within the internal market, on the Union's global competitiveness, on financial inclusion, and on the Union's new strategy for jobs and growth.
- (14) In order to fulfil its objectives, the Authority should have legal personality as well as administrative and financial autonomy.
- (15) Based on the work of international bodies, systemic risk should be defined as a risk of disruption in the financial system with the potential to have serious negative consequences for the internal market and the real economy. All types of financial intermediaries, markets and infrastructures may be potentially systemically important to some degree.
- (16) Cross-border risk includes all risks caused by economic imbalances or financial failures in all or parts of the Union that have the potential to have significant negative consequences for the transactions between economic operators of two or more Member

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States, for the functioning of the internal market or for the public finances of the Union or any of its Member States.

- (17) The Court of Justice of the European Union in its judgment of 2 May 2006 in Case C-217/04 (United Kingdom of Great Britain and Northern Ireland v. European Parliament and Council of the European Union) held that: ‘nothing in the wording of Article 95 EC [now Article 114 of the Treaty on the Functioning of the European Union (TFEU)] implies that the addressees of the measures adopted by the Community legislature on the basis of that provision can only be the individual Member States. The legislature may deem it necessary to provide for the establishment of a Community body responsible for contributing to the implementation of a process of harmonisation in situations where, in order to facilitate the uniform implementation and application of acts based on that provision, the adoption of non-binding supporting and framework measures seems appropriate’<sup>(16)</sup>. The purpose and tasks of the Authority – assisting competent national supervisory authorities in the consistent interpretation and application of Union rules and contributing to financial stability necessary for financial integration – are closely linked to the objectives of the Union *acquis* concerning the internal market for financial services. The Authority should therefore be established on the basis of Article 114 TFEU.
- (18) The following legislative acts lay down the tasks for competent authorities of Member States, including cooperating with each other and with the Commission: Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes<sup>(17)</sup>, Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems<sup>(18)</sup>, Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities<sup>(19)</sup>, Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements<sup>(20)</sup>, Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)<sup>(21)</sup>, Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC<sup>(22)</sup>, Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments<sup>(23)</sup>, Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market<sup>(24)</sup>, Directive 2006/49/EC of the European Parliament and the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions<sup>(25)</sup>, without prejudice to the competence of the European Supervisory Authority (European Banking Authority), as far as prudential supervision is concerned, Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)<sup>(26)</sup>, any future legislation in the area of Alternative Investment Fund Managers (AIFM) and Regulation (EC) No 1060/2009.

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- (19) Existing Union legislation regulating the field covered by this Regulation also includes Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate<sup>(27)</sup>, Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group<sup>(28)</sup>, Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds<sup>(29)</sup>, and the relevant parts of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing<sup>(30)</sup> and of Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services<sup>(31)</sup>.
- (20) It is desirable that the Authority promote a consistent approach in the area of investor compensation schemes to ensure a level playing field and the equitable treatment of investors across the Union. As investor compensation schemes are subject to oversight in their Member States rather than regulatory supervision, the Authority should be able to exercise its powers under this Regulation in relation to the investor compensation scheme itself and its operator.
- (21) In accordance with the Declaration (No 39) on Article 290 of the Treaty on the Functioning of the European Union (TFEU), annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, the elaboration of regulatory technical standards requires assistance of technical expertise in a form which is specific to the financial services area. It is necessary to allow the Authority to provide such expertise also on standards or parts of standards that are not based on a draft technical standard that it has elaborated.
- (22) There is a need to introduce an effective instrument to establish harmonised regulatory technical standards in financial services to ensure, also through a single rulebook, a level playing field and adequate protection of investors and consumers across the Union. As a body with highly specialised expertise, it is efficient and appropriate to entrust the Authority, in areas defined by Union law, with the elaboration of draft regulatory technical standards, which do not involve policy choices.
- (23) The Commission should endorse those draft regulatory technical standards by means of delegated acts under Article 290 TFEU in order to give them binding legal effect. They should be subject to amendment only in very restricted and extraordinary circumstances, since the Authority is the actor in close contact with and knowing best the daily functioning of financial markets. Draft regulatory technical standards would be subject to amendment if they were incompatible with Union law, did not respect the principle of proportionality or ran counter to the fundamental principles of the internal market for financial services as reflected in the *acquis* of Union financial services legislation. The Commission should not change the content of the draft regulatory technical standards prepared by the Authority without prior coordination with the Authority. To ensure a smooth and expeditious adoption process for those standards,

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the Commission's decision to endorse draft regulatory technical standards should be subject to a time limit.

- (24) Given the technical expertise of the Authority in the areas where regulatory technical standards should be developed, note should be taken of the Commission's stated intention to rely, as a rule, on the draft regulatory technical standards submitted to it by the Authority in view of the adoption of the corresponding delegated acts. However, in cases where the Authority fails to submit a draft regulatory technical standard within the time limits set out by the relevant legislative act, it should be ensured that the result of the exercise of delegated power is actually achieved, and the efficiency of the decision-making process be maintained. In those cases, the Commission should therefore be empowered to adopt regulatory technical standards in the absence of a draft by the Authority.
- (25) The Commission should also be empowered to adopt implementing technical standards by means of implementing acts under Article 291 TFEU.
- (26) In areas not covered by regulatory or implementing technical standards, the Authority should have the power to issue guidelines and recommendations on the application of Union law. In order to ensure transparency and to strengthen compliance by national supervisory authorities with those guidelines and recommendations, it should be possible for the Authority to publish the reasons for supervisory authorities' non-compliance with those guidelines and recommendations.
- (27) Ensuring the correct and full application of Union law is a core prerequisite for the integrity, transparency, efficiency and orderly functioning of financial markets, the stability of the financial system, and for neutral conditions of competition for financial market participants in the Union. A mechanism should therefore be established whereby the Authority addresses instances of non-application or incorrect application of Union law amounting to a breach thereof. That mechanism should apply in areas where Union law defines clear and unconditional obligations.
- (28) To allow for a proportionate response to instances of incorrect or insufficient application of Union law, a three-step mechanism should apply. First, the Authority should be empowered to investigate alleged incorrect or insufficient application of Union law obligations by national authorities in their supervisory practice, concluded by a recommendation. Second, where the competent national authority does not follow the recommendation, the Commission should be empowered to issue a formal opinion taking into account the Authority's recommendation, requiring the competent authority to take the actions necessary to ensure compliance with Union law.
- (29) Third, to overcome exceptional situations of persistent inaction by the competent authority concerned, the Authority should be empowered, as a last resort, to adopt decisions addressed to individual financial market participants. That power should be limited to exceptional circumstances in which a competent authority does not comply with the formal opinion addressed to it and in which Union law is directly applicable to financial market participants by virtue of existing or future Union regulations.

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- (30) Serious threats to the orderly functioning and integrity of financial markets or the stability of the financial system in the Union require a swift and concerted response at Union level. The Authority should therefore be able to require national supervisory authorities to take specific actions to remedy an emergency situation. The power to determine the existence of an emergency situation should be conferred on the Council, following a request by any of the ESAs, the Commission or the ESRB.
- (31) The Authority should be able to require national supervisory authorities to take specific action to remedy an emergency situation. The action undertaken by the Authority in this respect should be without prejudice to the Commission's powers under Article 258 TFEU to initiate infringement proceedings against the Member State of that supervisory authority for its failure to take such action, and without prejudice to the Commission's right in such circumstances to seek interim measures in accordance with the rules of procedure of the Court of Justice of the European Union. Furthermore, it should be without prejudice to any liability that that Member State might incur in accordance with the case law of the Court of Justice of the European Union if its supervisory authorities fail to take the action required by the Authority.
- (32) In order to ensure efficient and effective supervision and a balanced consideration of the positions of the competent authorities in different Member States, the Authority should be able to settle disagreements in cross-border situations between those competent authorities with binding effect, including within colleges of supervisors. A conciliation phase should be provided for during which the competent authorities may reach an agreement. The Authority's competence should cover disagreements on the procedure or content of an action or inaction by a competent authority of a Member State in cases specified in the legally binding Union acts referred to in this Regulation. In such a situation, one of the supervisors involved should be entitled to refer the issue to the Authority, which should act in accordance with this Regulation. The Authority should be empowered to require the competent authorities concerned to take specific action or to refrain from action in order to settle the matter in order to ensure compliance with Union law, with binding effects for the competent authorities concerned. If a competent authority does not comply with the settlement decision addressed to it, the Authority should be empowered to adopt decisions directly addressed to financial market participants in areas of Union law directly applicable to them. The power to adopt such decisions should apply only as a last resort and then only to ensure the correct and consistent application of Union law. In cases where the relevant Union legislation confers discretion on Member States' competent authorities, decisions taken by the Authority cannot replace the exercise in compliance with Union law of that discretion.
- (33) The crisis has proven that the current system of cooperation between national authorities whose powers are limited to individual Member States is insufficient as regards financial institutions that operate across borders.
- (34) Expert Groups set up by Member States to examine the causes of the crisis and make suggestions to improve the regulation and supervision of the financial sector have confirmed that the current arrangements are not a sound basis for the future regulation and supervision of cross-border financial institutions across the Union.



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- (35) As the de Larosière Report indicates, ‘[i]n essence, we have two alternatives: the first “chacun pour soi” beggar-thy-neighbour solutions; or the second – enhanced, pragmatic, sensible European cooperation for the benefit of all to preserve an open world economy. This will bring undoubted economic gains’.
- (36) Colleges of supervisors play an important role in the efficient, effective and consistent supervision of financial market participants operating across borders. The Authority should contribute to promoting and monitoring the efficient, effective and consistent functioning of the colleges of supervisors and, in that respect, have a leading role in ensuring the consistent and coherent functioning of colleges of supervisors for cross-border financial institutions across the Union. The Authority should therefore have full participation rights in colleges of supervisors with a view to streamlining the functioning of and the information exchange process in the colleges of supervisors and to foster convergence and consistency across colleges in the application of Union law. As the de Larosière Report states, ‘competition distortions and regulatory arbitrage stemming from different supervisory practices must be avoided, because they have the potential of undermining financial stability – inter alia by encouraging a shift of financial activity to countries with lax supervision. The supervisory system has to be perceived as fair and balanced’.
- (37) In the areas of its competence, the Authority should contribute to, and participate actively in the development and coordination of effective and consistent recovery and resolution plans, procedures in emergency situations and preventive measures to ensure the internalisation of costs by the financial system, in order to minimise the systemic impact of any failure and the reliance on taxpayer funds to bail out financial market participants. It should contribute to developing methods for the resolution of failing key financial market participants in ways which avoid contagion, which allow them to be wound down in an orderly and timely manner, and which, where applicable, include coherent and credible funding mechanisms as appropriate.
- (38) In the current review of Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes<sup>(32)</sup> and Directive 97/9/EC, the Commission’s intention to pay special attention to the need to ensure further harmonisation throughout the Union is noted. In the insurance sector, the Commission’s intention to examine the possibility of introducing Union rules protecting insurance policy holders in case of a failing insurance company is also noted. The ESAs should play an important role in those areas and appropriate powers concerning the European guarantee scheme systems should be conferred upon them.
- (39) The delegation of tasks and responsibilities can be a useful instrument in the functioning of the network of supervisors in order to reduce the duplication of supervisory tasks, to foster cooperation and thereby streamline the supervisory process, as well as to reduce the burden imposed on financial market participants. This Regulation should therefore provide a clear legal basis for such delegation. Whilst respecting the general rule that delegation should be allowed, Member States should be able to introduce specific conditions for the delegation of responsibilities, for example regarding information about, and the notification of, delegation arrangements. Delegation of tasks means that

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tasks are carried out by the Authority or by a national supervisory authority other than the responsible authority, while the responsibility for supervisory decisions remains with the delegating authority. By the delegation of responsibilities, the Authority or a national supervisory authority (the delegate) should be able to decide upon a certain supervisory matter in its own name in lieu of the delegating authority. Delegations should be governed by the principle of allocating supervisory competence to a supervisor which is best placed to take action in the subject matter. A reallocation of responsibilities would be appropriate, for example, for reasons of economies of scale or scope, of coherence in group supervision, and of optimal use of technical expertise among national supervisory authorities. Decisions by the delegate should be recognised by the delegating authority and by other competent authorities as determinative if those decisions are within the scope of the delegation. Relevant Union legislation could further specify the principles for the reallocation of responsibilities upon agreement. The Authority should facilitate and monitor delegation agreements between national supervisory authorities by all appropriate means.

It should be informed in advance of intended delegation agreements, in order to be able to express an opinion where appropriate. It should centralise the publication of such agreements to ensure timely, transparent and easily accessible information about agreements for all parties concerned. It should identify and disseminate best practices regarding delegation and delegation agreements.

- (40) The Authority should actively foster supervisory convergence across the Union with the aim of establishing a common supervisory culture.
- (41) Peer reviews are an efficient and effective tool for fostering consistency within the network of financial supervisors. The Authority should therefore develop the methodological framework for such reviews and conduct them on a regular basis. Reviews should focus not only on the convergence of supervisory practices but also on the capacity of supervisors to achieve high quality supervisory outcomes as well as on the independence of those competent authorities. The outcome of peer reviews should be made public with the agreement of the competent authority subject to the review. Best practices should also be identified and made public.
- (42) The Authority should actively promote a coordinated Union supervisory response, in particular to ensure the orderly functioning and integrity of financial markets and the stability of the financial system in the Union. In addition to its powers for action in emergency situations, the Authority should therefore be entrusted with a general coordination function within the ESFS. The smooth flow of all relevant information between competent authorities should be a particular focus of the Authority's actions.
- (43) In order to safeguard financial stability it is necessary to identify, at an early stage, trends, potential risks and vulnerabilities stemming from the micro-prudential level, across borders and across sectors. The Authority should monitor and assess such developments in the area of its competence and, where necessary, inform the European Parliament, the Council, the Commission, the other European Supervisory Authorities and the ESRB on a regular and, as necessary, on an ad hoc basis. The Authority should also, in cooperation with the ESRB, initiate and coordinate Union-wide stress tests to

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assess the resilience of financial market participants to adverse market developments, and it should ensure that an as consistent as possible methodology is applied at the national level to such tests. In order to perform its functions properly, the Authority should conduct economic analyses of the markets and the impact of potential market developments.

- (44) Given the globalisation of financial services and the increased importance of international standards, the Authority should foster dialogue and cooperation with supervisors outside the Union. It should be empowered to develop contacts and enter into administrative arrangements with the supervisory authorities and administrations of third countries and with international organisations, while fully respecting the existing roles and respective competences of the Member States and the Union institutions. Participation in the work of the Authority should be open to countries which have concluded agreements with the Union whereby they have adopted and are applying Union law, and the Authority should be able to cooperate with third countries which apply legislation that has been recognised as equivalent to that of the Union.
- (45) The Authority should serve as an independent advisory body to the European Parliament, the Council, and the Commission in the area of its competence. Without prejudice to the competencies of the competent authorities concerned, the Authority should be able to provide its opinion on the prudential assessment of mergers and acquisitions under Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments<sup>(23)</sup>, as amended by Directive 2007/44/EC<sup>(33)</sup> in those cases in which that Directive requires consultation between competent authorities from two or more Member States.
- (46) In order to carry out its duties effectively, the Authority should have the right to request all necessary information. To avoid the duplication of reporting obligations for financial market participants, that information should normally be provided by the national supervisory authorities which are closest to the financial markets and financial market participants and should take into account already existing statistics. However, as a last resort, the Authority should be able to address a duly justified and reasoned request for information directly to a financial market participant where a national competent authority does not or cannot provide such information in a timely fashion. Member States' authorities should be obliged to assist the Authority in enforcing such direct requests. In that context, the work on common reporting formats is essential. The measures for the collection of information should be without prejudice to the legal framework of the European Statistical System and the European System of Central Banks in the field of statistics. This Regulation should therefore be without prejudice both to Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics<sup>(34)</sup> and to Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank<sup>(35)</sup>.
- (47) Close cooperation between the Authority and the ESRB is essential to give full effectiveness to the functioning of the ESRB and the follow-up to its warnings and recommendations. The Authority and the ESRB should share any relevant information

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with each other. Data related to individual undertakings should be provided only upon reasoned request. Upon receipt of warnings or recommendations addressed by the ESRB to the Authority or a national supervisory authority, the Authority should ensure follow-up as appropriate.

- (48) The Authority should consult interested parties on regulatory or implementing technical standards, guidelines and recommendations and provide them with a reasonable opportunity to comment on proposed measures. Before adopting draft regulatory or implementing technical standards, guidelines and recommendations, the Authority should carry out an impact study. For reasons of efficiency, a Securities and Markets Stakeholder Group should be used for that purpose, and should represent, in balanced proportions, financial market participants, small and medium-sized enterprises (SMEs), academics and consumers and other retail users of financial services. The Securities and Markets Stakeholder Group should work as an interface with other user groups in the financial services area established by the Commission or by Union legislation.
- (49) Members of the Securities and Markets Stakeholder Group representing non-profit organisations or academics should receive adequate compensation in order to allow persons that are neither well-funded nor industry representatives to take part fully in the debate on financial regulation.
- (50) Member States have a core responsibility for ensuring coordinated crisis management and preserving financial stability in crisis situations, in particular with regard to stabilising and resolving individual failing financial market participants. Decisions by the Authority in emergency or settlement situations affecting the stability of a financial market participant should not impinge on the fiscal responsibilities of Member States. A mechanism should be established whereby Member States may invoke this safeguard and ultimately bring the matter before the Council for a decision. However, that safeguard mechanism should not be abused, in particular in relation to a decision taken by the Authority which does not have a significant or material fiscal impact, such as a reduction of income linked to the temporary prohibition of specific activities or products for consumer protection purposes. When taking decisions under the safeguard mechanism, the Council should vote, in accordance with the principle where each member has one vote. It is appropriate to confer on the Council a role in this matter given the particular responsibilities of the Member States in this respect. Given the sensitivity of the issue, strict confidentiality arrangements should be ensured.
- (51) In its decision-making procedures, the Authority should be bound by Union rules and general principles on due process and transparency. The right of the addressees of the Authority's decisions to be heard should be fully respected. The Authority's acts should form an integral part of Union law.
- (52) A Board of Supervisors composed of the heads of the relevant competent authorities in each Member State, and chaired by the Chairperson of the Authority, should be the principal decision-making organ of the Authority. Representatives of the Commission, the ESRB, the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Banking

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Authority) should participate as observers. Members of the Board of Supervisors should act independently and only in the Union's interest.

- (53) As a general rule, the Board of Supervisors should take its decisions by simple majority in accordance with the principle where each member has one vote. However, for acts of a general nature, including those relating to regulatory and implementing technical standards, guidelines and recommendations, for budgetary matters as well as in respect of requests by a Member State to reconsider a decision by the Authority to temporarily prohibit or restrict certain financial activities, it is appropriate to apply the rules of qualified majority voting as laid down in Article 16(4) of the Treaty on European Union and in the Protocol (No 36) on transitional provisions annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union. Cases concerning the settlement of disagreements between national supervisory authorities should be examined by a restricted, objective panel, composed of members who neither are representatives of the competent authorities which are party to the disagreement nor have any interest in the conflict or direct links to the competent authorities concerned. The composition of the panel should be appropriately balanced. The decision taken by the panel should be approved by the Board of Supervisors by simple majority in accordance with the principle where each member has one vote. However, with regard to decisions taken by the consolidating supervisor, the decision proposed by the panel could be rejected by members representing a blocking minority of the votes as defined in Article 16(4) of the Treaty on European Union and in Article 3 of the Protocol (No 36) on transitional provisions.
- (54) A Management Board, composed of the Chairperson of the Authority, of representatives of national supervisory authorities and of the Commission, should ensure that the Authority carries out its mission and performs the tasks assigned to it. The Management Board should be entrusted with the necessary powers, inter alia, to propose the annual and multi-annual work programme, to exercise certain budgetary powers, to adopt the Authority's staff policy plan, to adopt special provisions on the right to access to documents and to propose the annual report.
- (55) The Authority should be represented by a full time Chairperson, 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 selection procedure organised and managed by the Board of Supervisors assisted by the Commission. For the designation of the first Chairperson of the Authority, the Commission should, inter alia, draw up a shortlist of candidates on the basis of merit, skills, knowledge of financial institutions and markets, and experience relevant to financial supervision and regulation. For the subsequent designations, the opportunity of having a shortlist drawn up by the Commission should be reviewed in a report to be established pursuant to this Regulation. Before the selected person takes up his duties, and up to 1 month after his selection by the Board of Supervisors, the European Parliament should be entitled, after having heard the person selected, to object to his designation.

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- (56) The management of the Authority should be entrusted to an Executive Director, who should have the right to participate in meetings of the Board of Supervisors and the Management Board without the right to vote.
- (57) In order to ensure cross-sectoral consistency in the activities of the ESAs, they should coordinate closely through a Joint Committee and reach common positions where appropriate. The Joint Committee should coordinate the functions of the ESAs in relation to financial conglomerates and other cross sectoral matters. Where relevant, acts also falling within the area of competence of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) or the European Supervisory Authority (European Banking Authority) should be adopted in parallel by the European Supervisory Authorities concerned. The Joint Committee should be chaired for a 12-month term on a rotating basis by the Chairpersons of the ESAs. The Chairperson of the Joint Committee should be a Vice-Chair of the ESRB. The Joint Committee should have dedicated staff provided by the ESAs to allow for informal information sharing and the development of a common supervisory culture approach across the ESAs.
- (58) It is necessary to ensure that the parties affected by decisions adopted by the Authority may have recourse to the necessary remedies. To protect effectively the rights of parties, and for reasons of procedural economy, where the Authority has decision-making powers, parties should be granted a right of appeal to a Board of Appeal. For reasons of efficiency and consistency, the Board of Appeal should be a joint body of the ESAs, independent from their administrative and regulatory structures. The decisions of the Board of Appeal should be subject to appeal before the Court of Justice of the European Union.
- (59) In order to guarantee its full autonomy and independence, the Authority should be granted an autonomous budget with revenues mainly from obligatory contributions from national supervisory authorities and from the General Budget of the European Union. Union financing of the Authority is subject to an agreement by the budgetary authority in accordance with Point 47 of the Interinstitutional Agreement between the European Parliament, the Council and the Commission of 17 May 2006 on budgetary discipline and sound financial management<sup>(36)</sup>. The Union budgetary procedure should be applicable. The auditing of accounts should be undertaken by the Court of Auditors. The overall budget is subject to the discharge procedure.
- (60) Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)<sup>(37)</sup> should apply to the Authority. The Authority should also accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF)<sup>(38)</sup>.
- (61) In order to ensure open and transparent employment conditions and equal treatment of staff, Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities<sup>(39)</sup> should apply to the staff of the Authority.

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- (62) It is essential that business secrets and other confidential information be protected. The confidentiality of information made available to the Authority and exchanged in the network should be subject to stringent and effective confidentiality rules.
- (63) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>(40)</sup> and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>(41)</sup> are fully applicable to the processing of personal data for the purposes of this Regulation.
- (64) In order to ensure the transparent operation of the Authority, Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents<sup>(42)</sup> should apply to the Authority.
- (65) Third countries should be allowed to participate in the work of the Authority in accordance with appropriate agreements to be concluded by the Union.
- (66) Since the objectives of this Regulation, namely improving the functioning of the internal market by means of ensuring a high, effective and consistent level of prudential regulation and supervision, protecting investors, protecting the integrity, efficiency and orderly functioning of financial markets, maintaining the stability of the financial system, and strengthening international supervisory coordination, cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (67) The Authority should assume all current tasks and powers of the Committee of European Securities Regulators. Commission Decision 2009/77/EC should therefore be repealed on the date of the establishment of the Authority and Decision No 716/2009/EC of the European Parliament and of the Council of 16 September 2009 establishing a Community programme to support specific activities in the field of financial services, financial reporting and auditing<sup>(43)</sup>, should be amended accordingly. Given the existing structures and operations of the Committee of European Securities Regulators, it is important to ensure very close cooperation between the Committee of European Securities Regulators and the Commission when establishing appropriate transitional arrangements, to ensure that the period during which the Commission is responsible for the administrative establishment and initial administrative operation of the Authority be as limited as possible.
- (68) It is appropriate to set a time limit for the application of this Regulation in order to ensure that the Authority is adequately prepared to begin operations and a smooth transition from the Committee of European Securities Regulators. The Authority should be appropriately financed. At least initially, it should be financed 40 % from Union

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funds and 60 % through contributions from Member States, made in accordance with the weighting of votes set out in Article 3(3) of the Protocol (No 36) on transitional provisions.

- (69) In order to enable the Authority to be established on 1 January 2011, this Regulation should enter into force on the day following its publication in the *Official Journal of the European Union*,

HAVE ADOPTED THIS REGULATION:

## CHAPTER I

### ESTABLISHMENT AND LEGAL STATUS

#### *Article 1*

#### **Establishment and scope of action**

1 This Regulation establishes a European Supervisory Authority (European Securities and Markets Authority) (hereinafter the Authority’).

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 2003/6/EC, Directive 2003/71/EC, Directive 2004/39/EC, Directive 2004/109/EC, Directive 2009/65/EC and to Directive 2006/49/EC, without prejudice to the competence of the European Supervisory Authority (European Banking Authority) in terms of prudential supervision, any future legislation in the area of Alternative Investment Fund Managers (AIFM), 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 2005/60/EC, Directive 2002/65/EC, including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority.

3 The Authority shall also act in the field of activities of market participants in relation to issues not directly covered in the acts referred to in paragraph 2, including matters of corporate governance, auditing and financial reporting, provided that such actions by the Authority are necessary to ensure the effective and consistent application of those acts. The Authority shall also take appropriate action in the context of take-over bids, clearing and settlement and derivative issues.

4 The provisions of this Regulation are without prejudice to the powers of the Commission, in particular under Article 258 TFEU, to ensure compliance with Union law.

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

- a improving the functioning of the internal market, including in particular a sound, effective and consistent level of regulation and supervision,
- b ensuring the integrity, transparency, efficiency and orderly functioning of financial markets,
- c strengthening international supervisory coordination,



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- d preventing regulatory arbitrage and promoting equal conditions of competition,
- e ensuring the taking of investment and other risks are appropriately regulated and supervised, and
- f enhancing customer protection.

For those purposes, the Authority shall contribute to ensuring the consistent, efficient and effective application of the acts referred to in paragraph 2, foster supervisory convergence, provide opinions to the European Parliament, the Council, and the Commission and undertake economic analyses of the markets to promote the achievement of the Authority's objective.

In the exercise of the tasks conferred upon it by this Regulation, the Authority shall pay particular attention to any systemic risk posed by financial market participants, the failure of which may impair the operation of the financial system or the real economy.

When carrying out its tasks, the Authority shall act independently and objectively and in the interest of the Union alone.

## *Article 2*

### **European System of Financial Supervision**

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

2 The ESFS shall comprise the following:

- a the European Systemic Risk Board (ESRB), for the purposes of the tasks as specified in Regulation (EU) No 1092/2010<sup>(44)</sup> and this Regulation;
- b the Authority;
- c the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>(45)</sup>;
- d the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council<sup>(46)</sup>;
- e the Joint Committee of the European Supervisory Authorities ('Joint Committee') for the purposes of carrying out the tasks as specified in Articles 54 to 57 of this Regulation, of Regulation (EU) No 1093/2010 and of Regulation (EU) No 1094/2010;
- f the competent or supervisory authorities in the Member States as specified in the Union acts referred to in Article 1(2) of this Regulation, of Regulation (EU) No 1093/2010 and of Regulation (EU) No 1094/2010.

3 The Authority shall cooperate regularly and closely with the ESRB as well as with the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Insurance and Occupational Pensions Authority) through the Joint Committee, ensuring cross-sectoral consistency of work and reaching joint positions in the area of supervision of financial conglomerates and on other cross-sectoral issues.

4 In accordance with the principle of sincere cooperation under Article 4(3) of the Treaty on European Union, the parties to the ESFS shall cooperate with trust and full mutual respect, in particular in ensuring the flow of appropriate and reliable information between them.

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5 Those supervisory authorities that are party to the ESFS shall be obliged to supervise financial market participants operating in the Union in accordance with the acts referred to in Article 1(2).

### *Article 3*

#### **Accountability of the Authorities**

The Authorities referred to in Article 2(2)(a) to (d) shall be accountable to the European Parliament and the Council.

### *Article 4*

#### **Definitions**

For the purposes of this Regulation the following definitions apply:

- (1) ‘financial market participant’ means any person in relation to whom a requirement in the legislation referred to in Article 1(2) or a national law implementing such legislation applies;
- (2) ‘key financial market participant’ means a financial market participant whose regular activity or financial viability has or is likely to have a significant effect on the stability, integrity or efficiency of the financial markets in the Union;
- (3) ‘competent authorities’ means:
  - (i) competent authorities and/or supervisory authorities as defined in the legislation referred to in Article 1(2);
  - (ii) with regard to Directives 2002/65/EC and 2005/60/EC, 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;
  - (iii) with regard to investor compensation schemes, bodies which administer national compensation schemes pursuant to Directive 97/9/EC, or in the case where the operation of the investor compensation scheme is administered by a private company, the public authority supervising those schemes pursuant to that Directive.

### *Article 5*

#### **Legal status**

- 1 The Authority shall be a Union body with legal personality.
- 2 In each Member State, the Authority shall enjoy the most extensive legal capacity accorded to legal persons under national law. It may, in particular, acquire or dispose of movable and immovable property and be a party to legal proceedings.
- 3 The Authority shall be represented by its Chairperson.

## Article 6

### Composition

The Authority shall comprise:

- (1) a Board of Supervisors, which shall exercise the tasks set out in Article 43;
- (2) a Management Board, which shall exercise the tasks set out in Article 47;
- (3) a Chairperson, who shall exercise the tasks set out in Article 48;
- (4) an Executive Director, who shall exercise the tasks set out in Article 53;
- (5) a Board of Appeal, which shall exercise the tasks set out in Article 60.

## Article 7

### Seat

The Authority shall have its seat in Paris.

## CHAPTER II

### TASKS AND POWERS OF THE AUTHORITY

## Article 8

### Tasks and powers of the Authority

- 1 The Authority shall have the following tasks:
  - a to contribute to the establishment of high- quality common regulatory and supervisory standards and practices, in particular by providing opinions to the Union institutions and by developing guidelines, recommendations, and draft regulatory and implementing technical standards which shall be based on the legislative acts referred to in Article 1(2);
  - b to contribute to the consistent application of legally binding Union acts, in particular by contributing to a common supervisory culture, ensuring consistent, efficient and effective application of the acts referred to in Article 1(2), preventing regulatory arbitrage, mediating and settling disagreements between competent authorities, ensuring effective and consistent supervision of financial market participants, ensuring a coherent functioning of colleges of supervisors and taking actions, inter alia, in emergency situations;
  - c to stimulate and facilitate the delegation of tasks and responsibilities among competent authorities;
  - d to cooperate closely with the ESRB, in particular by providing the ESRB with the necessary information for the achievement of its tasks and by ensuring a proper follow up to the warnings and recommendations of the ESRB;

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- e to organise and conduct peer review analyses of competent authorities, including issuing guidelines and recommendations and identifying best practices, in order to strengthen consistency in supervisory outcomes;
  - f to monitor and assess market developments in the area of its competence;
  - g to undertake economic analyses of markets to inform the discharge of the Authority's functions;
  - h to foster investor protection;
  - i to contribute to the consistent and coherent functioning of colleges of supervisors, the monitoring, assessment and measurement of systemic risk, the development and coordination of recovery and resolution plans, providing a high level of protection to investors throughout the Union and developing methods for the resolution of failing financial market participants and an assessment of the need for appropriate financing instruments, in accordance with Articles 21 to 26;
  - j to fulfil any other specific tasks set out in this Regulation or in other legislative acts;
  - k to publish on its website, and to update regularly, information relating to its field of activities, in particular, within the area of its competence, on registered financial market participants, in order to ensure information is easily accessible by the public;
  - l to take over, as appropriate, all existing and ongoing tasks from the Committee of European Securities Regulators (CESR).
- 2 To achieve the tasks set out in paragraph 1, the Authority shall have the powers set out in this Regulation, in particular to:
- a develop draft regulatory technical standards in the specific cases referred to in Article 10;
  - b develop draft implementing technical standards in the specific cases referred to in Article 15;
  - c issue guidelines and recommendations, as laid down in Article 16;
  - d issue recommendations in specific cases, as referred to in Article 17(3);
  - e take individual decisions addressed to competent authorities in the specific cases referred to in Articles 18(3) and 19(3);
  - f in cases concerning directly applicable Union law, take individual decisions addressed to financial market participants, in the specific cases referred to in Article 17(6), in Article 18(4) and in Article 19(4);
  - g issue opinions to the European Parliament, the Council, or the Commission as provided for in Article 34;
  - h collect the necessary information concerning financial market participants as provided for in Article 35;
  - i develop common methodologies for assessing the effect of product characteristics and distribution processes on the financial position of financial market participants and on consumer protection;
  - j provide a centrally accessible database of registered financial market participants in the area of its competence where specified in the acts referred to in Article 1(2).

### *Article 9*

#### **Tasks related to consumer protection and financial activities**

- 1 The Authority shall take a leading role in promoting transparency, simplicity and fairness in the market for consumer financial products or services across the internal market, including by:

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- a collecting, analysing and reporting on consumer trends;
- b reviewing and coordinating financial literacy and education initiatives by the competent authorities;
- c developing training standards for the industry; and
- d contributing to the development of common disclosure rules.

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 practice.

3 The Authority may also issue warnings in the event that a financial activity poses a serious threat to the objectives laid down in Article 1(5).

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 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.

5 The Authority may temporarily prohibit or restrict certain financial activities that threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union in the cases specified and under the conditions laid down in the legislative acts referred to in Article 1(2) or if so required in the case of an emergency situation in accordance with and under the conditions laid down in Article 18.

The Authority shall review the decision referred to in the first subparagraph at appropriate intervals and at least every 3 months. If the decision is not renewed after a three-month period, it shall automatically expire.

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

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

#### *Article 10*

### **Regulatory technical standards**

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

Regulatory technical standards shall be technical, shall not imply strategic decisions or policy choices and their content shall be delimited by the legislative acts on which they are based.

Before submitting them to the Commission, the Authority shall conduct open public consultations on draft regulatory technical standards and analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft regulatory technical standards concerned or

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in relation to the particular urgency of the matter. The Authority shall also request the opinion of the Securities and Markets Stakeholder Group referred to in Article 37.

Where the Authority submits a draft regulatory technical standard, the Commission shall immediately forward it to the European Parliament and the Council.

Within 3 months of receipt of a draft regulatory technical standard, the Commission shall decide whether to endorse it. The Commission may endorse the draft regulatory technical standards in part only, or with amendments, where the Union's interests so require.

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

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

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

2 Where the Authority has not submitted a draft regulatory technical standard within the time limit set out in the legislative acts referred to in Article 1(2), the Commission may request such a draft within a new time limit.

3 Only where the Authority does not submit a draft regulatory technical standard to the Commission within the time limits in accordance with paragraph 2, may the Commission adopt a regulatory technical standard by means of a delegated act without a draft from the Authority.

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

The Commission shall immediately forward the draft regulatory technical standard to the European Parliament and the Council.

The Commission shall send its draft regulatory technical standard to the Authority. Within a period of 6 weeks, the Authority may amend the draft regulatory technical standard and submit it in the form of a formal opinion to the Commission. The Authority shall send a copy of its formal opinion to the European Parliament and to the Council.

If, on the expiry of the six-week period referred to in the fourth subparagraph, the Authority has not submitted an amended draft regulatory technical standard, the Commission may adopt the regulatory technical standard.

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If the Authority has submitted an amended draft regulatory technical standard within the six-week period, the Commission may amend the draft regulatory technical standard on the basis of the Authority's proposed amendments or adopt the regulatory technical standard with the amendments it considers relevant. The Commission shall not change the content of the draft regulatory technical standard prepared by the Authority without prior coordination with the Authority, as set out in this Article.

4 The regulatory technical standards shall be adopted by means of regulations or decisions. They shall be published in the *Official Journal of the European Union* and shall enter into force on the date stated therein.

### *Article 11*

#### **Exercise of the delegation**

1 The power to adopt regulatory technical standards referred to in Article 10 shall be conferred on the Commission for a period of 4 years from 16 December 2010. The Commission shall draw up a report in respect of the delegated power not later than 6 months before the end of the four-year period. The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 14.

2 As soon as it adopts a regulatory technical standard, the Commission shall notify it simultaneously to the European Parliament and to the Council.

3 The power to adopt regulatory technical standards is conferred on the Commission subject to the conditions laid down in Articles 12 to 14.

### *Article 12*

#### **Revocation of the delegation**

1 The delegation of power referred to in Article 10 may be revoked at any time by the European Parliament or by the Council.

2 The institution which has commenced an internal procedure for deciding whether to revoke a delegation of power shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated power which could be subject to revocation.

3 The decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the regulatory technical standards already in force. It shall be published in the *Official Journal of the European Union*.

### *Article 13*

#### **Objections to regulatory technical standards**

1 The European Parliament or the Council may object to a regulatory technical standard within a period of 3 months from the date of notification of the regulatory technical standard adopted by the Commission. At the initiative of the European Parliament or the Council that period shall be extended by 3 months.

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Where the Commission adopts a regulatory technical standard which is the same as the draft regulatory technical standard submitted by the Authority, the period during which the European Parliament and the Council may object shall be 1 month from the date of notification. At the initiative of the European Parliament or the Council that period shall be extended by 1 month.

2 If, on the expiry of the period referred to in paragraph 1, neither the European Parliament nor the Council has objected to the regulatory technical standard, it shall be published in the *Official Journal of the European Union* and shall enter into force on the date stated therein.

The regulatory technical standard may be published in the *Official Journal of the European Union* and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3 If either the European Parliament or the Council objects to a regulatory technical standard within the period referred to in paragraph 1, it shall not enter into force. In accordance with Article 296 TFEU, the institution which objects shall state the reasons for objecting to the regulatory technical standard.

#### *Article 14*

### **Non-endorsement or amendment of draft regulatory technical standards**

1 In the event that the Commission does not endorse a draft regulatory technical standard or amends it as provided for in Article 10, the Commission shall inform the Authority, the European Parliament and the Council, stating its reasons.

2 Where appropriate, the European Parliament or the Council may invite the responsible Commissioner, together with the Chairperson of the Authority, within 1 month of the notice referred to in paragraph 1, for an ad hoc meeting of the competent committee of the European Parliament or the Council to present and explain their differences.

#### *Article 15*

### **Implementing technical standards**

1 The Authority may develop implementing technical standards, by means of implementing acts under Article 291 TFEU, in the areas specifically set out in the legislative acts referred to in Article 1(2). Implementing technical standards shall be technical, shall not imply strategic decisions or policy choices and their content shall be to determine the conditions of application of those acts. The Authority shall submit its draft implementing technical standards to the Commission for endorsement.

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

Where the Authority submits a draft implementing technical standard, the Commission shall immediately forward it to the European Parliament and the Council.



Within 3 months of receipt of a draft implementing technical standard, the Commission shall decide whether to endorse it. The Commission may extend that period by 1 month. The Commission may endorse the draft implementing technical standard in part only, or with amendments, where the Union's interests so require.

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

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

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

2 In cases where the Authority has not submitted a draft implementing technical standard within the time limit set out in the legislative acts referred to in Article 1(2), the Commission may request such a draft within a new time limit.

3 Only where the Authority does not submit a draft implementing technical standard to the Commission within the time limits in accordance with paragraph 2, may the Commission adopt an implementing technical standard by means of an implementing act without a draft from the Authority.

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

The Commission shall immediately forward the draft implementing technical standard to the European Parliament and the Council.

The Commission shall send the draft implementing technical standard to the Authority. Within a period of 6 weeks, the Authority may amend the draft implementing technical standard and submit it in the form of a formal opinion to the Commission. The Authority shall send a copy of its formal opinion to the European Parliament and to the Council.

If, on the expiry of the six-week period referred to in the fourth subparagraph, the Authority has not submitted an amended draft implementing technical standard, the Commission may adopt the implementing technical standard.

If the Authority has submitted an amended draft implementing technical standard within that six-week period, the Commission may amend the draft implementing

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technical standard on the basis of the Authority's proposed amendments or adopt the implementing technical standard with the amendments it considers relevant.

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

4 The implementing technical standards shall be adopted by means of regulations or decisions. They shall be published in the *Official Journal of the European Union* and shall enter into force on the date stated therein.

### Article 16

#### Guidelines and recommendations

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

2 The Authority shall, where appropriate, conduct open public consultations regarding the guidelines and recommendations and analyse the related potential costs and benefits. Such consultations and analyses shall be proportionate in relation to the scope, nature and impact of the guidelines or recommendations. The Authority shall, where appropriate, also request opinions or advice from the Securities and Markets Stakeholder Group referred to in Article 37.

3 The competent authorities and financial market participants shall make every effort to comply with those guidelines and recommendations.

Within 2 months of the issuance of a guideline or recommendation, each competent authority shall confirm whether it complies or intends to comply with that guideline or recommendation. In the event that a competent authority does not comply or does not intend to comply, it shall inform the Authority, stating its reasons.

The Authority shall publish the fact that a competent authority does not comply or does not intend to comply with that guideline or recommendation. The Authority may also decide, on a case by case basis, to publish the reasons provided by the competent authority for not complying with that guideline or recommendation. The competent authority shall receive advanced notice of such publication.

If required by that guideline or recommendation, financial market participants shall report, in a clear and detailed way, whether they comply with that guideline or recommendation.

4 In the report referred to in Article 43(5) the Authority shall inform the European Parliament, the Council and the Commission of the guidelines and recommendations that have been issued, stating which competent authority has not complied with them, and outlining how the Authority intends to ensure that the competent authority concerned follow its recommendations and guidelines in the future.

## Article 17

### Breach of Union law

1 Where a competent authority has not applied the acts referred to in Article 1(2), or has applied them in a way which appears to be a breach of Union law, including the regulatory technical standards and implementing technical standards established in accordance with Articles 10 to 15, in particular by failing to ensure that a financial market participant satisfies the requirements laid down in those acts, the Authority shall act in accordance with the powers set out in paragraphs 2, 3 and 6 of this Article.

2 Upon a request from one or more competent authorities, the European Parliament, the Council, the Commission or the Securities and Markets Stakeholder Group, or on its own initiative, and after having informed the competent authority concerned, the Authority may investigate the alleged breach or non-application of Union law.

Without prejudice to the powers laid down in Article 35, the competent authority shall, without delay, provide the Authority with all information which the Authority considers necessary for its investigation.

3 The Authority may, not later than 2 months from initiating its investigation, address a recommendation to the competent authority concerned setting out the action necessary to comply with Union law.

The competent authority shall, within ten working days of receipt of the recommendation, inform the Authority of the steps it has taken or intends to take to ensure compliance with Union law.

4 Where the competent authority has not complied with Union law within 1 month from receipt of the Authority's recommendation, the Commission may, after having been informed by the Authority or on its own initiative, issue a formal opinion requiring the competent authority to take the action necessary to comply with Union law. The Commission's formal opinion shall take into account the Authority's recommendation.

The Commission shall issue such a formal opinion no later than 3 months after the adoption of the recommendation. The Commission may extend this period by 1 month.

The Authority and the competent authorities shall provide the Commission with all necessary information.

5 The competent authority shall, within ten working days of receipt of the formal opinion referred to in paragraph 4, inform the Commission and the Authority of the steps it has taken or intends to take to comply with that formal opinion.

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

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

7 Decisions adopted under 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 or a decision pursuant to paragraph 6, competent authorities shall comply with the formal opinion or the decision, as the case may be.

8 In the report referred to in Article 43(5), the Authority shall set out which competent authorities and financial market participants have not complied with the formal opinions or decisions referred to in paragraphs 4 and 6 of this Article.

### *Article 18*

#### **Action in emergency situations**

1 In the case of adverse developments which may seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union, the Authority shall actively facilitate and, where deemed necessary, coordinate any actions undertaken by the relevant national competent supervisory authorities.

In order to be able to perform that facilitating and coordinating role, the Authority shall be fully informed of any relevant developments, and shall be invited to participate as an observer in any relevant gathering by the relevant national competent supervisory authorities.

2 The Council, in consultation with the Commission and the ESRB and, where appropriate, the ESAs, may adopt a decision addressed to the Authority, determining the existence of an emergency situation for the purposes of this Regulation, following a request by the Authority, the Commission or the ESRB. The Council shall review that decision at appropriate intervals and at least once a month. If the decision is not renewed at the end of a one-month period, it shall automatically expire. The Council may declare the discontinuation of the emergency situation at any time.

Where the ESRB or the Authority considers that an emergency situation may arise, it shall issue a confidential recommendation addressed to the Council and provide it with an assessment of the situation. The Council shall then assess the need for a meeting. In that process, due care of confidentiality shall be guaranteed.

If the Council determines the existence of an emergency situation, it shall duly inform the European Parliament and the Commission without delay.

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

4 Without prejudice to the powers of the Commission under Article 258 TFEU, where a competent authority does not comply with the decision of the Authority referred to in

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paragraph 3 within the period laid down in that decision, the Authority may, where the relevant requirements laid down in the legislative acts referred to in Article 1(2) including in regulatory technical standards and implementing technical standards adopted in accordance with those acts are directly applicable to financial market participants, adopt an individual decision addressed to a financial market participant requiring the necessary action to comply with its obligations under that legislation, including the cessation of any practice. This shall apply only in situations in which a competent authority does not apply the legislative acts referred to in Article 1(2), including regulatory technical standards and implementing technical standards adopted in accordance with those acts, or applies them in a way which appears to be a manifest breach of those acts, and where urgent remedying is necessary to restore the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union.

5 Decisions adopted under paragraph 4 shall prevail over any previous decision adopted by the competent authorities on the same matter.

Any action by the competent authorities in relation to issues which are subject to a decision pursuant to paragraph 3 or 4 shall be compatible with those decisions.

### *Article 19*

#### **Settlement of disagreements between competent authorities in cross-border situations**

1 Without prejudice to the powers laid down in Article 17, where a competent authority disagrees about the procedure or content of an action or inaction of a competent authority of another Member State in cases specified in the acts referred to in Article 1(2), the Authority, at the request of one or more of the competent authorities concerned may assist the authorities in reaching an agreement in accordance with the procedure set out in paragraphs 2 to 4 of this Article.

In cases specified in the legislation referred to in Article 1(2), and where on the basis of objective criteria, disagreement between competent authorities from different Member States can be determined, the Authority may, on its own initiative, assist the authorities in reaching an agreement in accordance with the procedure set out in paragraphs 2 to 4.

2 The Authority shall set a time limit for conciliation between the competent authorities taking into account any relevant time periods specified in the acts referred to in Article 1(2) and the complexity and urgency of the matter. At that stage the Authority shall act as a mediator.

3 If the competent authorities concerned fail to reach an agreement within the conciliation phase referred to in paragraph 2, the Authority may, in accordance with the procedure set out in the third and fourth subparagraph of Article 44(1) take a decision requiring them to take specific action or to refrain from action in order to settle the matter, with binding effects for the competent authorities concerned, in order to ensure compliance with Union law.

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

5 Decisions adopted under paragraph 4 shall prevail over any previous decision adopted by the competent authorities on the same matter. Any action by the competent authorities in

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relation to facts which are subject to a decision pursuant to paragraph 3 or 4 shall be compatible with those decisions.

6 In the report referred to in Article 50(2), the Chairperson of the Authority shall set out the nature and type of disagreements between competent authorities, the agreements reached and the decisions taken to settle such disagreements.

#### *Article 20*

### **Settlement of disagreements between competent authorities across sectors**

The Joint Committee shall, in accordance with the procedure laid down in Article 19 and Article 56, settle cross-sectoral disagreements that may arise between competent authorities as defined in Article 4(2) of this Regulation, of Regulation (EU) No 1093/2010 and of Regulation (EU) No 1094/2010 respectively.

#### *Article 21*

### **Colleges of supervisors**

1 The Authority shall contribute to promoting and monitoring the efficient, effective and consistent functioning of the colleges of supervisors established in the legislative acts referred to in Article 1(2) 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 in the activities of the colleges of supervisors, including on-site examinations, carried out jointly by two or more competent authorities.

2 The Authority shall lead in ensuring a consistent and coherent functioning of colleges of supervisors for cross-border institutions across the Union, taking account of the systemic risk posed by financial market participants referred to in Article 23.

For the purpose of this paragraph and of paragraph 1 of this Article, the Authority shall be considered a 'competent authority' within the meaning of the relevant legislation.

The Authority may:

- a collect and share all relevant information in cooperation with the competent authorities in order to facilitate the work of the college and establish and manage a central system to make such information accessible to the competent authorities in the college;
- b initiate and coordinate Union-wide stress tests in accordance with Article 32 to assess the resilience of financial market participants, in particular the systemic risk posed by key financial market participants as referred to in Article 23, to adverse market developments, and evaluate the potential for systemic risk posed by key financial market participants to increase in situations of stress, ensuring that a consistent methodology is applied at the national level to such tests and, where appropriate, address a recommendation to the competent authority to correct issues identified in the stress test;
- c promote effective and efficient supervisory activities, including evaluating the risks to which financial market participants are or might be exposed in stress situations;
- d oversee, in accordance with the tasks and powers specified in this Regulation, the tasks carried out by the competent authorities, and
- e request further deliberations of a college in any cases where it considers that the decision would result in an incorrect application of Union law or would not contribute to the

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objective of convergence of supervisory practices. It may also require to schedule a meeting of the college or add a point to the agenda of a meeting.

3 The Authority may develop draft regulatory and implementing technical standards to ensure uniform conditions of application with respect to the provisions regarding the operational functioning of colleges of supervisors and issue guidelines and recommendations adopted under Article 16 to promote convergence in supervisory functioning and best practices adopted by the colleges of supervisors.

4 The Authority shall have a legally binding mediation role to resolve disputes between competent authorities in accordance with the procedure set out in Article 19. The Authority may take supervisory decisions directly applicable to the financial market participant concerned in accordance with Article 19.

## Article 22

### General provisions

1 The Authority shall duly consider systemic risk as defined by Regulation (EU) No 1092/2010. It shall address any risk of disruption in financial services that:

- a is caused by an impairment of all or parts of the financial system; and
- b has the potential to have serious negative consequences for internal market and the real economy.

The Authority shall consider, where appropriate, the monitoring and assessment of systemic risk as developed by the ESRB and the Authority and respond to warnings and recommendations by the ESRB in accordance with Article 17 of Regulation (EU) No 1092/2010.

2 The Authority shall, in collaboration with the ESRB, and in accordance with Article 23 develop a common approach for the identification and measurement of systemic risk posed by key financial market participants, including quantitative and qualitative indicators as appropriate.

Those indicators shall be a critical element in the determination of appropriate supervisory actions. The Authority shall monitor the degree of convergence in the determinations made, with a view to promoting a common approach.

3 Without prejudice to the acts referred to in Article 1(2), the Authority shall draw up, as necessary, additional guidelines and recommendations for key financial market participants, to take account of the systemic risk posed by them.

The Authority shall ensure that the systemic risk posed by key financial market participants is taken into account when developing draft regulatory and implementing technical standards in the areas laid down in the legislative acts referred to in Article 1(2).

4 Upon a request from one or more competent authorities, the European Parliament, the Council or the Commission, or on its own initiative, the Authority may conduct an inquiry into a particular type of financial activity or type of product or type of conduct in order to assess potential threats to the integrity of financial markets or the stability of the financial system and make appropriate recommendations for action to the competent authorities concerned.

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

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5 The Joint Committee shall ensure overall and cross-sectoral coordination of the activities carried out in accordance with this Article.

### *Article 23*

#### **Identification and measurement of systemic risk**

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

2 The Authority shall take fully into account the relevant international approaches when developing the criteria for the identification and measurement of systemic risk posed by financial market participants, including those established by the Financial Stability Board, the International Monetary Fund and the Bank for International Settlements.

### *Article 24*

#### **Permanent capacity to respond to systemic risks**

1 The Authority shall ensure it has specialised and ongoing capacity to respond effectively to the materialisation of systemic risks as referred to in Articles 22 and 23, in particular with respect to institutions that pose a systemic risk.

2 The Authority shall fulfil the tasks conferred upon it in this Regulation and in the legislation referred to in Article 1(2), and shall contribute to ensuring a coherent and coordinated crisis management and resolution regime in the Union.

### *Article 25*

#### **Recovery and resolution procedures**

1 The Authority shall contribute to and participate actively in the development and coordination of effective and consistent recovery and resolution plans, procedures in emergency situations and preventive measures to minimise the systemic impact of any failure.

2 The Authority may develop regulatory and implementing technical standards as specified in the legislative acts referred to in Article 1(2) in accordance with the procedure laid down in Articles 10 to 15.

### *Article 26*

#### **European system of national Investor Compensation Schemes**

1 The Authority shall contribute to strengthening the European system of national Investor Compensation Schemes (ICS) by acting under the powers conferred to it in this Regulation to ensure the correct application of Directive 97/9/EC with the aim of ensuring that national Investor Compensation Schemes are adequately funded by contributions from the concerned financial market participants, including where appropriate financial market



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participants headquartered in third-countries, and provide a high level of protection to all investors in a harmonised framework throughout the Union.

2 Article 16 concerning the Authority's powers to adopt guidelines and recommendations shall apply to Investor Compensation Schemes.

3 The Authority may develop regulatory and implementing technical standards as specified in the legislative acts referred to in Article 1(2) in accordance with the procedure laid down in Articles 10 to 15.

4 The review of this Regulation provided for in Article 81 shall in particular examine the convergence of the European system of national Investor Compensation Schemes.

#### *Article 27*

### **European system of resolution and funding arrangements**

1 In the areas of its competence, the Authority shall contribute to developing methods for the resolution of failing key financial market participants in ways which avoid contagion, allow them to be wound down in an orderly and timely manner, and, where applicable, including coherent and credible funding mechanisms as appropriate.

2 The Authority shall contribute to the work on the level playing field issues and cumulative impacts of any systems of levies and contributions on financial institutions that may be introduced to ensure fair burden sharing and incentives to contain systemic risk as a part of a coherent and credible resolution framework.

The review of this Regulation provided for in Article 81 shall in particular examine the possible enhancement of the role of the Authority in a framework of crisis prevention, management and resolution.

#### *Article 28*

### **Delegation of tasks and responsibilities**

1 Competent authorities may, with the consent of the delegate, delegate tasks and responsibilities to the Authority or other competent authorities subject to the conditions set out in this Article. Member States may set out specific arrangements regarding the delegation of responsibilities that have to be complied with before their competent authorities enter into such delegation agreements, and may limit the scope of delegation to what is necessary for the effective supervision of cross-border financial market participants or groups.

2 The Authority shall stimulate and facilitate the delegation of tasks and responsibilities between competent authorities by identifying those tasks and responsibilities that can be delegated or jointly exercised and by promoting best practices.

3 The delegation of responsibilities shall result in the reallocation of competences laid down in the acts referred to in Article 1(2). The law of the delegate authority shall govern the procedure, enforcement and administrative and judicial review relating to the delegated responsibilities.

4 The competent authorities shall inform the Authority of delegation agreements into which they intend to enter. They shall put the agreements into effect at the earliest 1 month after informing the Authority.

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The Authority may give an opinion on the intended agreement within 1 month of being informed.

The Authority shall publish, by appropriate means, any delegation agreement as concluded by the competent authorities, in order to ensure that all parties concerned are informed appropriately.

#### *Article 29*

### **Common supervisory culture**

1 The Authority shall play an active role in building a common Union supervisory culture and consistent supervisory practices, as well as in ensuring uniform procedures and consistent approaches throughout the Union. The Authority shall carry out, at a minimum, the following activities:

- a providing opinions to competent authorities;
- b promoting an effective bilateral and multilateral exchange of information between competent authorities, with full respect for the applicable confidentiality and data protection provisions provided for in the relevant Union legislation;
- c contributing to developing high-quality and uniform supervisory standards, including reporting standards, and international accounting standards in accordance with Article 1(3);
- d reviewing the application of the relevant regulatory and implementing technical standards adopted by the Commission, and of the guidelines and recommendations issued by the Authority and proposing amendments where appropriate; and
- e establishing sectoral and cross-sectoral training programmes, facilitating personnel exchanges and encouraging competent authorities to intensify the use of secondment schemes and other tools.

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

#### *Article 30*

### **Peer reviews of competent authorities**

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

- 2 The peer review shall include an assessment of, but shall not be limited to:
- a the adequacy of resources and governance arrangements of the competent authority, with particular regard to the effective application of the regulatory technical standards and implementing technical standards referred to in Articles 10 to 15 and of the acts referred to in Article 1(2) and the capacity to respond to market developments;
  - b the degree of convergence reached in the application of Union law and in supervisory practice, including regulatory technical standards and implementing technical standards, guidelines and recommendations adopted under Articles 10 to 16,

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

3 On the basis of a peer review, the Authority may issue guidelines and recommendations pursuant to Article 16. In accordance with Article 16(3), the competent authorities shall endeavour to follow those guidelines and recommendations. The Authority shall take into account the outcome of the peer review when developing draft regulatory technical or implementing technical standards in accordance with Articles 10 to 15.

4 The Authority shall make the best practices that can be identified from those peer reviews publicly available. In addition, all other results of peer reviews may be disclosed publicly, subject to the agreement of the competent authority that is the subject of the peer review.

### *Article 31*

#### **Coordination function**

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

The Authority shall promote a coordinated Union response, inter alia, by:

- (a) facilitating the exchange of information between the competent authorities;
- (b) determining the scope and, where possible and appropriate, verifying the reliability of information that should be made available to all the competent authorities concerned;
- (c) without prejudice to Article 19, carrying out non-binding mediation upon a request from the competent authorities or on its own initiative;
- (d) notifying the ESRB of any potential emergency situations without delay.
- (e) taking all appropriate measures in case of developments which may jeopardise the functioning of the financial markets with a view to facilitating the coordination of actions undertaken by relevant competent authorities;
- (f) centralising information received from competent authorities in accordance with Articles 21 and 35 as the result of the regulatory reporting obligations for financial market participants active in more than one Member State. The Authority shall share that information with the other competent authorities concerned.

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## Article 32

### Assessment of market developments

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

2 The Authority shall, in cooperation with the ESRB, initiate and coordinate Union-wide assessments of the resilience of financial market participants to adverse market developments. To that end, it shall develop the following, for application by the competent authorities:

- a common methodologies for assessing the effect of economic scenarios on the financial position of a financial market participant;
- b common approaches to communication on the outcomes of these assessments of the resilience of financial market participants;
- c common methodologies for assessing the effect of particular products or distribution processes on the financial position of a financial market participant and on investors and customer information.

3 Without prejudice to the tasks of the ESRB set out in Regulation (EU) No 1092/2010, the Authority shall, at least once a year, and more frequently as necessary, provide assessments to the European Parliament, the Council, the Commission and the ESRB of trends, potential risks and vulnerabilities in its area of competence.

The Authority shall include a classification of the main risks and vulnerabilities in these assessments and, where necessary, recommend preventative or remedial actions.

4 The Authority shall ensure an adequate coverage of cross-sectoral developments, risks and vulnerabilities by closely cooperating with the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Insurance and Occupational Pensions Authority) through the Joint Committee.

## Article 33

### International relations

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

2 The Authority shall assist in preparing equivalence decisions pertaining to supervisory regimes in third countries in accordance with the acts referred to in Article 1(2).

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3 In the report referred to in Article 43(5), the Authority shall set out the administrative arrangements agreed upon with international organisations or administrations in third countries and the assistance provided in preparing equivalence decisions.

#### *Article 34*

#### **Other tasks**

1 The Authority may, upon a request from the European Parliament, the Council or the Commission, or on its own initiative, provide opinions to the European Parliament, the Council and the Commission on all issues related to its area of competence.

2 With regard to prudential assessments of mergers and acquisitions falling within the scope of Directive 2004/39/EC, as amended by Directive 2007/44/EC, and which according to that Directive require consultation between competent authorities from two or more Member States, the Authority may, on application of one of the competent authorities concerned, issue and publish an opinion on a prudential assessment, except in relation to the criteria in Article 10b(e) of Directive 2004/39/EC. The opinion shall be issued promptly and in any event before the end of the assessment period in accordance with Directive 2004/39/EC, as amended by Directive 2007/44/EC. Article 35 shall apply to the areas in respect of which the Authority may issue an opinion.

#### *Article 35*

#### **Collection of information**

1 At the request of the Authority, the competent authorities of the Member States shall provide the Authority with all the necessary information to carry out the duties assigned to it by this Regulation, provided that they have legal access to the relevant information, and that the request for information is necessary in relation to the nature of the duty in question.

2 The Authority may also request information to be provided at recurring intervals and in specified formats. Such requests shall, where possible, be made using common reporting formats.

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

4 Before requesting information in accordance with this Article and in order to avoid the duplication of reporting obligations, the Authority shall take account of any relevant existing statistics produced and disseminated by the European Statistical System and the European System of Central Banks.

5 Where information is not available or is not made available by the competent authorities in a timely fashion, the Authority may address a duly justified and reasoned request to other supervisory authorities, to the ministry responsible for finance where it has at its disposal prudential information, to the national central bank or to the statistical office of the Member State concerned.

6 Where information is not available or is not made available under paragraph 1 or 5 in a timely fashion, the Authority may address a duly justified and reasoned request directly to the

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relevant financial market participants. The reasoned request shall explain why the information concerning the respective individual financial market participants is necessary.

The Authority shall inform the relevant competent authorities of requests in accordance with this paragraph and with paragraph 5.

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

7 The Authority may use confidential information received under this Article only for the purposes of carrying out the duties assigned to it by this Regulation.

### *Article 36*

#### **Relationship with the ESRB**

1 The Authority shall cooperate closely and on a regular basis with the ESRB.

2 The Authority shall provide the ESRB with regular and timely information necessary for the achievement of its tasks. Any data necessary for the achievement of its tasks that are not in summary or aggregate form shall be provided, without delay, to the ESRB upon a reasoned request, as specified in Article 15 of Regulation (EU) No 1092/2010. The Authority, in cooperation with the ESRB, shall have in place adequate internal procedures for the transmission of confidential information, in particular information regarding individual financial market participants.

3 The Authority shall, in accordance with paragraphs 4 and 5, ensure a proper follow-up to ESRB warnings and recommendations referred to in Article 16 of Regulation (EU) No 1092/2010.

4 On receipt of a warning or recommendation from the ESRB addressed to the Authority, the Authority shall convene a meeting of the Board of Supervisors without delay and assess the implications of such a warning or recommendation for the fulfilment of its tasks.

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

If the Authority does not act on a recommendation, it shall explain to the ESRB and the Council its reasons for not doing so.

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

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

The competent authority shall take due account of the views of the Board of Supervisors when informing the Council and the ESRB in accordance with Article 17 of Regulation (EU) No 1092/2010.

6 In discharging the tasks set out in this Regulation, the Authority shall take the utmost account of the warnings and recommendations of the ESRB.

### Article 37

#### Securities and Markets Stakeholder Group

1 To help facilitate consultation with stakeholders in areas relevant to the tasks of the Authority, a Securities and Markets Stakeholder Group shall be established. The Securities and Markets Stakeholder Group shall be consulted on actions taken in accordance with Articles 10 to 15 concerning regulatory technical standards and implementing technical standards and, to the extent that these do not concern individual financial market participants, Article 16 concerning guidelines and recommendations. If actions must be taken urgently and consultation becomes impossible, the Securities and Markets Stakeholder Group shall be informed as soon as possible.

The Securities and Markets Stakeholder Group shall meet at least four times a year.

2 The Securities and Markets Stakeholder Group shall be composed of 30 members, representing in balanced proportions financial market participants operating in the Union, their employees' representatives as well as consumers, users of financial services and representatives of SMEs. At least five of its members shall be independent top-ranking academics. Ten of its members shall represent financial market participants.

3 The members of the Securities and Markets Stakeholder Group shall be appointed by the Board of Supervisors, following proposals from the relevant stakeholders. In making its decision, the Board of Supervisors shall, to the extent possible, ensure an appropriate geographical and gender balance and representation of stakeholders across the Union.

4 The Authority shall provide all necessary information, subject to professional secrecy, as set out in Article 70, and ensure adequate secretarial support for the Securities and Markets Stakeholder Group. Adequate compensation shall be provided to members of the Securities and Markets Stakeholder Group that are representing non-profit organisations, excluding industry representatives. The Securities and Markets Stakeholder Group may establish working groups on technical issues. Members of the Securities and Markets Stakeholder Group shall serve for a period of two-and-a-half years, following which a new selection procedure shall take place.

The members of the Securities and Markets Stakeholder Group may serve two successive terms.

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

6 The Securities and Markets Stakeholder Group shall adopt its rules of procedure by a majority of two-thirds of its members.

7 The Authority shall make public the opinions and advice of the Securities and Markets Stakeholder Group and the results of its consultations.

### Article 38

#### Safeguards

1 The Authority shall ensure that no decision adopted under Articles 18 or 19 impinges in any way on the fiscal responsibilities of Member States.

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2 Where a Member State considers that a decision taken under Article 19(3) impinges on its fiscal responsibilities, it may notify the Authority and the Commission within 2 weeks after notification of the Authority's decision to the competent authority that the decision will not be implemented by the competent authority.

In its notification, the Member State shall clearly and specifically explain why and how the decision impinges on its fiscal responsibilities.

In the case of such notification, the decision of the Authority shall be suspended.

Within a period of 1 month from the notification by the Member State, the Authority shall inform the Member State as to whether it maintains its decision or whether it amends or revokes it. If the decision is maintained or amended, the Authority shall state that fiscal responsibilities are not affected.

Where the Authority maintains its decision, the Council shall take a decision, by a majority of the votes cast, at one of its meetings not later than 2 months after the Authority has informed the Member State as set out in the fourth subparagraph, as to whether the Authority's decision is maintained.

Where the Council, after having considered the matter, does not take a decision to maintain the Authority's decision in accordance with the fifth subparagraph, the Authority's decision shall be terminated.

3 Where a Member State considers that a decision taken under Article 18(3) impinges on its fiscal responsibilities, it may notify the Authority, the Commission and the Council within three working days after notification of the Authority's decision to the competent authority that the decision will not be implemented by the competent authority.

In its notification, the Member State shall clearly and specifically explain why and how the decision impinges on its fiscal responsibilities.

In the event of such notification, the decision of the Authority shall be suspended.

The Council shall, within ten working days, convene a meeting and take a decision, by a simple majority of its members, as to whether the Authority's decision is revoked.

Where the Council, after having considered the matter, does not take a decision to revoke the Authority's decision in accordance with the fourth subparagraph, the suspension of the Authority's decision shall be terminated.

4 Where the Council has taken a decision in accordance with paragraph 3 not to revoke a decision of the Authority relating to Article 18(3), and the Member State concerned still considers that the decision of the Authority impinges upon its fiscal responsibilities, that Member State may notify the Commission and the Authority and request the Council to re-examine the matter. The Member State concerned shall clearly set out the reasons for its disagreement with the decision of the Council.

Within a period of 4 weeks after the notification referred to in the first subparagraph, the Council shall confirm its original decision or take a new decision in accordance with paragraph 3.

The period of 4 weeks may be extended by four additional weeks by the Council, if the particular circumstances of the case so require.



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5 Any abuse of this Article, in particular in relation to a decision by the Authority which does not have a significant or material fiscal impact, shall be prohibited as incompatible with the internal market.

### *Article 39*

#### **Decision-making procedures**

1 Before taking the decisions provided for in this Regulation, the Authority shall inform any named addressee of its intention to adopt the decision, setting a time limit within which the addressee may express its views on the matter, taking full account of the urgency, complexity and potential consequences of the matter. This applies mutatis mutandis to recommendations as referred to in Article 17(3).

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

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

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

5 The decisions which the Authority takes pursuant to Articles 17, 18 or 19 shall be made public and shall state 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 interests of financial market participants in 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.

## CHAPTER III

### ORGANISATION

#### SECTION 1

##### **Board of Supervisors**

### *Article 40*

#### **Composition**

- 1 The Board of Supervisors shall be composed of:
- a the Chairperson, who shall be non-voting;
  - b the head of the national public authority competent for the supervision of financial market participants in each Member State, who shall meet in person at least twice a year;
  - c one representative of the Commission, who shall be non-voting;
  - d one representative of the ESRB, who shall be non-voting;
  - e one representative of each of the other two European Supervisory Authorities who shall be non-voting;

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2 The Board of Supervisors shall convene meetings with the Securities and Markets Stakeholder Group regularly, at least twice a year.

3 Each competent authority shall be responsible for nominating a high-level alternate from its authority, who may replace the member of the Board of Supervisors referred to in paragraph 1(b), where that person is prevented from attending.

4 In Member States where more than one authority is responsible for the supervision according to this Regulation, those authorities shall agree on a common representative. Nevertheless, when an item to be discussed by the Board of Supervisors does not fall within the competence of the national authority being represented by the member referred to in paragraph 1(b), that member may bring a representative from the relevant national authority, who shall be non-voting.

5 For the purpose of acting within the scope of Directive 97/9/EC, the member of the Board of Supervisors referred to in paragraph 1(b) may, where appropriate, be accompanied by a representative from the relevant bodies which administer investor compensation schemes in each Member State, who shall be non-voting.

6 The Board of Supervisors may decide to admit observers.

The Executive Director may participate in meetings of the Board of Supervisors without the right to vote.

#### *Article 41*

### **Internal committees and panels**

1 The Board of Supervisors may establish internal committees or panels for specific tasks attributed to the Board of Supervisors, and may provide for the delegation of certain clearly defined tasks and decisions to internal committees or panels, to the Management Board or to the Chairperson.

2 For the purposes of Article 19, the Board of Supervisors shall convoke an independent panel to facilitate an impartial settlement of the disagreement, consisting of the Chairperson and two of its members, who are not representatives of the competent authorities which are party to the disagreement and who have neither any interest in the conflict nor direct links to the competent authorities concerned.

3 Subject to Article 19(2), the panel shall propose a decision for final adoption by the Board of Supervisors, in accordance with the procedure set out in the third subparagraph of Article 44(1).

4 The Board of Supervisors shall adopt rules of procedure for the panel referred to in paragraph 2.

#### *Article 42*

### **Independence**

When carrying out the tasks conferred upon it by this Regulation, the Chairperson and 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

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from 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 Board of Supervisors in the performance of their tasks.

### *Article 43*

#### **Tasks**

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.

2 The Board of Supervisors shall adopt the opinions, recommendations, and decisions, and issue the advice referred to in Chapter II.

3 The Board of Supervisors shall appoint the Chairperson.

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

The work programme shall be adopted without prejudice to the annual budgetary procedure and shall be made public.

5 The Board of Supervisors shall, on the basis of a proposal by the Management Board, adopt 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.

6 The Board of Supervisors shall adopt the multi-annual work programme of the Authority, and shall transmit it for information to the European Parliament, the Council and the Commission.

The multi-annual work programme shall be adopted without prejudice to the annual budgetary procedure and shall be made public.

7 The Board of Supervisors shall adopt the budget in accordance with Article 63.

8 The Board of Supervisors shall exercise disciplinary authority over the Chairperson and the Executive Director and may remove them from office in accordance with Article 48(5) or Article 51(5) respectively.

### *Article 44*

#### **Decision making**

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

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With regard to the acts specified in Articles 10 to 16 and measures and decisions adopted under the third subparagraph of Article 9(5) and Chapter VI and by way of derogation from the first subparagraph of this paragraph, the Board of Supervisors shall take decisions on the basis of a qualified majority of its members, as defined in Article 16(4) of the Treaty on European Union and in Article 3 of the Protocol (No 36) on transitional provisions.

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

For all other decisions in accordance with Article 19(3), the decision proposed by the panel shall be adopted by a simple majority of the members of the Board of Supervisors. Each member shall have one vote.

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

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

4 The rules of procedure shall set out in detail the arrangements governing voting, including, where appropriate, the rules governing quorums. The non-voting members and the observers, with the exception of the Chairperson and the Executive Director, shall not attend any discussions within the Board of Supervisors relating to individual financial market participants, unless otherwise provided for in Article 75(3) or in the acts referred to in Article 1(2).

## SECTION 2

### Management Board

#### *Article 45*

#### Composition

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

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

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

2 Decisions by the Management Board shall be adopted on the basis of a majority of the members present. Each member shall have one vote.

The Executive Director and a representative of the Commission shall participate in meetings of the Management Board without the right to vote.

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The representative of the Commission shall have the right to vote on matters referred to in Article 63.

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

3 Meetings of the Management Board shall be convened by the Chairperson at his own initiative or at the request of at least a third of its members, and shall be chaired by the Chairperson.

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

4 The members of the Management Board may, subject to the rules of procedure, be assisted by advisers or experts. The non-voting members, with the exception of the Executive Director, shall not attend any discussions within the Management Board relating to individual financial market participants.

#### *Article 46*

### **Independence**

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

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

#### *Article 47*

### **Tasks**

1 The Management Board shall ensure that the Authority carries out its mission and performs the tasks assigned to it in accordance with this Regulation.

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

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

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

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

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

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

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

## SECTION 3

### Chairperson

#### Article 48

#### Appointment and tasks

1 The Authority shall be represented by a Chairperson, who shall be a full-time independent professional.

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

2 The Chairperson shall be appointed by the Board of Supervisors on the basis of merit, skills, knowledge of financial market participants and markets, and of experience relevant to financial supervision and regulation, following an open selection procedure.

Before taking up his duties, and up to 1 month after the selection by the Board of Supervisors, the European Parliament may, after having heard the candidate selected by the Board of Supervisors, object to the designation of the selected person.

The Board of Supervisors shall also elect, from among its members, an alternate who shall carry out the functions of the Chairperson in his absence. That alternate shall not be elected from among the members of the Management Board.

3 The Chairperson's term of office shall be 5 years and may be extended once.

4 In the course of the 9 months preceding the end of the five-year term of office of the Chairperson, the Board of Supervisors shall evaluate:

- a the results achieved in the first term of office and the way they were achieved;
- b the Authority's duties and requirements in the coming years.

The Board of Supervisors, taking into account the evaluation may extend the term of office of the Chairperson once subject to confirmation by the European Parliament.

5 The Chairperson may be removed from office only by the European Parliament following a decision of the Board of Supervisors.

The Chairperson shall not prevent the Board of Supervisors from discussing matters relating to the Chairperson, in particular the need for his removal, and shall not be involved in deliberations concerning such a matter.

#### Article 49

#### Independence

Without prejudice to the role of the Board of Supervisors in relation to the tasks of the Chairperson, the Chairperson shall neither seek nor take instructions from the Union

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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 Chairperson in the performance of his tasks.

In accordance with the Staff Regulations referred to in Article 68, the Chairperson shall, after leaving service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

#### *Article 50*

### **Report**

1 The European Parliament and the Council may invite the Chairperson or his alternate to make a statement, while fully respecting his independence. The Chairperson shall, make a statement before the European Parliament and answer any questions put by its members, whenever so requested.

2 The Chairperson shall report in writing on the main activities of the Authority to the European Parliament when requested and at least 15 days before making the statement referred to in paragraph 1.

3 In addition to the information referred to in Articles 11 to 18 and Articles 20 and 33, the report shall also include any relevant information requested by the European Parliament on an ad-hoc basis.

## SECTION 4

### **Executive Director**

#### *Article 51*

### **Appointment**

1 The Authority shall be managed by an Executive Director, who shall be a full-time independent professional.

2 The Executive Director shall be appointed by the Board of Supervisors, after confirmation by the European Parliament, on the basis of merit, skills, knowledge of financial market participants and markets, and experience relevant to financial supervision and regulation and managerial experience, following an open selection procedure.

3 The Executive Director's term of office shall be 5 years and may be extended once.

4 In the course of the 9 months preceding the end of the Executive Director's term of office, the Board of Supervisors shall evaluate in particular:

- a the results achieved in the first term of office and the way they were achieved;
- b the Authority's duties and requirements in the coming years.

The Board of Supervisors, taking into account the evaluation referred to in the first subparagraph, may extend the term of office of the Executive Director once.

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5 The Executive Director may be removed from office only upon a decision of the Board of Supervisors.

#### *Article 52*

### **Independence**

Without prejudice to the respective roles of the Management Board and the Board of Supervisors in relation to the tasks of the Executive Director, the Executive Director 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 Executive Director in the performance of his tasks.

In accordance with the Staff Regulations referred to in Article 68, the Executive Director shall, after leaving service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

#### *Article 53*

### **Tasks**

1 The Executive Director shall be in charge of the management of the Authority and shall prepare the work of the Management Board.

2 The Executive Director shall be responsible for implementing the annual work programme of the Authority under the guidance of the Board of Supervisors and under the control of the Management Board.

3 The Executive Director shall take the 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.

4 The Executive Director shall prepare a multi-annual work programme, as referred to in Article 47(2).

5 Each year by 30 June, the Executive Director shall prepare a work programme for the following year, as referred to in Article 47(2).

6 The Executive Director shall draw up a preliminary draft budget of the Authority pursuant to Article 63 and shall implement the budget of the Authority pursuant to Article 64.

7 Each year the Executive Director shall prepare a draft report with a section on the regulatory and supervisory activities of the Authority and a section on financial and administrative matters.

8 The Executive Director shall exercise in respect to the Authority's staff the powers laid down in Article 68 and manage staff matters.



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## CHAPTER IV

### JOINT BODIES OF THE EUROPEAN SUPERVISORY AUTHORITIES

#### SECTION 1

##### Joint Committee of European Supervisory Authorities

###### *Article 54*

###### **Establishment**

- 1 The Joint Committee of the European Supervisory Authorities is hereby established.
- 2 The Joint Committee shall serve as a forum in which the Authority shall cooperate regularly and closely and ensure cross-sectoral consistency with the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Insurance and Occupational Pensions Authority), in particular regarding:
  - financial conglomerates,
  - accounting and auditing,
  - micro-prudential analyses of cross-sectoral developments, risks and vulnerabilities for financial stability,
  - retail investment products,
  - measures combating money laundering; and,
  - information exchange with the ESRB and developing the relationship between the ESRB and the ESAs,
- 3 The Joint Committee shall have a dedicated staff provided by the ESAs that shall act as a secretariat. The Authority shall contribute adequate resources to administrative, infrastructure and operational expenses.
- 4 In the event that a financial market participant reaches across different sectors, the Joint Committee shall resolve disagreements in accordance with Article 56.

###### *Article 55*

###### **Composition**

- 1 The Joint Committee shall be composed of the Chairpersons of the ESAs, and, where applicable, the Chairperson of any Sub-Committee established under Article 57.
- 2 The Executive Director, a representative of the Commission and the ESRB shall be invited to the meetings of the Joint Committee, as well as of any Sub-Committees referred to in Article 57, as observers.
- 3 The Chairperson of the Joint Committee shall be appointed on an annual rotational basis from among the Chairpersons of the ESAs. The Chairperson of the Joint Committee shall be a Vice-Chair of the ESRB.
- 4 The Joint Committee shall adopt and publish its own rules of procedure. The rules may specify further participants in the meetings of the Joint Committee.

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The Joint Committee shall meet at least once every 2 months.

#### *Article 56*

### **Joint positions and common acts**

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

Acts under Articles 10 to 15, 17, 18 or 19 of this Regulation in relation to the application of Directive 2002/87/EC and of any other Union acts referred to in Article 1(2) that also fall within the area of competence of the European Supervisory Authority (European Banking Authority) or the European Supervisory Authority (European Insurance and Occupational Pensions Authority) shall be adopted, in parallel, by the Authority, the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Insurance and Occupational Pensions Authority), as appropriate.

#### *Article 57*

### **Sub-Committees**

1 For the purposes of Article 56, a Sub-Committee on Financial Conglomerates to the Joint Committee shall be established.

2 The Sub-Committee shall be composed of the individuals referred to in Article 55(1), and one high-level representative from the current staff of the relevant competent authority from each Member State.

3 The Sub-Committee shall elect a Chairperson from among its members, who shall also be a member of the Joint Committee.

4 The Joint Committee may establish further Sub Committees.

## SECTION 2

### **Board of Appeal**

#### *Article 58*

### **Composition and operation**

1 The Board of Appeal shall be a joint body of the ESAs.

2 The Board of Appeal shall be composed of six members and six alternates, who shall be individuals of a high repute with a proven record of relevant knowledge and professional experience, including supervisory, experience to a sufficiently high level in the fields of banking, insurance, occupational pensions, securities markets or other financial services, excluding current staff of the competent authorities or other national or Union institutions involved in the

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activities of the Authority. The Board of Appeal shall have sufficient legal expertise to provide expert legal advice on the legality of the Authority's exercise of its powers.

The Board of Appeal shall designate its President.

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

The other members shall be appointed in accordance with Regulation (EU) No 1093/2010 and Regulation (EU) No 1094/2010.

4 The term of office of the members of the Board of Appeal shall be 5 years. That term may be extended once.

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

6 The decisions of the Board of Appeal shall be adopted on the basis of a majority of at least four of its six members. Where the appealed decision falls within the scope of this Regulation, the deciding majority shall include at least one of the two members of the Board of Appeal appointed by the Authority.

7 The Board of Appeal shall be convened by its President when necessary.

8 The ESAs shall ensure adequate operational and secretarial support for the Board of Appeal through the Joint Committee.

#### *Article 59*

### **Independence and impartiality**

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

2 Members of the Board of Appeal shall not take part in any appeal proceedings in which they have any personal interest, if they have previously been involved as representatives of one of the parties to the proceedings, or if they have participated in the decision under appeal.

3 If, for one of the reasons referred to in paragraphs 1 and 2 or for any other reason, a member of a Board of Appeal considers that another member should not take part in any appeal proceedings, he shall inform the Board of Appeal accordingly.

4 Any party to the appeal proceedings may object to the participation of a member of the Board of Appeal on any of the grounds referred to in paragraphs 1 and 2, or if suspected of bias.

No objection may be based on the nationality of members nor shall it be admissible if, while being aware of a reason for objecting, the party to the appeal proceedings has nonetheless taken a procedural step other than objecting to the composition of the Board of Appeal.

5 The Board of Appeal shall decide on the action to be taken in the cases specified in paragraphs 1 and 2 without the participation of the member concerned.

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*Status: Point in time view as at 24/11/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Regulation (EU) No 1095/2010 of the European Parliament and of the Council. (See end of Document for details)*

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For the purpose of taking that decision, the member concerned shall be replaced on the Board of Appeal by his alternate. Where the alternate is in a similar situation, the Chairperson shall designate a replacement from among the available alternates.

6 The members of the Board of Appeal shall undertake to act independently and in the public interest.

For that purpose, they shall make a declaration of commitments and a declaration of interests indicating either the absence of any interest which may be considered prejudicial to their independence or any direct or indirect interest which might be considered prejudicial to their independence.

Those declarations shall be made public, annually and in writing.

## CHAPTER V

### REMEDIES

#### *Article 60*

#### **Appeals**

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

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

The Board of Appeal shall decide upon the appeal within 2 months after the appeal has been lodged.

3 An appeal lodged pursuant to paragraph 1 shall not have suspensive effect.

However, the Board of Appeal may, if it considers that circumstances so require, suspend the application of the contested decision.

4 If the appeal is admissible, the Board of Appeal shall examine whether it is well-founded. It shall invite the parties to the appeal proceedings to file observations on its own notifications or on communications from the other parties to the appeal proceedings, within specified time limits. Parties to the appeal proceedings shall be entitled to make oral representations.

5 The Board of Appeal may confirm the decision taken by the competent body of the Authority, or remit the case to the competent body of the Authority. That body shall be bound by the decision of the Board of Appeal and that body shall adopt an amended decision regarding the case concerned.

6 The Board of Appeal shall adopt and make public its rules of procedure.

7 The decisions taken by the Board of Appeal shall be reasoned and shall be made public by the Authority.

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*Status: Point in time view as at 24/11/2010.*

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## Article 61

### **Actions before the Court of Justice of the European Union**

- 1 Proceedings may be brought before the Court of Justice of the European Union, in accordance with Article 263 TFEU, contesting a decision taken by the Board of Appeal or, in cases where there is no right of appeal before the Board of Appeal, by the Authority.
- 2 Member States and the Union institutions, as well as any natural or legal person, may institute proceedings before the Court of Justice of the European Union against decisions of the Authority, in accordance with Article 263 TFEU.
- 3 In the event that the Authority has an obligation to act and fails to take a decision, proceedings for failure to act may be brought before the Court of Justice of the European Union in accordance with Article 265 TFEU.
- 4 The Authority shall be required to take the necessary measures to comply with the judgment of the Court of Justice of the European Union.

## CHAPTER VI

### **FINANCIAL PROVISIONS**

## Article 62

### **Budget of the Authority**

- 1 The revenues of the Authority, a European body in accordance with Article 185 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>(47)</sup> (hereinafter the ‘Financial Regulation’), shall consist, in particular, of any combination of the following:
  - a obligatory contributions from the national public authorities competent for the supervision of financial market participants which shall be made in accordance with a formula based on the weighting of votes set out in Article 3(3) of Protocol (No 36) on transitional provisions. For the purposes of this Article, Article 3(3) of Protocol (No 36) on transitional provisions shall continue to apply beyond the deadline of 31 October 2014 therein established;
  - b a subsidy from the Union, entered in the General Budget of the European Union (Commission Section);
  - c any fees paid to the Authority in the cases specified in the relevant instruments of Union law.
- 2 The expenditure of the Authority shall include, at least, staff, remuneration, administrative, infrastructure professional training and operational expenses.
- 3 Revenue and expenditure shall be in balance.
- 4 Estimates of all Authority revenue and expenditure shall be prepared for each financial year, corresponding to the calendar year, and shall be presented in the budget of the Authority.

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### Article 63

#### Establishment of the budget

1 By 15 February each year, the Executive Director shall draw up a draft statement of estimates of revenue and expenditure for the following financial year, and shall forward it to the Management Board and the Board of Supervisors, together with the establishment plan. Each year, the Board of Supervisors shall, on the basis of the draft statement drawn up by the Executive Director and approved by the Management Board, produce a statement of estimates of revenue and expenditure of the Authority for the following financial year. That statement of estimates, including a draft establishment plan, shall be transmitted by the Board of Supervisors to the Commission by 31 March. Prior to adoption of the statement of estimates, the draft prepared by the Executive Director shall be approved by the Management Board.

2 The statement of estimates shall be transmitted by the Commission to the European Parliament and to the Council (hereinafter referred to together as the ‘budgetary authority’), together with the draft budget of the European Union.

3 On the basis of the statement of estimates, the Commission shall enter in the draft budget of the European Union the estimates it deems necessary in respect of the establishment plan and the amount of the subsidy to be charged to the General Budget of the European Union in accordance with Articles 313 and 314 TFEU.

4 The budgetary authority shall adopt the establishment plan for the Authority. The budgetary authority shall authorise the appropriations for the subsidy to the Authority.

5 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 European Union. Where necessary, it shall be adjusted accordingly.

6 The Management Board shall, without delay, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of its budget, in particular any project relating to property, such as the rental or purchase of buildings. It shall inform the Commission thereof. If either branch of the budgetary authority intends to issue an opinion, it shall, within 2 weeks of receipt of the information on the project, notify the Authority of its intention to issue such an opinion. In the absence of a reply, the Authority may proceed with the planned operation.

7 For the first year of operation of the Authority, ending on 31 December 2011, the financing of the Authority by the Union is subject to an agreement by the budgetary authority as provided for in Point 47 of the Interinstitutional Agreement on budgetary discipline and sound financial management.

### Article 64

#### Implementation and control of the budget

1 The Executive Director shall act as authorising officer and shall implement the Authority’s budget.

2 By 1 March following the completion of each financial year, the Authority’s accounting officer shall forward to the Commission’s accounting officer and to the Court of Auditors the provisional accounts, accompanied by the report on budgetary and financial

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management during the financial year. 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 and the Council by 31 March of the following year.

The Commission's accounting officer shall then consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of the Financial Regulation.

3 After receiving the observations of the Court of Auditors on the provisional accounts of the Authority in accordance with Article 129 of the Financial Regulation, the Executive Director, acting on his own responsibility, shall draw up the final accounts of the Authority and transmit them, for opinion, to the Management Board.

4 The Management Board shall deliver an opinion on the final accounts of the Authority.

5 The Executive Director shall transmit those final accounts, accompanied by the opinion of the Management Board, by 1 July following the completion of the financial year, to the Members of the Board of Supervisors, the European Parliament, the Council, the Commission and the Court of Auditors.

6 The final accounts shall be published.

7 The Executive Director shall send the Court of Auditors a reply to the latter's observations by 30 September. He shall also send a copy of that reply to the Management Board and the Commission.

8 The Executive Director shall submit to the European Parliament, at the latter's request and as provided for in Article 146(3) of the Financial Regulation, any information necessary for the smooth application of the discharge procedure for the financial year in question.

9 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 comprising revenue from the General Budget of the European Union and competent authorities for the financial year N.

#### *Article 65*

### **Financial rules**

The financial rules applicable to the Authority shall be adopted by the Management Board after consulting the Commission. Those rules may not depart from Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>(48)</sup> unless the specific operational needs for the functioning of the Authority so require and only with the prior agreement of the Commission.

#### *Article 66*

### **Anti-fraud measures**

1 For the purposes of combating fraud, corruption and any other illegal activity, Regulation (EC) No 1073/1999 shall apply to the Authority without any restriction.

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2 The Authority shall accede to the Interinstitutional Agreement concerning internal investigations by OLAF and shall immediately adopt appropriate provisions for all staff of the Authority.

3 The funding decisions and the agreements and the implementing instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may, if need be, carry out on-the-spot checks on the beneficiaries of monies disbursed by the Authority as well as on the staff responsible for allocating these monies.

## CHAPTER VII

### GENERAL PROVISIONS

#### *Article 67*

#### **Privileges and immunities**

The Protocol (No 7) on the privileges and immunities of the European Union annexed to the Treaty on European Union and to the TFEU shall apply to the Authority and its staff.

#### *Article 68*

#### **Staff**

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 its Executive Director and its Chairperson.

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

3 In respect of its staff, the Authority shall exercise the powers conferred on the appointing authority by the Staff Regulations and on the authority entitled to conclude contracts by the Conditions of Employment of Other Servants.

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

#### *Article 69*

#### **Liability of the Authority**

1 In the case of non-contractual liability, the Authority shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its staff in the performance of their duties. The Court of Justice of the European Union shall have jurisdiction in any dispute over the remedying of such damage.

2 The personal financial liability and disciplinary liability of Authority staff towards the Authority shall be governed by the relevant provisions applying to the staff of the Authority.



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## Article 70

### Obligation of professional secrecy

1 Members of the Board of Supervisors and the Management Board, the Executive Director, and 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.

Article 16 of the Staff Regulations shall apply to them.

In accordance with the Staff Regulations, the staff shall, after leaving service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

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

2 Without prejudice to cases covered by criminal law, any confidential information received by persons referred to in paragraph 1 whilst performing their duties may not be divulged to any person or authority whatsoever, except in summary or aggregate form, such that individual financial market participants cannot be identified.

Moreover, the obligation under paragraph 1 and the first subparagraph of this paragraph shall not prevent the Authority and the national supervisory 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.

3 Paragraphs 1 and 2 shall not prevent the Authority from exchanging information with national supervisory authorities in accordance with this Regulation and other Union legislation applicable to financial market participants.

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

4 The Authority shall apply Commission Decision 2001/844/EC/ECSC, Euratom of 29 November 2001 amending its internal Rules of Procedure<sup>(49)</sup>.

## Article 71

### Data protection

This Regulation shall be without prejudice to the obligations of Member States relating to their processing of personal data under Directive 95/46/EC or the obligations of the Authority relating to its processing of personal data under Regulation (EC) No 45/2001 when fulfilling its responsibilities.

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## Article 72

### Access to documents

- 1 Regulation (EC) No 1049/2001 shall apply to documents held by the Authority.
- 2 The Management Board shall, by 31 May 2011, adopt practical measures for applying Regulation (EC) No 1049/2001.
- 3 Decisions taken by the Authority pursuant to Article 8 of Regulation (EC) No 1049/2001 may be the subject of a complaint to the Ombudsman or of proceedings before the Court of Justice of the European Union, following an appeal to the Board of Appeal, as appropriate, in accordance with the conditions laid down in Articles 228 and 263 TFEU respectively.

## Article 73

### Language arrangements

- 1 Council Regulation No 1 determining the languages to be used by the European Economic Community<sup>(50)</sup> shall apply to the Authority.
- 2 The Management Board shall decide on the internal language arrangements for the Authority.
- 3 The translation services required for the functioning of the Authority shall be provided by the Translation Centre for the Bodies of the European Union.

## Article 74

### Headquarters Agreement

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 Executive Director, the members of the Management Board, the staff of the Authority and members of their families shall be laid down in a Headquarters Agreement between the Authority and that Member State concluded after obtaining the approval of the Management Board.

That Member State shall provide the best possible conditions to ensure the proper functioning of the Authority, including multilingual, European-oriented schooling and appropriate transport connections.

## Article 75

### Participation of third countries

- 1 Participation in the work of the Authority shall be open to third countries which have concluded agreements with the Union whereby they have adopted and are applying Union law in the areas of competence of the Authority as referred to in Article 1(2).

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2 The Authority may cooperate with the countries referred to in paragraph 1, applying legislation which has been recognised as equivalent in the areas of competence of the Authority referred to in Article 1(2), as provided for in international agreements concluded by the Union in accordance with Article 216 TFEU.

3 Under the relevant provisions of the agreements referred to in paragraphs 1 and 2, arrangements shall be made specifying, in particular, the nature, scope and procedural aspects of the involvement of the countries referred to in paragraph 1 in the work of the Authority, including provisions relating to financial contributions and to staff. They may provide for representation, as an observer, on the Board of Supervisors, but shall ensure that those countries do not attend any discussions relating to individual financial market participants, except where there is a direct interest.

## CHAPTER VIII

### TRANSITIONAL AND FINAL PROVISIONS

#### *Article 76*

#### **Preparatory actions**

1 Following the entry into force of this Regulation, and before the establishment of the Authority, CESR shall act in close cooperation with the Commission to prepare for the replacement of CESR by the Authority.

2 Once the Authority has been established, the Commission shall be responsible for the administrative establishment and initial administrative operation of the Authority until the Authority has appointed an Executive Director.

For that purpose, until such time as the Executive Director takes up his duties following his appointment by the Board of Supervisors in accordance with Article 51, the Commission may assign one official on an interim basis in order to fulfil the functions of the Executive Director. That period shall be limited to the time necessary for the appointment of an Executive Director of the Authority.

The interim Executive Director may authorise all payments covered by credits provided in the budget of the Authority, once approved by the Management Board and may conclude contracts, including staff contracts following the adoption of the Authority's establishment plan.

3 Paragraphs 1 and 2 are without prejudice to the powers of the Board of Supervisors and the Management Board.

4 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 asset and liability situation as of the date of that transfer. That statement shall be audited and approved by CESR and by the Commission.

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## Article 77

### **Transitional staff provisions**

1 By way of derogation from Article 68, all employment contracts and secondment agreements concluded by CESR or its Secretariat and in force on 1 January 2011 shall be honoured until their expiry date. They may not be extended.

2 All members of staff under contracts referred to in paragraph 1 shall be offered the possibility of concluding temporary agent contracts under Article 2(a) of the Conditions of Employment of Other Servants at the various grades as set out in the Authority's establishment plan.

An internal selection limited to staff who have contracts with CESR or its Secretariat shall be carried out after the entry into force of this Regulation by the authority authorised to conclude contracts in order to check the ability, efficiency and integrity of those to be engaged. The internal selection procedure shall take full account of the skills and experience demonstrated by the individuals' performance prior to the engagement.

3 Depending on the type and level of functions to be performed, successful applicants shall be offered temporary agents' contracts of a duration corresponding at least to the time remaining under the prior contract.

4 The relevant national law relating to labour contracts and other relevant instruments shall continue to apply to staff members with prior contracts who choose not to apply for temporary agent's contracts or who are not offered temporary agents contracts in accordance with paragraph 2.

## Article 78

### **National provisions**

The Member States shall make such provision as is appropriate to ensure the effective application of this Regulation.

## Article 79

### **Amendments**

Decision No 716/2009/EC is hereby amended in so far as CESR is removed from the list of beneficiaries set out in Section B of the Annex to that Decision.

## Article 80

### **Repeal**

Commission Decision 2009/77/EC, establishing CESR, is hereby repealed with effect from 1 January 2011.

*Status: Point in time view as at 24/11/2010.*

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## Article 81

### Review

1 By 2 January 2014 and every 3 years thereafter, the Commission shall publish a general report on the experience acquired as a result of the operation of the Authority and the procedures laid down in this Regulation. That report shall evaluate, inter alia:

- a the convergence in supervisory practices reached by competent authorities,
  - (i) the convergence in functional independence of the competent authorities and in standards equivalent to corporate governance;
  - (ii) the impartiality, objectivity and autonomy of the Authority;
- b the functioning of the colleges of supervisors;
- c the progress achieved towards convergence in the fields of crisis prevention, management and resolution, including Union funding mechanisms;
- d the role of the Authority as regards systemic risk;
- e the application of the safeguard clause established in Article 38;
- f the application of the binding mediation role established in Article 19.

2 The report referred to in paragraph 1 shall also examine whether:

- a it is appropriate to continue separate supervision of banking, insurance, occupational pensions, securities and financial markets;
- b it is appropriate to undertake prudential supervision and supervise the conduct of business separately or by the same supervisor;
- c it is appropriate to simplify and reinforce the architecture of the ESFS in order to increase the coherence between the macro and the micro levels and between the ESAs;
- d the evolution of the ESFS is consistent with that of the global evolution;
- e there is sufficient diversity and excellence within the ESFS;
- f accountability and transparency in relation to publication requirements are adequate;
- g the resources of the Authority are adequate to carry out its responsibilities;
- h it is appropriate for the seat of the Authority to be maintained or to move the ESAs to a single seat to enhance better coordination between them.

3 Concerning the issue of direct supervision of institutions or infrastructures of pan-European reach and taking account of market developments, the Commission shall draw up an annual report on the appropriateness of entrusting the Authority with further supervisory responsibilities in this area.

4 The report and any accompanying proposals, as appropriate, shall be forwarded to the European Parliament and to the Council.

## Article 82

### Entry into force

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

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*Status: Point in time view as at 24/11/2010.*

**Changes to legislation:** *There are currently no known outstanding effects for the Regulation (EU) No 1095/2010 of the European Parliament and of the Council. (See end of Document for details)*

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It shall apply from 1 January 2011, with the exception of Article 76 and Article 77(1) and (2), which shall apply as from the date of its entry into force.

The Authority shall be established on 1 January 2011.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 24 November 2010.

*For the European Parliament*

*The President*

J. BUZEK

*For the Council*

*The President*

O. CHASTEL

*Status: Point in time view as at 24/11/2010.*

**Changes to legislation:** *There are currently no known outstanding effects for the Regulation (EU) No 1095/2010 of the European Parliament and of the Council. (See end of Document for details)*

- (1) [OJ C 13, 20.1.2010, p. 1.](#)
- (2) Opinion of 22 January 2010 (not yet published in the Official Journal).
- (3) Position of the European Parliament of 22 September 2010 (not yet published in the Official Journal) and decision of the Council of 17 November 2010.
- (4) [OJ C 40, 7.2.2001, p. 453.](#)
- (5) [OJ C 25 E, 29.1.2004, p. 394.](#)
- (6) [OJ C 175 E, 10.7.2008, p. 392.](#)
- (7) [OJ C 8 E, 14.1.2010, p. 26.](#)
- (8) [OJ C 9 E, 15.1.2010, p. 48.](#)
- (9) [OJ C 184 E, 8.7.2010, p. 214.](#)
- (10) [OJ C 184 E, 8.7.2010, p. 292.](#)
- (11) [OJ L 302, 17.11.2009, p. 1.](#)
- (12) See page 1 of this Official Journal.
- (13) [OJ L 25, 29.1.2009, p. 23.](#)
- (14) [OJ L 25, 29.1.2009, p. 28.](#)
- (15) [OJ L 25, 29.1.2009, p. 18.](#)
- (16) European Court Reports 2006 Page I-03771, para 44.
- (17) [OJ L 84, 26.3.1997, p. 22.](#)
- (18) [OJ L 166, 11.6.1998, p. 45.](#)
- (19) [OJ L 184, 6.7.2001, p. 1.](#)
- (20) [OJ L 168, 27.6.2002, p. 43.](#)
- (21) [OJ L 96, 12.4.2003, p. 16.](#)
- (22) [OJ L 345, 31.12.2003, p. 64.](#)
- (23) [OJ L 145, 30.4.2004, p. 1.](#)
- (24) [OJ L 390, 31.12.2004, p. 38.](#)
- (25) [OJ L 177, 30.6.2006, p. 201.](#)
- (26) [OJ L 302, 17.11.2009, p. 32.](#)
- (27) [OJ L 35, 11.2.2003, p. 1.](#)
- (28) [OJ L 330, 5.12.1998, p. 1.](#)
- (29) [OJ L 345, 8.12.2006, p. 1.](#)
- (30) [OJ L 309, 25.11.2005, p. 15.](#)
- (31) [OJ L 271, 9.10.2002, p. 16.](#)
- (32) [OJ L 135, 31.5.1994, p. 5.](#)
- (33) Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector ([OJ L 247, 21.9.2007, p. 1.](#))
- (34) [OJ L 87, 31.3.2009, p. 164.](#)
- (35) [OJ L 318, 27.11.1998, p. 8.](#)
- (36) [OJ C 139, 14.6.2006, p. 1.](#)
- (37) [OJ L 136, 31.5.1999, p. 1.](#)

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**Status:** Point in time view as at 24/11/2010.

**Changes to legislation:** There are currently no known outstanding effects for the Regulation (EU) No 1095/2010 of the European Parliament and of the Council. (See end of Document for details)

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- (38) OJ L 136, 31.5.1999, p. 15.
- (39) OJ L 56, 4.3.1968, p. 1.
- (40) OJ L 281, 23.11.1995, p. 31.
- (41) OJ L 8, 12.1.2001, p. 1.
- (42) OJ L 145, 31.5.2001, p. 43.
- (43) OJ L 253, 25.9.2009, p. 8.
- (44) See page 1 of this Official Journal.
- (45) See page 12 of this Official Journal.
- (46) See page 48 of this Official Journal.
- (47) OJ L 248, 16.9.2002, p. 1.
- (48) OJ L 357, 31.12.2002, p. 72.
- (49) OJ L 317, 3.12.2001, p. 1.
- (50) OJ 17, 6.10.1958, p. 385.



**Status:**

Point in time view as at 24/11/2010.

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