

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

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;
- 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.

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## 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 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.

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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.

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

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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.

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

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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.

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.

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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 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.

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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.

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.

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### 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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