

DIRECTIVES

DIRECTIVE 2010/78/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 24 November 2010

amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 50, Article 53(1) and Articles 62 and 114 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Central Bank ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

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 competent authorities.

(2) In several resolutions 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 Union level and 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, of 21 November 2002 on prudential supervision rules in the European Union, of 11 July 2007 on financial services policy (2005 to 2010) – White Paper, of 23 September 2008 with recommendations to the Commission on hedge funds and private equity, and of 9 October 2008 with recommendations to the Commission on Lamfalussy follow-up: future structure of supervision, 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) and of 23 April 2009 on the proposal for a regulation of the European Parliament and of the Council on Credit Rating Agencies).

(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 far-reaching reforms to the supervisory structure of the financial sector within the Union. The de Larosière Report also recommended that a European System of Financial Supervisors (ESFS) be created, comprising three European Supervisory Authorities (ESA) – one for each of the banking, the securities and the insurance and occupational pensions sectors – and a European Systemic Risk Council.

⁽¹⁾ Opinion of 18 March 2010 (OJ C 87, 1.4.2010, p. 1).

⁽²⁾ Opinion of 18 March 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) In its Communication of 4 March 2009 entitled 'Driving European Recovery', the Commission proposed to put forward draft legislation creating the ESFS and in its Communication of 27 May 2009 entitled 'European Financial Supervision', it provided more details of the possible architecture of that new supervisory framework.
- (5) In its conclusions following its meeting on 18 and 19 June 2009, the European Council recommended that a European System of Financial Supervisors, comprising three new ESA, be established. The system should be aimed at upgrading the quality and consistency of national supervision, strengthening oversight of cross-border groups, establishing a European single rule book applicable to all financial institutions in the internal market. It emphasised that the ESA should also have supervisory powers for credit rating agencies and invited the Commission to prepare concrete proposals on how the ESFS could play a strong role in crisis situations.
- (6) On 23 September 2009, the Commission adopted proposals for three regulations establishing the ESFS including the creation of the three ESA.
- (7) In order for the ESFS to work effectively, changes to legal acts of the Union in the field of operation of the three ESA are necessary. Such changes concern the definition of the scope of certain powers of the ESA, the integration of certain powers established in legal acts of the Union, and amendments to ensure a smooth and effective functioning of the ESA in the context of the ESFS.
- (8) The establishment of the three ESA should be accompanied by the development of a single rule book to ensure consistent harmonisation and uniform application and thus contribute to a more effective functioning of the internal market.
- (9) The regulations establishing the ESFS provide that, in the areas specifically set out in the relevant legislation, the ESA may develop draft technical standards, to be submitted to the Commission for adoption in accordance with Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFEU) by means of delegated or implementing acts. This Directive should identify a first set of such areas and should be without prejudice to adding further areas in the future.
- (10) The relevant legislation should define those areas where the ESA are empowered to develop draft technical standards and how they should be adopted. The relevant legislation should lay down the elements, conditions and specifications as detailed in Article 290 TFEU in the case of delegated acts.
- (11) The identification of areas for technical standards should strike an appropriate balance between building a single set of harmonised rules and avoiding unduly complicated regulation and enforcement. The only areas selected should be those in which consistent technical rules will contribute significantly and effectively to the achievement of the objectives of the relevant legislation, while ensuring that policy decisions are taken by the European Parliament, the Council and the Commission in accordance with their usual procedures.
- (12) Matters subject to technical standards should be genuinely technical, where their development requires the expertise of supervisory experts. The technical standards adopted as delegated acts should further develop, specify and determine the conditions for consistent harmonisation of the rules included in basic instruments adopted by the European Parliament and the Council, supplementing or amending certain non-essential elements of the legislative act. The technical standards adopted as implementing acts should set conditions for the uniform application of legally binding Union acts. Technical standards should not involve policy choices.
- (13) In the case of regulatory technical standards it is appropriate to introduce the procedure provided for in Articles 10 to 14 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority) ⁽¹⁾, of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority) ⁽²⁾ and of 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) ⁽³⁾, respectively. Implementing technical standards should be adopted in accordance with the procedure provided for in Article 15 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010, respectively. The European Council endorsed the four-level 'Lamfalussy' approach to make the regulatory process for Union financial legislation more efficient and transparent. The Commission is empowered to adopt level-2 measures in many areas, and a large number of level-2 Commission regulations and directives are in force. In cases where the regulatory technical standards are designed to further develop, specify or determine the conditions of application of such level-2 measures, they should be adopted only once the relevant level-2 measures have been adopted and should be compatible with that level-2 measure.

⁽¹⁾ See page 12 of this Official Journal.

⁽²⁾ See page 48 of this Official Journal.

⁽³⁾ See page 84 of this Official Journal.

- (14) Binding technical standards contribute to a single rulebook for financial services legislation as endorsed by the European Council in its conclusions of June 2009. To the extent that certain requirements in Union legislative acts are not fully harmonised, and in accordance with the precautionary principle on supervision, binding technical standards developing, specifying or determining the conditions of application for those requirements should not prevent Member States from requiring additional information or imposing more stringent requirements. Technical standards should therefore allow Member States to do so in specific areas, when those legislative acts provide for such discretion.
- (15) As set out in the regulations establishing the ESFS, before submitting the technical standards to the Commission, the ESA should, where appropriate, conduct open public consultations relating thereto and analyse the potential related costs and benefits.
- (16) It should be possible for technical standards to provide for transitional measures subject to adequate deadlines, if the costs of immediate implementation would be excessive compared to the benefits involved.
- (17) The regulations establishing the ESFS provide for a mechanism to settle disagreements between national competent authorities. Where a competent authority disagrees with the procedure or content of an action or inaction by another competent authority in areas specified in legal acts of the Union in accordance with Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010, where the relevant legislation requires cooperation, coordination or joint decision-making by national competent authorities from more than one Member State, the ESA, at the request of one of the competent authorities concerned, should be able to assist the authorities in reaching an agreement within the time limit set by the ESA which should take into account any relevant time limits in the relevant legislation, and the urgency and complexity of the disagreement. In the event that such disagreement persists, the ESA should be able to settle the matter.
- (18) The regulations establishing the ESA require that the cases where the mechanism to settle disagreements between national competent authorities may be applied are to be specified in the sectoral legislation. This Directive should identify a first set of such cases and should be without prejudice to adding further cases in the future. This Directive should not prevent the ESA from acting in accordance with other powers or fulfilling tasks specified in their establishing regulations, including non-binding mediation and contributing to the consistent, efficient and effective application of legal acts of the Union. Moreover, in those areas where some form of non-binding mediation is already established in the relevant legal act, or where there are time limits for joint decisions to be taken by one or more national competent authorities, amendments are needed to ensure clarity and minimum disruption of the process for reaching a joint decision, but also that where necessary, the ESA should be able to resolve disagreements. The binding procedure for the settlement of disagreements is designed to solve situations where national competent authorities cannot resolve, among themselves, procedural or substantive issues relating to compliance with legal acts of the Union.
- (19) This Directive should therefore identify situations in which a procedural or a substantive issue of compliance with Union law needs to be resolved and the national competent authorities are not able to resolve the matter on their own. In such a situation, one of the national competent authorities concerned should be able to raise the issue with the European Supervisory Authority concerned. That European Supervisory Authority should act in accordance with its establishing regulation and with this Directive. The European Supervisory Authority concerned should be able to require the competent authorities concerned to take specific action or to refrain from action in order to settle the matter and to ensure compliance with Union law, with binding effects on the competent authorities concerned. In cases where the relevant legal act of the Union confers discretion on Member States, decisions taken by a European Supervisory Authority should not replace the exercise of discretion by the competent authorities in compliance with Union law.
- (20) Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions ⁽¹⁾ provides for mediation or joint decisions as regards the determination of significant branches for the purposes of supervisory college membership, model validation and group risk assessment. In all of those areas, amendments should clearly state that in the event of disagreement during a specified time period, the European Supervisory Authority (European Banking Authority) may resolve the disagreement using the process outlined in Regulation (EU) No 1093/2010. That approach makes it clear that, while the European Supervisory Authority (European Banking Authority) should not replace the exercise of discretion by the competent authorities in compliance with Union law, it should be possible for disagreements to be resolved and cooperation to be strengthened before a final decision is taken or issued to an institution.

⁽¹⁾ OJ L 177, 30.6.2006, p. 1.

- (21) In order to ensure a smooth transition of the current tasks of the Committee of European Banking Supervisors, the Committee of European Insurance and Occupational Pensions Supervisors and the Committee of European Securities Regulators to the new ESA, references to those Committees should be replaced in the relevant legislation with references to the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), respectively.
- (22) In order to give full effect to the new framework provided for in the TFEU, it is necessary to adapt and replace the implementing powers designed under Article 202 of the Treaty establishing the European Community (EC Treaty) with the appropriate provisions in accordance with Articles 290 and 291 TFEU. That review should be finalised within 3 years from the entry into force of the Treaty of Lisbon and the remaining powers conferred under Article 202 EC Treaty should cease to apply on that date.
- (23) The alignment of committee procedures to the TFEU and, in particular, to Articles 290 and 291 thereof, should be effected on a case-by-case basis. In order to take account of the technical developments in the financial markets and to specify the requirements laid down in the directives amended by this Directive, the Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU.
- (24) The European Parliament and the Council should have 3 months from the date of notification to object to a delegated act. At the initiative of the European Parliament or the Council, it should be possible to prolong that period by 3 months in regard to significant areas of concern. It should also be possible for the European Parliament and the Council to inform the other institutions of their intention not to raise objections. Such early approval of delegated acts is particularly appropriate when deadlines need to be met, for example where there are timetables in the basic act for the Commission to adopt delegated acts.
- (25) In the Declaration (No 39) on Article 290 TFEU, annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, the Conference took note of the Commission's intention to continue to consult experts appointed by the Member States in the preparation of draft delegated acts in the financial services area, in accordance with its established practice.
- (26) The new supervisory architecture established by the ESFS will require national competent authorities to cooperate closely with the ESA. Amendments to the relevant legislation should ensure there are no legal obstacles to the information sharing obligations included in the regulations establishing the ESA.
- (27) Information transmitted to or exchanged between competent authorities and the ESA or the ESRB should be covered by the obligation of professional secrecy, to which the persons employed or formerly employed by the competent authorities receiving the information are subject.
- (28) The regulations establishing the ESA provide that they may develop contacts with supervisory authorities from third countries and assist in preparing equivalence decisions pertaining to supervisory regimes in third countries. Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ⁽¹⁾ and Directive 2006/48/EC should be amended to allow the ESA to establish cooperation agreements with third countries and exchange information where those third countries can provide guarantees that professional secrecy will be protected.
- (29) Having a single consolidated list or register for each category of financial institution in the Union, which is currently the duty of each national competent authority, will improve transparency and is more appropriate in the context of the single financial market. The ESA should be given the task of establishing, publishing and regularly updating registers and lists of financial actors within the Union. This concerns the list of authorisations of credit institutions granted by national competent authorities, the register of all investment firms and the list of regulated markets under Directive 2004/39/EC. Similarly, the European Supervisory Authority (European Securities and Markets Authority) should be given the task of establishing, publishing and regularly updating the list of approved prospectuses and the certificates of approval under 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 ⁽²⁾.
- (30) In those areas where the ESA are under an obligation to develop draft technical standards, those draft technical standards should be submitted to the Commission within 3 years of the creation of the ESA unless another deadline is established by the relevant legislative act.
- (31) The tasks of the European Supervisory Authority (European Securities and Markets Authority) in relation to 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 ⁽³⁾ should be without prejudice to the competence of the European System of Central Banks to promote the smooth operation of payment systems, in line with the fourth indent of Article 127(2) TFEU.

⁽¹⁾ OJ L 145, 30.4.2004, p. 1.

⁽²⁾ OJ L 345, 31.12.2003, p. 64.

⁽³⁾ OJ L 166, 11.6.1998, p. 45.

- (32) The technical standards to be drafted by the European Supervisory Authority (European Insurance and Occupational Pensions Authority) in accordance with this Directive and in relation to Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision ⁽¹⁾ should be without prejudice to the competences of Member States with regard to prudential requirements on such institutions as provided for in Directive 2003/41/EC.
- (33) Under Article 13(5) of Directive 2003/71/EC, the competent authority of the home Member State may transfer the approval of a prospectus to the competent authority of another Member State, subject to the agreement of that competent authority. Article 28(4) of Regulation (EU) No 1095/2010 requires that such delegation agreements be notified to the European Supervisory Authority (European Securities and Markets Authority) at least 1 month before they are put into effect. However, given the experience in transfer of approval under Directive 2003/71/EC, which provides for shorter deadlines, it is appropriate not to apply Article 28(4) of Regulation (EU) No 1095/2010 to that situation.
- (34) There is currently no need for the ESA to develop draft technical standards on the existing requirements that the persons who effectively direct the business of investment firms, credit institutions, UCITS and their management companies be of sufficiently good repute and sufficiently experienced so as to ensure their sound and prudent management. However, given the importance of those requirements, the ESA should give priority to identifying best practices in guidelines and to ensuring the convergence of supervisory and prudential processes towards those best practices. They should similarly identify best practices and ensure convergence with respect to prudential requirements relative to the head office of those bodies.
- (35) The European single rule book, applicable to all financial institutions in the internal market, should ensure adequate harmonisation of criteria and methodology to be applicable by the competent authorities to assess the risk of credit institutions. More particularly, the purpose of developing draft technical standards in relation to the Internal Ratings Based approach, the Advanced Measurement Approach and the internal model for market risk approach, as provided for by this Directive, should be to ensure the quality and robustness of such approaches, as well as the consistency of their review by the competent authorities. Those technical standards should allow the competent authorities to permit financial institutions to develop different approaches based on their experience and specificities, in accordance with the requirements laid down in Directive 2006/48/EC and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions ⁽²⁾ and subject to the requirements of the relevant technical standards.
- (36) Since the objectives of this Directive, namely improving the functioning of the internal market by means of ensuring a high, effective and consistent level of prudential regulation and supervision, protecting depositors, investors and beneficiaries and thereby businesses and consumers, protecting the integrity, efficiency and orderly functioning of financial markets, maintaining the stability and sustainability of the financial system, preserving the real economy, safeguarding public finances and strengthening international supervisory coordination, cannot be sufficiently achieved by the Member States and can, therefore, by reason of their scale, 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 Directive does not go beyond what is necessary in order to achieve those objectives.
- (37) The Commission should, by 1 January 2014, report to the European Parliament and to the Council on the submission by the ESA of the draft technical standards provided for in this Directive and present any appropriate proposals.
- (38) 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 ⁽³⁾, 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 ⁽⁴⁾, Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) ⁽⁵⁾, Directive 2003/41/EC, Directive 2003/71/EC, Directive 2004/39/EC, 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 ⁽⁶⁾, 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 ⁽⁷⁾, Directive 2006/48/EC, Directive 2006/49/EC and 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) ⁽⁸⁾ should therefore be amended accordingly,

⁽²⁾ OJ L 177, 30.6.2006, p. 201.

⁽³⁾ OJ L 166, 11.6.1998, p. 45.

⁽⁴⁾ OJ L 35, 11.2.2003, p. 1.

⁽⁵⁾ OJ L 96, 12.4.2003, p. 16.

⁽⁶⁾ OJ L 390, 31.12.2004, p. 38.

⁽⁷⁾ OJ L 309, 25.11.2005, p. 15.

⁽⁸⁾ OJ L 302, 17.11.2009, p. 32.

⁽¹⁾ OJ L 235, 23.9.2003, p. 10.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 98/26/EC

Directive 98/26/EC is hereby amended as follows:

(1) Article 6(3) is replaced by the following:

‘3. The Member State referred to in paragraph 2 shall immediately notify the European Systemic Risk Board, other Member States and the European Supervisory Authority (European Securities and Markets Authority) (hereinafter “ESMA”), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (*).

(*) OJ L 331, 15.12.2010, p. 84.’

(2) In Article 10(1) the first subparagraph is replaced by the following:

‘1. Member States shall specify the systems, and the respective system operators, which are to be included in the scope of this Directive and shall notify them to ESMA and inform it of the authorities chosen in accordance with Article 6(2). ESMA shall publish that information on its website.’

(3) The following Article is inserted:

‘Article 10a

1. The competent authorities shall cooperate with ESMA for the purposes of this Directive, in accordance with Regulation (EU) No 1095/2010.

2. The competent authorities shall provide, without delay, ESMA with all the information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010.’

Article 2

Amendments to Directive 2002/87/EC

Directive 2002/87/EC is hereby amended as follows:

(1) Article 4 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. The coordinator appointed in accordance with Article 10 shall inform the parent undertaking at the head of a group or, in the absence of a parent undertaking, the regulated entity with the largest balance sheet total in the most important financial sector in a group, that the group has been identified as a financial conglomerate and of the appointment of the coordinator.

The coordinator shall also inform the competent authorities which have authorised regulated entities in the group and the competent authorities of the Member State in which the mixed financial holding company has its head office, and the Joint Committee of the European Supervisory Authorities (ESA) established by Articles 54 of Regulation (EU) No 1093/2010 of the

European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority) (*), of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority) (**) and of 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) (***) (hereinafter “the Joint Committee”), respectively.

(*) OJ L 331, 15.12.2010, p. 12.

(**) OJ L 331, 15.12.2010, p. 48.

(***) OJ L 331, 15.12.2010, p. 84.’

(b) the following paragraph is added:

‘3. The Joint Committee shall publish on its website and keep up-to-date the list of identified financial conglomerates. That information shall be available by hyperlink on each of the European Supervisory Authority’s websites.’

(2) In Article 9(2), the following point is added:

‘(d) arrangements in place to contribute to and develop, if required, adequate recovery and resolution arrangements and plans. Such arrangements shall be updated regularly.’

(3) The title of Section 3 is replaced by the following:

‘MEASURES TO FACILITATE SUPPLEMENTARY SUPERVISION AND POWERS OF THE JOINT COMMITTEE’.

(4) The following Article is inserted in Section 3:

‘Article 9a

Role of the Joint Committee

The Joint Committee shall, in accordance with Article 56 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively, ensure coherent cross-sectoral and cross-border supervision and compliance with Union legislation.’

(5) Article 10(1) is replaced by the following:

‘1. In order to ensure adequate supplementary supervision of the regulated entities in a financial conglomerate, a single coordinator, responsible for coordination and exercise of supplementary supervision, shall be appointed from among the competent authorities of the Member States concerned, including those of the Member State in which the mixed financial holding company has its head office. The identity of the coordinator shall be published on the Joint Committee’s website.’

- (6) In Article 11(1), the second subparagraph is replaced by the following:

'In order to facilitate and establish supplementary supervision on a broad legal basis, the coordinator, and the other relevant competent authorities, and, where necessary, the other competent authorities concerned, shall have coordination arrangements in place. The coordination arrangements may entrust additional tasks to the coordinator and may specify the procedures for the decision-making process among the relevant competent authorities as referred to in Articles 3 and 4, Article 5(4), Article 6, Article 12(2) and Articles 16 and 18, and for cooperation with other competent authorities.

In accordance with Article 8 and the procedure set out in Article 56 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively, the ESA, through the Joint Committee, shall develop guidelines aimed at the convergence of supervisory practices with regard to the consistency of supervisory coordination arrangements in accordance with Article 131a of Directive 2006/48/EC and Article 248(4) of Directive 2009/138/EC.'

- (7) In Article 12(1), the third subparagraph is replaced by the following:

The competent authorities may also exchange with the following authorities such information as may be needed for the performance of their respective tasks, regarding regulated entities in a financial conglomerate, in line with the provisions laid down in the sectoral rules: central banks, the European System of Central Banks, the European Central Bank and the European Systemic Risk Board in accordance with Article 15 of Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (*).

(*) OJ L 331, 15.12.2010, p. 1.'

- (8) The following Article is inserted:

'Article 12a

Cooperation and exchange of information with the Joint Committee

1. The competent authorities shall cooperate with the Joint Committee for the purposes of this Directive, in accordance with Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010, and Regulation (EU) No 1095/2010.

2. The competent authorities shall without delay provide the Joint Committee with all information necessary to carry out its duties in accordance with Article 35 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010 respectively.'

- (9) Article 14(1) is replaced by the following:

'1. Member States shall ensure that there are no legal impediments within their jurisdiction preventing the natural and legal persons included within the scope of supplementary supervision, whether or not a regulated entity, from exchanging with each other any information which would be relevant for the purposes of supplementary supervision and from exchanging information in accordance with this Directive and with the ESA in accordance with Article 35 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively, where necessary through the Joint Committee.'

- (10) The second paragraph of Article 16 is replaced by the following:

'Without prejudice to Article 17(2), Member States may determine what measures may be taken by the competent authorities with respect to mixed financial holding companies. In accordance with Articles 16 and 56 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively, the ESA, through the Joint Committee, may develop guidelines for measures in relation to mixed financial holding companies.'

- (11) Article 18 is amended as follows:

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

'1. Without prejudice to the sectoral rules, where Article 5(3) applies, the competent authorities shall verify whether the regulated entities, the parent undertaking of which has its head office in a third country are subject to supervision by that third country's competent authority, which is equivalent to that provided for by this Directive on the supplementary supervision of regulated entities referred to in Article 5(2). The verification shall be carried out by the competent authority which would be the coordinator if the criteria set out in Article 10(2) were to apply, on the request of the parent undertaking or of any of the regulated entities authorised in the Union or on its own initiative.

That competent authority shall consult the other relevant competent authorities, and shall make every effort to comply with any applicable guidelines prepared through the Joint Committee in accordance with Articles 16 and 56 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively.'

- (b) the following paragraph is inserted:

'1a. Where a competent authority disagrees with the decision taken by another relevant competent authority under paragraph 1, Article 19 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively shall apply.'

(12) Article 19(2) is replaced by the following:

‘2. Without prejudice to Article 218(1) and (2) of the Treaty on the Functioning of the European Union (TFEU), the Commission shall, with the assistance of the Joint Committee, the European Banking Committee, the European Insurance and Occupational Pensions Committee and the Financial Conglomerates Committee, examine the outcome of the negotiations referred to in paragraph 1 and the resulting situation.’

(13) In Article 20(1), the following subparagraph is added:

‘Those measures shall not include the subject matter of the power delegated and conferred on the Commission with regard to the items listed in Article 21a.’

(14) Article 21 is amended as follows:

(a) paragraph 4 is replaced by the following:

‘4. The ESA, through the Joint Committee, may provide general guidelines as to whether the supplementary supervision arrangements of competent authorities in third countries are likely to achieve the objectives of the supplementary supervision as defined in this Directive, in relation to the regulated entities in a financial conglomerate, the head of which has its head office in a third country. The Joint Committee shall keep any such guidelines under review and take into account any changes to the supplementary supervision carried out by such competent authorities.’

(b) paragraph 5 is replaced by the following:

‘5. By 1 December 2011 the Commission shall review Article 20 and present any appropriate legislative proposals in order to allow the full application of delegated acts under Article 290 TFEU and implementing acts under Article 291 TFEU in respect of this Directive. Without prejudice to implementing measures already adopted, the powers conferred on the Commission in Article 21 to adopt implementing measures that remain after the entry into force of the Lisbon Treaty, shall cease to apply on 1 December 2012.’

(15) The following Article is inserted:

‘Article 21a

Technical standards

1. In order to ensure consistent harmonisation of this Directive, the ESA, in accordance with Article 56 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010 respectively may develop draft regulatory technical standards with regard to:

(a) Article 2(11) in order to specify the application of Article 17 of Council Directive 78/660/EEC in the context of this Directive;

(b) Article 2(17) in order to establish procedures or specify criteria for the determination of “relevant competent authorities”;

(c) Article 3(5) in order to specify the alternative parameters for the identification of a financial conglomerate.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010 respectively.

2. In order to ensure uniform conditions of application of this Directive, the ESA, in accordance with Articles 56 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010 respectively may develop draft implementing technical standards with regard to:

(a) Article 6(2) in order to ensure uniform conditions of application of the calculation methods listed in Annex I part II, but without prejudice to Article 6(4);

(b) Article 7(2) in order to ensure uniform conditions of application of the procedures for including the items within the scope of the definition of “risk concentrations” in the supervisory overview referred to in the second subparagraph of Article 7(2);

(c) Article 8(2) in order to ensure uniform conditions of application of the procedures for including the items within the scope of the definition of “intra group transactions” in the supervisory overview referred to in the third subparagraph of Article 8(2).

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010 respectively.’

Article 3

Amendments to Directive 2003/6/EC

Directive 2003/6/EC is hereby amended as follows:

(1) In Article 1(5) the following subparagraphs are added:

‘The European Supervisory Authority (European Securities and Markets Authority) (hereinafter “ESMA”), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (*) may develop draft implementing technical standards to ensure uniform conditions of application of the acts adopted by the Commission in accordance with this Article in relation to accepted market practices.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the second subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

(*) OJ L 331, 15.12.2010, p. 84.

- (2) In Article 6, the following paragraph is added:

‘11. ESMA may develop draft implementing technical standards to ensure uniform conditions of application of the acts adopted by the Commission in accordance with the sixth indent of the first subparagraph of paragraph 10.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’

- (3) Article 8 is amended as follows:

(a) the existing text is numbered as paragraph 1.

(b) the following paragraph is added:

‘2. ESMA may develop draft implementing technical standards to ensure uniform conditions of application of acts adopted by the Commission in accordance with paragraph 1.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’

- (4) In Article 14 the following paragraph is added:

‘5. Member States shall provide ESMA annually with aggregated information regarding all administrative measures and sanctions imposed in accordance with paragraphs 1 and 2.

Where the competent authority has disclosed an administrative measure or a sanction to the public, it shall contemporaneously report that fact to ESMA.

Where a published sanction relates to an investment firm authorised in accordance with Directive 2004/39/EC, ESMA shall add a reference to the published sanction in the register of investment firms established under Article 5(3) of Directive 2004/39/EC.’

- (5) The following Article is inserted:

‘Article 15a

1. The competent authorities shall cooperate with ESMA for the purposes of this Directive, in accordance with Regulation (EU) No 1095/2010.

2. The competent authorities shall, without delay, provide ESMA with all information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010.’

- (6) Article 16 is amended as follows:

(a) in paragraph 2, the fourth subparagraph is replaced by the following:

‘Without prejudice to Article 258 of the Treaty on the Functioning of the European Union (TFEU), a competent authority whose request for information is not acted upon within a reasonable time or whose request for information is rejected may refer that rejection or absence of action within a reasonable timeframe to ESMA. In the situations referred to in the first sentence, ESMA may act in accordance with Article 19 of Regulation (EU) No 1095/2010, without prejudice to the possibilities for refusing to act on a request for information provided for in the second subparagraph of this paragraph and to the possibility of ESMA acting in accordance with Article 17 of Regulation (EU) No 1095/2010.’;

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

‘Without prejudice to Article 258 TFEU, a competent authority whose application to open an inquiry or whose request for authorisation for its officials to accompany those of the other Member State’s competent authority is not acted upon within a reasonable time or is rejected may refer that rejection or absence of action within a reasonable timeframe to ESMA. In the situations referred to in the first sentence, ESMA may act in accordance with Article 19 of Regulation (EU) No 1095/2010, without prejudice to the possibilities for refusing to act on a request for information provided in the fourth subparagraph of this paragraph and to the possibility of ESMA acting in accordance with Article 17 of Regulation (EU) No 1095/2010.’;

(c) paragraph 5 is replaced by the following:

‘5. In order to ensure uniform conditions of application of paragraphs 2 and 4, ESMA may develop draft implementing technical standards on the procedures and forms for exchange of information and for cross-border inspections as referred to in this Article.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’

- (7) The following Article is inserted:

‘Article 17a

By 1 December 2011 the Commission shall review Articles 1, 6, 8, 14, and 16 and present any appropriate legislative proposals in order to allow the full application of the delegated acts under Article 290 TFEU and implementing acts under Article 291 TFEU in respect of this Directive. Without prejudice to implementing measures already adopted, the powers conferred on the Commission in Article 17 to adopt implementing measures that remain after the entry into force of the Lisbon Treaty shall cease to apply on 1 December 2012.’

Article 4

Amendments to Directive 2003/41/EC

Directive 2003/41/EC is hereby amended as follows:

(1) Article 9 is amended as follows:

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

‘(a) the institution is registered in a national register by the competent authority or authorised; in the case of cross-border activities referred to in Article 20, the register shall also indicate the Member States in which the institution is operating; that information shall be communicated to the European Supervisory Authority (European Insurance and Occupational Pensions Authority (hereinafter “EIOPA”), established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council (*) which shall publish it on its website;

(*) OJ L 331, 15.12.2010, p. 48.’;

(b) paragraph 5 is replaced by the following:

‘5. In the case of cross-border activity as referred to in Article 20, the conditions of operation of the institution shall be subject to a prior authorisation by the competent authorities of the home Member State. When giving such authorisation, Member States shall immediately inform EIOPA.’

(2) Article 13 is amended as follows:

(a) the existing text is numbered as paragraph 1;

(b) the following paragraph is added:

‘2. EIOPA may develop draft implementing technical standards on the forms and formats for the documents listed in paragraph 1(c)(i) to (vi).

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.’

(3) In Article 14(4), the second subparagraph is replaced by the following:

‘Any decision to prohibit the activities of an institution shall contain detailed reasons and be notified to the institution in question. It shall also be notified to EIOPA.’

(4) In Article 15(6), the first subparagraph is replaced by the following:

‘6. With a view to further harmonisation of the rules regarding the calculation of technical provisions which may be justified – in particular the interest rates and other assumptions influencing the level of technical provisions – the

Commission, drawing on advice from EIOPA, shall, every 2 years or at the request of a Member State, issue a report on the situation concerning the development in cross-border activities.’.

(5) In Article 20, the following paragraph is added:

‘11. Member States shall report to EIOPA their national provisions of prudential nature relevant to the field of occupational pension schemes, which are not covered by the reference to national social and labour law in paragraph 1.

Member States shall update that information on a regular basis and at least every 2 years and EIOPA shall make that information available on its website.

In order to ensure uniform conditions of application of this paragraph, EIOPA shall develop draft implementing technical standards on the procedures to be followed and formats and templates to be used by the competent authorities when transmitting and updating the relevant information to EIOPA. EIOPA shall submit those draft implementing technical standards to the Commission by 1 January 2014.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.’

(6) Article 21 is amended as follows:

(a) the title is replaced by the following:

‘Cooperation between Member States, EIOPA and the Commission’;

(b) the following paragraph is inserted:

‘2a. The competent authorities shall cooperate with EIOPA for the purposes of this Directive, in accordance with Regulation (EU) No 1094/2010.

The competent authorities shall without delay provide EIOPA with all information necessary to carry out its duties under this Directive and under Regulation (EU) No 1094/2010, in accordance with Article 35 of that Regulation.’;

(c) paragraph 3 is replaced by the following:

‘3. Each Member State shall inform the Commission and EIOPA of any major difficulties to which the application of this Directive gives rise.

The Commission, EIOPA and the competent authorities of the Member States concerned shall examine such difficulties as quickly as possible in order to find an appropriate solution.’.

Article 5

Amendments to Directive 2003/71/EC

Directive 2003/71/EC is hereby amended as follows:

- (1) In Article 4, paragraph 3 is replaced by the following:

‘3. In order to ensure consistent harmonisation of this Directive, the European Supervisory Authority (European Securities and Markets Authority) (hereinafter “ESMA”) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (*) may develop draft regulatory technical standards to specify the exemptions concerning the points (a) to (e) of paragraph 1 and points (a) to (h) of paragraph 2.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

(*) OJ L 331, 15.12.2010, p. 84.’

- (2) In Article 5(2), the following subparagraphs are added:

‘In order to ensure uniform conditions of application of this Directive and of the delegated acts adopted by the Commission in accordance with paragraph 5, ESMA shall develop draft implementing technical standards in order to ensure uniform conditions of application of the delegated acts adopted by the Commission in accordance with paragraph 5 in relation to a uniform template for the presentation of the summary and to allow investors to compare the security concerned with other relevant products.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’

- (3) In Article 7, the following paragraph is added:

‘4. ESMA may develop draft implementing technical standards in order to ensure uniform conditions of application of the delegated acts adopted by the Commission in accordance with paragraph 1.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’

- (4) In Article 8, the following paragraph is added:

‘5. ESMA may develop draft implementing technical standards to ensure uniform conditions of application of the delegated acts adopted by the Commission in accordance with paragraph 4.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’

- (5) Article 13 is amended as follows:

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

‘The competent authority shall notify ESMA of the approval of the prospectus and any supplement thereto at the same time as that approval is notified to the issuer, the offeror or the person asking for admission to trading on a regulated market, as the case may be. The competent authorities shall at the same time provide ESMA with a copy of the prospectus and any supplement thereto.’;

- (b) paragraph 5 is replaced by the following:

‘5. The competent authority of the home Member State may transfer the approval of a prospectus to the competent authority of another Member State, subject to prior notification to ESMA and the agreement of the competent authority. Such a transfer shall be notified to the issuer, the offeror or the person asking for admission to trading on a regulated market within three working days from the date of the decision taken by the competent authority of the home Member State. The time limit referred to in paragraph 2 shall apply from that date. Article 28(4) of Regulation (EU) No 1095/2010 shall not apply to the transfer of the approval of the prospectus in accordance with this paragraph.

In order to ensure uniform conditions of application of this Directive and to facilitate communication between the competent authorities and between the competent authorities and ESMA, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the notifications provided for in this paragraph.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the second subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’

- (6) Article 14 is amended as follows:

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

‘1. Once approved, the prospectus shall be filed with the competent authority of the home Member State, shall be accessible to ESMA through the competent authority and shall be made available to the public by the issuer, the offeror or the person asking for admission to trading on a regulated market as soon as practicable and, in any event, at a reasonable time in advance of, and at the latest at the beginning of, the offer to the public or the admission to trading of the securities involved. In addition, in the case of an initial public offer of a class of shares not already admitted to trading on a regulated market that is to be admitted to trading for the first time, the prospectus shall be available at least six working days before the end of the offer.’;

(b) the following paragraph is inserted:

'4a. ESMA shall publish on its website the list of prospectuses approved in accordance with Article 13, including, if applicable, a hyperlink to the prospectus published on the website of the competent authority of the home Member State, or on the website of the issuer, or on the website of the regulated market. The published list shall be kept up-to-date and each item shall remain on the website for a period of at least 12 months.'

(7) In Article 16, the following paragraph is added:

'3. In order to ensure consistent harmonisation, to specify the requirements laid down in this Article and to take account of technical developments on financial markets, ESMA shall develop draft regulatory technical standards to specify situations where a significant new factor, material mistake or inaccuracy relating to the information included in the prospectus requires a supplement to the prospectus to be published. ESMA shall submit those draft regulatory technical standards to the Commission by 1 January 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.'

(8) Article 17 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Without prejudice to Article 23, where an offer to the public or admission to trading on a regulated market is provided for in one or more Member States, or in a Member State other than the home Member State, the prospectus approved by the home Member State and any supplements thereto shall be valid for the public offer or the admission to trading in any number of host Member States, provided that ESMA and the competent authority of each host Member State are notified in accordance with Article 18. Competent authorities of host Member States shall not undertake any approval or administrative procedures relating to prospectuses.'

(b) paragraph 2 is replaced by the following:

'2. If significant new factors, material mistakes or inaccuracies come to light after approval of the prospectus, as referred to in Article 16, the competent authority of the home Member State shall require the publication of a supplement to be approved in accordance with Article 13(1). ESMA and the competent authority of the host Member State may inform the competent authority of the home Member State of the need for new information.'

(9) In Article 18, the following paragraphs are added:

'3. The competent authority of the home Member State shall notify ESMA of the certificate of approval of the prospectus at the same time as it is notified to the competent authority of the host Member State.

ESMA and the competent authority of the host Member State shall publish on their websites the list of certificates of approval of prospectuses and any supplements thereto, which are notified in accordance with this Article, including, if applicable, a hyperlink to those documents published on the website of the competent authority of the home Member State, on the website of the issuer, or on the website of the regulated market. The published list shall be kept up-to-date and each item shall remain on the websites for a period of at least 12 months.

4. In order to ensure uniform conditions of application of this Directive and to take account of technical developments on financial markets, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the notification of the certificate of approval, the copy of the prospectus, the supplement of the prospectus and the translation of the summary.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.'

(10) Article 21 is amended as follows:

(a) the following paragraphs are inserted:

'1a. The competent authorities shall cooperate with ESMA for the purposes of this Directive, in accordance with Regulation (EU) No 1095/2010.

1b. The competent authorities shall without delay provide ESMA with all information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010.'

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

'The Member States shall inform the Commission, ESMA and the competent authorities of other Member States of any arrangements entered into with regard to delegation of tasks, including the precise conditions regulating such delegation.'

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

'In accordance with Article 21 of Regulation (EU) No 1095/2010, ESMA shall be entitled to participate in on-site inspections referred to in point (d) where they are carried out jointly by two or more competent authorities.'

(11) Article 22 is amended as follows:

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

‘The competent authorities may refer to ESMA situations where a request for cooperation, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time. Without prejudice to Article 258 of the Treaty on the Functioning of the European Union (TFEU), ESMA may, in the situations referred to in the first sentence, act in accordance with the power conferred on it under Article 19 of Regulation (EU) No 1095/2010.’;

(b) paragraph 3 is replaced by the following:

‘3. Paragraph 1 shall not prevent the competent authorities from exchanging confidential information or from transmitting confidential information to ESMA or the European Systemic Risk Board (hereinafter the “ESRB”), subject to constraints relating to firm-specific information and effects on third countries as provided for in Regulation (EU) No 1095/2010 and Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (*) respectively. Information exchanged between competent authorities and ESMA or the ESRB shall be covered by the obligation of professional secrecy, to which the persons employed or formerly employed by the competent authorities receiving the information are subject.

(*) OJ L 331, 15.12.2010, p. 1.’;

(c) The following paragraph is added:

‘4. In order to ensure consistent harmonisation of this Article and to take account of technical developments on financial markets, ESMA shall develop draft regulatory technical standards to specify the information required in paragraph 2.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

In order to ensure uniform conditions of application of paragraph 2, and to take account of technical developments on financial markets, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the cooperation and exchange of information between competent authorities.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’.

(12) Article 23 is replaced by the following:

‘Article 23

Precautionary measures

1. Where the competent authority of the host Member State finds that irregularities have been committed by the issuer or by the financial institutions in charge of the public offer or that the issuer has breached its obligations by reason of the fact that securities are admitted to trading on a regulated market, it shall refer those findings to the competent authority of the home Member State and to ESMA.

2. If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, the issuer or the financial institution in charge of the public offer persists in breaching the relevant legal or regulatory provisions, the competent authority of the host Member State, after informing the competent authority of the home Member State and ESMA, shall take all appropriate measures in order to protect investors and shall inform the Commission and ESMA thereof at the earliest opportunity.’.

Article 6

Amendments to Directive 2004/39/EC

Directive 2004/39/EC is hereby amended as follows:

(1) Article 5(3) is replaced by the following:

‘3. Member States shall register all investment firms. The register shall be publicly accessible and shall contain information on the services or activities for which the investment firm is authorised. It shall be updated on a regular basis. Every authorisation shall be notified to the European Supervisory Authority (European Securities and Markets Authority) (hereinafter “ESMA”), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (*).

ESMA shall establish a list of all investment firms in the Union. The list shall contain information on the services or activities for which the investment firm is authorised and it shall be updated on a regular basis. ESMA shall publish and keep up-to-date that list on its website.

Where a competent authority has withdrawn an authorisation in accordance with Article 8(b) to (d), that withdrawal shall be published on the list for a period of 5 years.

(*) OJ L 331, 15.12.2010, p. 84.’.

(2) In Article 7, the following paragraph is added:

'4. In order to ensure consistent harmonisation of this Article and of Article 9(2) to (4), Article 10(1) and (2), ESMA may develop draft regulatory technical standards to specify:

- (a) the information to be provided to the competent authorities under Article 7(2) including the programme of operations;
- (b) the requirements applicable to the management of investment firms under Article 9(4) and the information for the notifications under Article 9(2);
- (c) the requirements applicable to shareholders and members with qualifying holdings, as well as obstacles which may prevent effective exercise of the supervisory functions of the competent authority, under Article 10(1) and (2).

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

In order to ensure uniform conditions of application of Article 7(2) and Article 9(2), ESMA may develop draft implementing technical standards to determine standard forms, templates and procedures for the notification or provision of information provided for in those Articles.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.'

(3) In Article 8 the following paragraph is added:

'Every withdrawal of authorisation shall be notified to ESMA.'

(4) In Article 10a, the following paragraph is added:

'8. In order to ensure consistent harmonisation of this Article, ESMA shall develop draft regulatory technical standards to establish an exhaustive list of information, referred to in paragraph 4 to be included by proposed acquirers in their notification, without prejudice to paragraph 2.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 January 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

In order to ensure uniform conditions of application of Articles 10, 10a and 10b, ESMA shall develop draft implementing technical standards to determine standard forms, templates and procedures for the modalities of the consultation process between the relevant competent authorities as referred to in Article 10(4).

ESMA shall submit those draft implementing technical standards to the Commission by 1 January 2014.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the fourth subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.'

(5) Article 15 is amended as follows

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

'1. Member States shall inform the Commission and ESMA of any general difficulties which their investment firms encounter in establishing themselves or providing investment services and/or performing investment activities in any third country.'

(b) paragraph 2 is replaced by the following:

'2. Whenever it appears to the Commission, on the basis of information submitted to it under paragraph 1, that a third country does not grant Union investment firms effective market access comparable to that granted by the Union to investment firms from that third country, the Commission, taking into account guidance issued by ESMA, shall submit proposals to the Council for an appropriate mandate for negotiation with a view to obtaining comparable competitive opportunities for Union investment firms. The Council shall act by qualified majority.

The European Parliament shall be immediately and fully informed at all stages of the procedure in accordance with Article 217 of the Treaty on the Functioning of the European Union (TFEU).

ESMA shall assist the Commission for the purposes of this Article.'

(6) In Article 16(2), the following subparagraph is added:

'ESMA may develop guidelines regarding the monitoring methods referred to in this paragraph.'

(7) In Article 19(6), the first indent is replaced by the following:

— the services referred to in the introductory part relate to shares admitted to trading on a regulated market or in an equivalent third-country market, money market instruments, bonds or other forms of securitised debt (excluding those bonds or securitised debt that embed a derivative), UCITS and other non-complex financial instruments. A third-country market shall be considered as equivalent to a regulated market if it complies with equivalent requirements to those established under Title III. The Commission and ESMA shall publish on their websites a list of those markets that are to be considered as equivalent. That list shall be updated periodically. ESMA shall assist the Commission in the assessment of third-country markets.'

(8) In Article 23(3), the first subparagraph is replaced by the following:

‘3. Member States that decide to allow investment firms to appoint tied agents shall establish a public register. Tied agents shall be registered in the public register in the Member State where they are established. ESMA shall publish on its website references or hyperlinks to the public registers established under this Article by the Member States that decide to allow investment firms to appoint tied agents.’.

(9) Article 25 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Without prejudice to the allocation of responsibilities for enforcing the provisions of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (*), Member States coordinated by ESMA in accordance with Article 31 of Regulation (EU) No 1095/2010 shall ensure that appropriate measures are in place to enable the competent authority to monitor the activities of investment firms to ensure that they act honestly, fairly and professionally and in a manner which promotes the integrity of the market.

(*) OJ L 96, 12.4.2003, p. 16.’;

(b) paragraph 2 is replaced by the following:

‘2. Member States shall require investment firms to keep at the disposal of the competent authority, for at least 5 years, the relevant data relating to all transactions in financial instruments which they have carried out, whether on own account or on behalf of a client. In the case of transactions carried out on behalf of clients, the records shall contain all the information and details of the identity of the client, and the information required under Directive 2005/60/EC.

ESMA may request access to that information in accordance with the procedure and under the conditions set out in Article 35 of Regulation (EU) No 1095/2010.’.

(10) Article 27(2) is replaced by the following:

‘2. The competent authority of the most relevant market in terms of liquidity as defined in Article 25 for each share shall determine at least annually, on the basis of the arithmetic average value of the orders executed in the market in respect of that share, the class of shares to which it belongs. That information shall be made public to all market participants and transmitted to ESMA, which shall publish it on its website.’.

(11) Article 31 is amended as follows:

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

‘In cases where the investment firm intends to use tied agents, the competent authority of the home Member State of the investment firm shall, at the request of the competent authority of the host Member State and within a reasonable time, communicate the identity of the tied agents that the investment firm intends to use in that Member State. The host Member State may make public such information. ESMA may request access to that information in accordance with the procedure and under the conditions set out in Article 35 of Regulation (EU) No 1095/2010.’.

(b) the following paragraph is added:

‘7. In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to specify the information to be notified in accordance with paragraphs 2, 4 and 6.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the transmission of information in accordance with paragraphs 3, 4 and 6.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’.

(12) In Article 32, the following paragraph is added:

‘10. In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to specify the information to be notified in accordance with paragraphs 2, 4 and 9.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the transmission of information in accordance with paragraphs 3 and 9.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’.

(13) In Article 36, the following paragraph is added:

‘6. ESMA shall be notified of any withdrawal of authorisation.’

(14) Article 41(2) is replaced by the following:

‘2. A competent authority which requests the suspension or removal of a financial instrument from trading on one or more regulated markets shall immediately make public its decision and inform ESMA and the competent authorities of the other Member States. Save where it is likely to cause significant damage to the investors’ interests or the orderly functioning of the internal market, the competent authorities of the other Member States shall request the suspension or removal of that financial instrument from trading on the regulated markets and MTFs that operate under their supervision.’

(15) In Article 42(6), the second subparagraph is replaced by the following:

‘The regulated market shall communicate to the competent authority of its home Member State the Member State in which it intends to provide such arrangements. The competent authority of the home Member State shall communicate that information to the Member State in which the regulated market intends to provide such arrangements within 1 month. ESMA may request access to that information in accordance with the procedure and under the conditions set out in Article 35 of Regulation (EU) No 1095/2010.’

(16) Article 47 is replaced by the following:

‘Article 47

List of regulated markets

Each Member State shall draw up a list of the regulated markets for which it is the home Member State and shall forward that list to the other Member States and ESMA. A similar communication shall be effected in respect of each change to that list. ESMA shall publish and keep up-to-date a list of all regulated markets on its website.’

(17) Article 48 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Each Member State shall designate the competent authorities which are to carry out each of the duties provided for in this Directive. Member States shall inform the Commission, ESMA and the competent authorities of other Member States of the identity of the competent authorities responsible for enforcement of each of those duties, and of any division of those duties.’

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

‘Member States shall inform the Commission, ESMA and the competent authorities of other Member States of any arrangements entered into with regard to delegation of tasks, including the precise conditions regulating such delegation.’

(c) paragraph 3 is replaced by the following:

‘3. ESMA shall publish and keep up-to-date a list of the competent authorities referred to in paragraphs 1 and 2 on its website.’

(18) In Article 51, the following paragraphs are added:

‘4. Member States shall provide ESMA annually with aggregated information about all administrative measures and sanctions imposed in accordance with paragraphs 1 and 2.

5. Where the competent authority has disclosed an administrative measure or sanction to the public, it shall, contemporaneously, report that fact to ESMA.

6. Where a published sanction relates to an investment firm authorised in accordance with this Directive, ESMA shall add a reference to the published sanction in the register of investment firms established under Article 5(3).’

(19) In Article 53, the following paragraph is added:

‘3. The competent authorities shall notify ESMA of the complaint and redress procedures referred to in paragraph 1 which are available under its jurisdictions.

ESMA shall publish and keep up-to-date a list of all extra-judicial mechanisms on its website.’

(20) The Title of Chapter II is replaced by the following:

‘Cooperation between the competent authorities of the Member States and with ESMA’.

(21) Article 56 is amended as follows:

(a) in paragraph 1, the third subparagraph is replaced by the following:

‘In order to facilitate and accelerate cooperation, and more particularly exchange of information, Member States shall designate a single competent authority as a contact point for the purposes of this Directive. Member States shall communicate to the Commission, ESMA and to the other Member States the names of the authorities which are designated to receive requests for exchange of information or cooperation pursuant to this paragraph. ESMA shall publish and keep up-to-date a list of those authorities on its website.’

(b) paragraph 4 is replaced by the following:

‘4. Where a competent authority has good reasons to suspect that acts contrary to the provisions of this Directive, carried out by entities not subject to its supervision, are being or have been carried out on the territory of another Member State, it shall notify the competent authority of the other Member State and ESMA in as specific a manner as possible. The notified competent authority shall take appropriate action. It shall inform the notifying competent authority and ESMA of the outcome of the action and, to the extent possible, of significant interim developments. This paragraph shall be without prejudice to the competence of the notifying competent authority.’;

(c) the following paragraph is added:

‘6. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the cooperation arrangements referred to in paragraph 2.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’.

(22) Article 57 is amended as follows:

(a) the existing text is renumbered as paragraph 1.

(b) the following paragraphs are added:

‘2. With the objective of converging supervisory practices, ESMA shall be able to participate in the activities of the colleges of supervisors, including on-site verifications or investigations, carried out jointly by two or more competent authorities in accordance with Article 21 of Regulation (EU) No 1095/2010.

3. In order to ensure consistent harmonisation of paragraph 1, ESMA may develop draft regulatory technical standards to specify the information to be exchanged between competent authorities when cooperating in supervisory activities, on-the-spot verifications, and investigations.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

In order to ensure uniform conditions of application of paragraph 1, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for competent authorities to cooperate in supervisory activities, on-site verifications, and investigations.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’.

(23) Article 58 is amended as follows:

(a) paragraph 4 is replaced by the following:

‘4. In order to ensure uniform conditions of application of paragraphs 1 and 2, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the exchange of information.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’;

(b) paragraph 5 is replaced by the following:

‘5. Neither this Article nor Articles 54 or 63 shall prevent a competent authority from transmitting to ESMA, the European Systemic Risk Board (hereinafter the “ESRB”), central banks, the European System of Central Banks and the European Central Bank, in their capacity as monetary authorities, and, where appropriate, to other public authorities responsible for overseeing payment and settlement systems, confidential information intended for the performance of their tasks; likewise such authorities or bodies shall not be prevented from communicating to the competent authorities such information as they may need for the purpose of performing their functions provided for in this Directive.’.

(24) The following Article is inserted:

‘Article 58a

Binding mediation

The competent authorities may refer to ESMA situations where a request relating to one of the following has been rejected or has not been acted upon within a reasonable time:

(a) to carry out a supervisory activity, an on-the-spot verification, or an investigation, as provided for in Article 57; or

(b) to exchange information as provided for in Article 58.

In the situations referred to in the first paragraph, ESMA may act in accordance with Article 19 of Regulation (EU) No 1095/2010, without prejudice to the possibilities for refusing to act on a request for information foreseen in Article 59a and to the possibility of ESMA acting in accordance with Article 17 of Regulation (EU) No 1095/2010.’.

(25) Article 59, the second paragraph is replaced by the following:

‘In the case of such a refusal, the competent authority shall notify the requesting competent authority and ESMA accordingly, providing as detailed information as possible.’.

(26) In Article 60, the following paragraph is added:

‘4. In order to ensure uniform conditions of application of paragraphs 1 and 2, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the consultation of other competent authorities prior to granting an authorisation.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’

(27) Article 62 is amended as follows:

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

‘If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, the investment firm persists in acting in a manner that is clearly prejudicial to the interests of host Member State investors or the orderly functioning of markets, the following shall apply:

(a) after informing the competent authority of the home Member State, the competent authority of the host Member State shall take all the appropriate measures needed in order to protect investors and the proper functioning of the markets, which shall include the possibility of preventing offending investment firms from initiating any further transactions within their territories. The Commission and ESMA shall be informed of such measures without delay;

(b) in addition, the competent authority of the host Member State may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.’;

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

‘If, despite the measures taken by the host Member State, the investment firm persists in breaching the legal or regulatory provisions referred to in the first subparagraph in force in the host Member State, the following shall apply:

(a) after informing the competent authority of the home Member State, the competent authority of the host Member State shall take all the appropriate measures needed in order to protect investors and the proper functioning of the markets. The Commission and ESMA shall be informed of such measures without delay;

(b) in addition, the competent authority of the host Member State may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.’;

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

‘If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, that regulated market or the MTF persists in acting in a manner that is clearly prejudicial to the interests of host Member State investors or the orderly functioning of markets, the following shall apply:

(a) after informing the competent authority of the home Member State, the competent authority of the host Member State shall take all the appropriate measures needed in order to protect investors and the proper functioning of the markets, which shall include the possibility of preventing that regulated market or the MTF from making their arrangements available to remote members or participants established in the host Member State. The Commission and ESMA shall be informed of such measures without delay;

(b) in addition, the competent authority of the host Member State may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.’.

(28) The following Article is inserted:

‘Article 62a

Cooperation and exchange of information with ESMA

1. The competent authorities shall cooperate with ESMA for the purposes of this Directive, in accordance with Regulation (EU) No 1095/2010.

2. The competent authorities shall, without delay, provide ESMA with all information necessary to carry out its duties under this Directive and in accordance with Article 35 of Regulation (EU) No 1095/2010.’.

(29) Article 63(1) is replaced by the following:

‘1. Member States and in accordance with Article 33 of Regulation (EU) No 1095/2010, ESMA may conclude cooperation agreements providing for the exchange of information with the competent authorities of third countries only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those required under Article 54. Such exchange of information must be intended for the performance of the tasks of those competent authorities.

Member States and ESMA may transfer personal data to a third country in accordance with Chapter IV of Directive 95/46/EC.

Member States and ESMA may also conclude cooperation agreements providing for the exchange of information with third country authorities, bodies and natural or legal persons responsible for one or more of the following:

- (a) the supervision of credit institutions, other financial institutions, insurance undertakings and the supervision of financial markets;
- (b) the liquidation and bankruptcy of investment firms and other similar procedures;
- (c) the carrying out of statutory audits of the accounts of investment firms and other financial institutions, credit institutions and insurance undertakings, in the performance of their supervisory functions, or which administer compensation schemes, in the performance of their functions;
- (d) oversight of the bodies involved in the liquidation and bankruptcy of investment firms and other similar procedures;
- (e) oversight of persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions.

The cooperation agreements referred to in the third subparagraph may be concluded only where the information disclosed is subject to guarantees of professional secrecy at least equivalent to those required under Article 54. Such exchange of information shall be intended for the performance of the tasks of those authorities or bodies or natural or legal persons.’

(30) The following Article is inserted

‘Article 64a

Sunset clause

By 1 December 2011 the Commission shall review Articles 2, 4, 10b, 13, 15, 18, 19, 21, 22, 24 and 25, Articles 27 to 30, and Articles 40, 44, 45, 56 and 58 and present any appropriate legislative proposal in order to allow the full application of the delegated acts under Article 290 TFEU and implementing acts under Article 291 TFEU in respect of this Directive. Without prejudice to implementing measures already adopted, the powers conferred on the Commission in Article 64 to adopt implementing measures that remain after the entry into force of the Lisbon Treaty on 1 December 2009 shall cease to apply on 1 December 2012.’

Article 7

Amendments to Directive 2004/109/EC

Directive 2004/109/EC is hereby amended as follows:

(1) Article 2(3) is amended as follows:

- (a) the first subparagraph is replaced by the following:

‘3. In order to take account of technical developments on financial markets, to specify the requirements

and to ensure the uniform application of paragraph 1, the Commission shall adopt, in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures concerning the definitions set out in paragraph 1.’

- (b) the third subparagraph is replaced by the following:

‘The measures referred to in points (a) and (b) of the second subparagraph shall be laid down by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b.’

(2) Article 5(6) is amended as follows:

- (a) the first subparagraph is replaced by the following:

‘6. The Commission shall adopt, in accordance with Article 27(2) or Article 27(2a), (2b) and (2c), in order to take account of technical developments on financial markets, measures to specify the requirements and ensure the uniform application of paragraphs 1 to 5 of this Article.’;

- (b) the third subparagraph is replaced by the following:

‘The measures referred to in point (a) shall be adopted in accordance with the regulatory procedure referred to in Article 27(2). The measures referred to in points (b) and (c) shall be laid down by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b.’;

- (c) the fourth subparagraph is replaced by the following:

‘Where appropriate, the Commission may also adapt the five-year period referred to in paragraph 1 by means of a delegated act in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b.’

(3) Article 9(7) is amended as follows:

- (a) the first subparagraph is replaced by the following:

‘7. The Commission shall adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures in order to take account of technical developments on financial markets and to specify the requirements laid down in paragraphs 2, 4 and 5.’

- (b) the second subparagraph is replaced by the following:

‘The Commission shall specify, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, the maximum length of the “short settlement cycle” referred to in paragraph 4 of this Article, as well as the appropriate control mechanisms by the competent authority of the home Member State.’

(4) Article 12 is amended as follows:

(a) in paragraph 8:

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

'8. In order to take account of technical developments on financial markets and to specify the requirements laid down in paragraphs 1, 2, 4, 5 and 6 of this Article, the Commission shall adopt, in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures';

(ii) point (a) is deleted;

(iii) the second subparagraph is deleted;

(b) the following paragraph is added:

'9. In order to ensure the uniform conditions of application of this Article and to take account of technical developments on financial markets, the European Supervisory Authority (European Securities and Markets Authority) (hereinafter "ESMA"), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (*) may develop draft implementing technical standards to establish standard forms, templates and procedures to be used when notifying the required information to the issuer under paragraph 1 of this Article or when filing information under Article 19(3).

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

(*) OJ L 331, 15.12.2010, p. 84.'

(5) Article 13 is amended as follows:

(a) in paragraph 2:

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

'2. The Commission shall adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures in order to take account of technical developments on financial markets and to specify the requirements laid down in paragraph 1. It shall in particular determine';

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

'(c) the contents of the notification to be made';

(iii) the second subparagraph is deleted;

(b) the following paragraph is added:

'3. In order to ensure uniform conditions of application of paragraph 1 of this Article and to take account of technical developments on financial markets, ESMA may develop draft implementing technical standards to

establish standard forms, templates and procedures to be used when notifying the required information to the issuer under paragraph 1 of this Article or when filing information under Article 19(3).

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.'

(6) Article 14(2) is replaced by the following:

'2. The Commission shall adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures in order to take account of technical developments on financial markets and to specify the requirements laid down in paragraph 1.'

(7) Article 17(4) is replaced by the following:

'4. The Commission shall adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures in order to take account of technical developments on financial markets, to take account of developments in information and communication technology and to specify the requirements laid down in paragraphs 1, 2 and 3. The Commission shall, in particular, specify the types of financial institution through which a shareholder may exercise the financial rights provided for in paragraph 2(c).'

(8) Article 18(5) is replaced by the following:

'5. The Commission shall adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures in order to take account of technical developments on financial markets, to take account of developments in information and communication technology and to specify the requirements laid down in paragraphs 1 to 4. The Commission shall, in particular, specify the types of financial institution through which a debt security holder may exercise the financial rights provided for in paragraph 2(c).'

(9) Article 19(4) is replaced by the following:

'4. The Commission shall adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures in order to specify the requirements laid down in paragraphs 1, 2 and 3.

The Commission shall, in particular, specify the procedure in accordance with which an issuer, a holder of shares or other financial instruments, or a person or entity referred to in Article 10, is to file information with the competent authority of the home Member State under paragraph 1 or 3, respectively, in order to enable filing by electronic means in the home Member State.'

(10) Article 21(4) is replaced by the following:

‘4. The Commission shall adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures to take account of technical developments on financial markets, to take account of developments in information and communication technology and to specify the requirements laid down in paragraphs 1, 2 and 3.

The Commission shall, in particular, specify:

- (a) minimum standards for the dissemination of regulated information, as referred to in paragraph 1;
- (b) minimum standards for the central storage mechanism as referred to in paragraph 2.

The Commission may also specify and update a list of media for the dissemination of information to the public.’

(11) In Article 22, the first subparagraph of paragraph 1 is replaced by the following:

‘1. ESMA shall draw up guidelines, in accordance with Article 16 of Regulation (EU) No 1095/2010, with a view to further facilitating public access to information to be disclosed under Directive 2003/6/EC, Directive 2003/71/EC and under this Directive.’

(12) Article 23 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Where the registered office of an issuer is situated in a third country, the competent authority of the home Member State may exempt that issuer from requirements under Articles 4 to 7, Article 12(6) and Articles 14 to 18, provided that the law of the third country in question lays down equivalent requirements or such an issuer complies with requirements of the law of a third country that the competent authority of the home Member State considers as equivalent.

The competent authority shall then inform ESMA of the exemption granted.’

(b) paragraph 4 is replaced by the following:

‘4. In order to ensure the uniform conditions of application of paragraph 1, the Commission shall adopt, in accordance with the procedure referred to in Article 27(2), implementing measures:

- (i) setting up a mechanism ensuring the establishment of equivalence of information required under this Directive, including financial statements and information, required under the law, regulations or administrative provisions of a third country;
- (ii) stating that, by reason of its domestic law, regulations, administrative provisions, or of the practices or procedures based on the international standards set by international organisations, the third country where the issuer is registered ensures the equivalence of the information requirements provided for in this Directive.

In the context of point (ii) of the first subparagraph, the Commission shall also adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures concerning the assessment of standards relevant to the issuers of more than one country.

The Commission shall, in accordance with the procedure referred to in Article 27(2), take the necessary decisions on the equivalence of accounting standards which are used by third-country issuers under the conditions set out in Article 30(3). If the Commission decides that the accounting standards of a third country are not equivalent, it may allow the issuers concerned to continue using such accounting standards during an appropriate transitional period.

In the context of the third subparagraph, the Commission shall also adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures aimed at establishing general equivalence criteria regarding accounting standards relevant to issuers of more than one country.’

(c) paragraph 5 is replaced by the following:

‘5. In order to specify the requirements laid down in paragraph 2, the Commission may adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures defining the type of information disclosed in a third country that is of importance to the public in the Union.’

(d) in paragraph 7, the second subparagraph is replaced by the following:

‘The Commission shall also adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures aimed at establishing general equivalence criteria for the purpose of the first subparagraph.’

(e) the following paragraph is added:

‘8. ESMA shall assist the Commission in carrying out its tasks under this Article in accordance with Article 33 of Regulation (EU) No 1095/2010.’

(13) Article 24 is amended as follows:

(a) in paragraph 1, the first subparagraph is replaced by the following:

‘1. Each Member State shall designate the central authority referred to in Article 21(1) of Directive 2003/71/EC as the central competent administrative authority responsible for carrying out the obligations provided for in this Directive and for ensuring that the provisions adopted pursuant to this Directive are applied. Member States shall inform the Commission and ESMA accordingly.’

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

'3. Member States shall inform the Commission, ESMA in accordance with Article 28(4) of Regulation (EU) No 1095/2010, and competent authorities of other Member States of any arrangements entered into with regard to the delegation of tasks, including the precise conditions for regulating the delegations.'

- (14) Article 25 is amended as follows:

- (a) the following paragraphs are inserted:

'2a. The competent authorities may refer to ESMA situations where a request for cooperation has been rejected or has not been acted upon within a reasonable time. Without prejudice to the Article 258 of the Treaty on the Functioning of the European Union (TFEU), ESMA may, in situations referred to in the first sentence, act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

2b. The competent authorities shall cooperate with ESMA for the purposes of this Directive, in accordance with Regulation (EU) No 1095/2010.

2c. The competent authorities shall without delay provide ESMA with all information necessary to carry out its duties under this Directive and under Regulation (EU) No 1095/2010, in accordance with Article 35 of that Regulation.'

- (b) in paragraph 3, the first sentence is replaced by the following:

'3. Paragraph 1 shall not prevent the competent authorities from exchanging confidential information with, or from transmitting information to, other competent authorities, ESMA and the European Systemic Risk Board (ESRB) established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (*).

(*) OJ L 331, 15.12.2010, p. 1.;

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

'4. Member States and ESMA in accordance with Article 33 of Regulation (EU) No 1095/2010, may conclude cooperation agreements providing for the exchange of information with the competent authorities or bodies of third countries enabled by their respective legislation to carry out any tasks under this Directive in accordance with Article 24. Member States shall notify ESMA when they conclude cooperation agreements. Such an exchange of information is subject to guarantees of professional secrecy at least equivalent to those referred to in this Article. Such an exchange of information shall be intended for the performance of the supervisory task of the authorities or bodies mentioned. Where the information originates in another

Member State, it shall not be disclosed without the express agreement of the competent authorities which disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.'

- (15) Article 26 is replaced by the following:

'Article 26

Precautionary measures

1. Where the competent authority of a host Member State finds that the issuer or the holder of shares or other financial instruments, or the person or entity referred to in Article 10, has committed irregularities or infringed its obligations, it shall refer its findings to the competent authority of the home Member State and to ESMA.

2. If, despite the measures taken by the competent authority of the home Member State, or because such measures prove inadequate, the issuer or the security holder persists in infringing the relevant legal or regulatory provisions, the competent authority of the host Member State shall, after informing the competent authority of the home Member State, take, in accordance with Article 3(2), all the appropriate measures in order to protect investors, informing the Commission and ESMA thereof at the earliest opportunity.'

- (16) The title of Chapter VI is replaced by the following:

'DELEGATED ACTS AND IMPLEMENTING MEASURES'

- (17) Article 27 is amended as follows:

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

'2a. The power to adopt the delegated acts referred to in Article 2(3), Article 5(6), Article 9(7), Article 12(8), Article 13(2), Article 14(2), Article 17(4), Article 18(5), Article 19(4), Article 21(4), Article 23(4), Article 23(5) and Article 23(7) shall be conferred on the Commission for a period of 4 years from 4 January 2011. The Commission shall draw up a report in respect of delegated power at the latest 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 27a.'

- (b) the following paragraphs are inserted:

'2b. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

2c. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 27a and 27b.'

(18) The following Articles are inserted:

Article 27a

Revocation of the delegation

1. The delegation of power referred to in Article 2(3), Article 5(6), Article 9(7), Article 12(8), Article 13(2), Article 14(2), Article 17(4), Article 18(5), Article 19(4), Article 21(4), Article 23(4), Article 23(5) and Article 23(7) 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 delegated acts already in force. It shall be published in the *Official Journal of the European Union*.

Article 27b

Objections to delegated acts

1. The European Parliament or the Council may object to a delegated act within a period of 3 months from the date of notification. At the initiative of the European Parliament or the Council that period shall be extended by 3 months.

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

The delegated act 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 delegated act 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 delegated act.'

Article 8

Amendments to Directive 2005/60/EC

Directive 2005/60/EC is hereby amended as follows:

(1) Article 11(4) is replaced by the following:

'4. The Member States shall inform each other, the European Supervisory Authority (European Banking Authority)

(hereinafter "EBA"), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council (*), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (hereinafter "EIOPA"), established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council (**), and the European Supervisory Authority (European Securities and Markets Authority) (hereinafter "ESMA"), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (***) (collectively, the "ESA") to the extent relevant for the purposes of this Directive and in accordance with the relevant provisions of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010, and the Commission of cases where they consider that a third country meets the conditions laid down in paragraphs 1 or 2 or in other situations which meet the technical criteria established in accordance with Article 40(1)(b).

(*) OJ L 331, 15.12.2010, p. 12.

(**) OJ L 331, 15.12.2010, p. 48.

(***) OJ L 331, 15.12.2010, p. 84.'

(2) Article 16(2) is replaced by the following:

'2. The Member States shall inform each other, the ESA to the extent relevant for the purposes of this Directive and in accordance with the relevant provisions of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010, and the Commission of cases where they consider that a third country meets the conditions laid down in paragraph 1(b).'

(3) Article 28(7) is replaced by the following:

'7. The Member States shall inform each other, the ESA to the extent relevant for the purposes of this Directive and in accordance with the relevant provisions of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010 and the Commission of cases where they consider that a third country meets the conditions laid down in paragraphs 3, 4 or 5.'

(4) Article 31 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. The Member States, the ESA to the extent relevant for the purposes of this Directive and in accordance with the relevant provisions of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010 and the Commission shall inform each other of cases where the legislation of the third country does not permit application of the measures required under the first subparagraph of paragraph 1 and coordinated action could be taken to pursue a solution.'

(b) the following paragraph is added:

‘4. In order to ensure consistent harmonisation of this Article and to take account of technical developments in the fight against money laundering and terrorist financing, the ESA taking into account the existing framework and cooperating, as appropriate, with other relevant Union bodies in that field, may develop draft regulatory technical standards in accordance with Article 56 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010 respectively to specify the type of additional measures referred to in paragraph 3 of this Article and the minimum action to be taken by credit and financial institutions where the legislation of the third country does not permit application of the measures required under the first subparagraph of paragraph 1 of this Article.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.’

(5) In Article 34, the following paragraph is added:

‘3. In order to ensure consistent harmonisation and to take account of technical developments in the fight against money laundering and terrorist financing, the ESA, taking into account the existing framework and cooperating, as appropriate, with other relevant Union bodies in that field, may develop draft regulatory technical standards in accordance with Article 56 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively, to specify the minimum content of the communication referred to in paragraph 2.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.’

(6) The following Article is inserted:

‘Article 37a

1. The competent authorities shall cooperate with the ESA for the purposes of this Directive, in accordance with Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010, and Regulation (EU) No 1095/2010, respectively.

2. The competent authorities shall provide the ESA with all information necessary to carry out their duties under this Directive and under Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010, respectively.’

(7) The title of Chapter VI is replaced by the following:

‘DELEGATED ACTS AND IMPLEMENTING MEASURES’

(8) Article 40 is amended as follows:

(a) in paragraph 1:

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

‘1. In order to take account of technical developments in the fight against money laundering and terrorist financing and to specify the requirements laid down in this Directive, the Commission may, adopt the following measures:’;

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

‘The measures shall be adopted by means of delegated acts in accordance with Article 41(2a), (2b) and (2c), and subject to the conditions of Articles 41a and 41b.’;

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

‘The measures shall be adopted by means of delegated acts in accordance with Article 41(2a), (2b) and (2c), and subject to the conditions of Articles 41a and 41b.’

(9) Article 41 is amended as follows:

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

‘2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to Article 8 thereof and provided that the measures adopted in accordance with that procedure do not modify the essential provisions of this Directive.’;

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

‘2a. The power to adopt delegated acts referred to in Article 40 shall be conferred on the Commission for a period of 4 years from 4 January 2011. The Commission shall draw up a report in respect of the delegated power at the latest 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 41a.’;

(c) the following paragraphs are inserted:

‘2b. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

2c. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 41a and 41b.’;

(d) paragraph 3 is deleted.

(10) The following Articles are inserted:

‘Article 41a

Revocation of the delegation

1. The delegation of power referred to in Article 40 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 on a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the *Official Journal of the European Union*.

Article 41b

Objections to delegated acts

1. The European Parliament or the Council may object to a delegated act within a period of 3 months from the date of notification. At the initiative of the European Parliament or the Council that period shall be extended by 3 months.

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

The delegated act 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 delegated act 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 delegated act.’

Article 9

Amendments to Directive 2006/48/EC

Directive 2006/48/EC is hereby amended as follows:

(1) Article 6 is amended as follows:

(a) the existing paragraph is replaced by the following:

‘1. Member States shall require credit institutions to obtain authorisation before commencing their activities. Without prejudice to Articles 7 to 12, they shall lay

down the requirements for such authorisation and notify the Commission and the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council (*) (hereinafter “EBA”) thereof.

(*) OJ L 331, 15.12.2010, p. 12.’;

(b) the following paragraphs are added:

‘2. In order to ensure consistent harmonisation of this Article, EBA may develop draft regulatory technical standards:

(a) on the information to be provided to the competent authorities in the application for the authorisation of credit institutions, including the programme of operations provided for in Article 7;

(b) specifying the conditions to comply with the requirement set out in Article 8;

(c) specifying the requirements applicable to shareholders and members with qualifying holdings, as well as to specify obstacles which may prevent effective exercise of the supervisory functions of the competent authority, as provided for in Article 12.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in points (a), (b) and (c) of the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.

3. In order to ensure uniform conditions of application of this Article, EBA may develop draft implementing technical standards on standard forms, templates and procedures for such provision of information;

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.’

(2) In Article 9(2), point b is replaced by the following:

‘(b) the Member States concerned shall notify the Commission and EBA of their reasons for exercising that option; and’.

(3) Article 14 is replaced by the following:

‘Article 14

Every authorisation shall be notified to EBA.

The name of each credit institution to which authorisation has been granted shall be entered in a list. EBA shall publish and keep that list up-to-date on its website.’

(4) Article 17(2) is replaced by the following:

‘2. Withdrawal of authorisation shall be notified to the Commission and EBA and shall be reasoned. The persons concerned shall be notified of those reasons.’

(5) In Article 19, the following paragraph is added:

‘9. In order to ensure consistent harmonisation of this Article, EBA may develop draft regulatory technical standards to establish an exhaustive list of information, referred to in Article 19a(4), to be included by proposed acquirers in their notification, without prejudice to paragraph 3 of this Article.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

In order to ensure uniform conditions of application of this Directive, EBA may develop draft implementing technical standards to establish common procedures, forms and templates for the consultation process between the relevant competent authorities as referred to in Article 19b.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.’

(6) In Article 22, the following paragraph is added:

‘3. In order to specify the requirements laid down in this Article and to ensure the convergence of supervisory practices, EBA may develop draft regulatory technical standards to specify the arrangements, processes and mechanisms referred to in paragraph 1, in accordance with the principles of proportionality and comprehensiveness set out in paragraph 2.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.’

(7) In Article 25, the following paragraph is added:

‘5. In order to ensure consistent harmonisation of this Article, EBA shall develop draft regulatory technical standards to specify the information to be notified in accordance with this Article.

In order to ensure uniform conditions of application of this Article, EBA shall develop draft implementing technical standards to establish standard forms, templates and procedures for such notification.

EBA shall submit those draft technical standards to the Commission by 1 January 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.

Power is also conferred on the Commission to adopt the implementing technical standards referred to in the second subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.’

(8) In Article 26, the following paragraph is added:

‘5. In order to ensure consistent harmonisation of this Article, EBA shall develop draft regulatory technical standards to specify the information to be notified in accordance with this Article.

In order to ensure uniform conditions of application of this Article, EBA shall develop draft implementing technical standards to establish standard forms, templates and procedures for such notification.

EBA shall submit those draft technical standards to the Commission by 1 January 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.

Power is also conferred on the Commission to adopt the implementing technical standards referred to in the second subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.’

(9) In Article 28, the following paragraph is added:

‘4. In order to ensure consistent harmonisation of this Article, EBA shall develop draft regulatory technical standards to specify the information to be notified in accordance with this Article.

In order to ensure uniform conditions of application of this Article, EBA shall develop draft implementing technical standards to establish standard forms, templates and procedures for such notification.

EBA shall submit those draft technical standards to the Commission by 1 January 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Power is also conferred on the Commission to adopt the implementing technical standards referred to in the second subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.’

(10) In Article 33, the first paragraph is replaced by the following:

'Before following the procedure provided for in Article 30, the competent authorities of the host Member State may, in emergencies, take any precautionary measures necessary to protect the interests of depositors, investors and others to whom services are provided. The Commission, EBA and the competent authorities of the other Member States concerned shall be informed of such measures at the earliest opportunity.'

(11) Article 36 is replaced by the following:

'Article 36

The Member States shall inform the Commission and EBA of the number and type of cases in which there has been a refusal pursuant to Article 25 and Article 26(1), (2) and (3) or in which measures have been taken in accordance with Article 30(3).'

(12) Article 38(2) is replaced by the following:

'2. The competent authorities shall notify the Commission, EBA and the European Banking Committee of all authorisations for branches granted to credit institutions having their head office in a third country.'

(13) In Article 39 is amended as follows:

(a) in paragraph 2, the following point is added:

'(c) that EBA is able to obtain the information from the competent authorities of the Member States received from national authorities of third countries in accordance with Article 35 of Regulation (EU) No 1093/2010;'

(b) the following paragraph is added:

'4. EBA shall assist the Commission for the purposes of this Article in accordance with Article 33 of Regulation (EU) No 1093/2010.'

(14) In Article 42, the following paragraphs are added:

'The competent authorities may refer to EBA situations where a request for collaboration, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time. Without prejudice to Article 258 of the Treaty on the Functioning of the European Union (TFEU), EBA may, in situations referred to in the first sentence, act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1093/2010.'

In order to ensure consistent harmonisation of this Article, EBA shall develop draft regulatory technical standards to specify the information contained in this Article.

In order to ensure uniform conditions of application of this Article, EBA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the information sharing requirements which are likely to facilitate the monitoring of credit institutions.

EBA shall submit those draft technical standards to the Commission by 1 January 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the third paragraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.

Power is also conferred on the Commission to adopt the implementing technical standards referred to in the fourth paragraph in accordance with Article 15 of Regulation (EU) No 1093/2010.'

(15) Article 42a is amended as follows:

(a) in paragraph 1, the following subparagraph is inserted after the fourth subparagraph:

'If, at the end of the initial two-month period any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the competent authorities of the host Member State shall defer their decision and await the decision that EBA may take in accordance with Article 19(3) of that Regulation. The competent authorities of the host Member State shall take their decision in conformity with that of EBA. The two-month period shall be deemed to be the "conciliation phase" within the meaning of Article 19 of that Regulation. EBA shall take its decision within 1 month. The matter shall not be referred to EBA after the end of the initial two month period or after a joint decision has been reached.'

(b) in paragraph 3, the following subparagraphs are added:

'In order to ensure consistent harmonisation of this Article, EBA may develop draft regulatory technical standards in order to specify general conditions for the functioning of colleges of supervisors.'

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the fourth subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.

In order to ensure uniform conditions of application of this Article, EBA may develop draft implementing technical standards in order to determine the operational functioning of colleges of supervisors.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the sixth subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.'

(16) Article 42b is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. In the exercise of their duties, the competent authorities shall take into account the convergence in respect of supervisory tools and supervisory practices in the application of the laws, regulations and administrative requirements adopted pursuant to this Directive. For that purpose, Member States shall ensure that:

- (a) the competent authorities participate in the activities of EBA;
- (b) the competent authorities follow the guidelines and recommendations of EBA and state the reasons if they do not do so;
- (c) national mandates conferred on the competent authorities do not inhibit the performance of their duties as members of EBA or under this Directive.;

(b) paragraph 2 is deleted.

(17) Article 44(2) is replaced by the following:

'2. Paragraph 1 shall not prevent the competent authorities of the various Member States from exchanging information or transmitting information to EBA in accordance with this Directive, with other Directives applicable to credit institutions, and with Articles 31 and 35 of Regulation (EU) No 1093/2010. That information shall be subject to the conditions relating to professional secrecy set out in paragraph 1'.

(18) Article 46 is replaced by the following:

Article 46

In accordance with Article 33 of Regulation (EU) No 1093/2010, Member States and EBA may conclude cooperation agreements, providing for exchanges of information, with the competent authorities of third countries or with authorities or bodies of third countries as defined in Article 47 and Article 48(1) of this Directive only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in Article 44(1) of this Directive. Such exchange of information shall be for the purpose of performing the supervisory tasks of those authorities or bodies.

Where the information originates in another Member State, it shall not be disclosed without the express agreement of the authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.'

(19) Article 49 is amended as follows:

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

'This Section shall not prevent a competent authority from transmitting information to the following for the purposes of their tasks:

- (a) central banks of the European System of the Central Banks and other bodies with a similar function in their capacity as monetary authorities when the information is relevant for the exercise of their respective statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and settlement systems, and the safeguarding of stability of the financial system;
- (b) where appropriate, other public authorities responsible for overseeing payment systems;
- (c) the European Systemic Risk Board (hereinafter the "ESRB"), where that information is relevant for the exercise of its statutory tasks under Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (*).

This Section shall not prevent the authorities or bodies referred to in the first subparagraph from communicating to the competent authorities such information as they may need for the purposes of Article 45.

(*) OJ L 331, 15.12.2010, p. 1.;

(b) the fourth paragraph is replaced by the following:

'In an emergency situation as referred to in Article 130(1), Member States shall allow the competent authorities to communicate, without delay, information to the central banks in the European System of the Central Banks where that information is relevant for the exercise of their statutory tasks, including the conduct of monetary policy and related liquidity provision, the oversight of payments, clearing and securities settlement systems, and the safeguarding stability of the financial system, and to the ESRB under Regulation (EU) No 1092/2010, where such information is relevant for the exercise of its statutory tasks.'

(20) Article 63a is amended as follows:

(a) paragraph 4 is replaced by the following:

'4. The provisions governing the instrument shall provide for principal, unpaid interest or dividend to be such as to absorb losses and to not hinder the recapitalisation of the credit institution through appropriate mechanisms, as developed by EBA under paragraph 6';

(b) paragraph 6 is replaced by the following:

‘6. In order to ensure consistent harmonisation and to ensure the convergence of supervisory practices, EBA shall develop draft regulatory technical standards to specify the requirements applicable to the instruments referred to in paragraph 1 of this Article EBA shall submit those draft regulatory technical standards to the Commission by 1 January 2014. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.

EBA shall also issue guidelines in relation to instruments referred to in point (a) of the first paragraph of Article 57.

EBA shall monitor the application of those guidelines.’

(21) In Article 74(2), the second subparagraph is replaced by the following:

‘In order to ensure uniform conditions of application of this Directive, for the communication of those calculations by credit institutions, the competent authorities shall apply, from 31 December 2012, uniform formats, frequencies and dates of reporting. In order to ensure uniform conditions of application of this Directive, EBA shall develop draft implementing technical standards to introduce, within the Union, uniform formats (with associated instructions), frequencies and dates of reporting before 1 January 2012. The reporting formats shall be proportionate to the nature, scale and complexity of the credit institutions’ activities.

In order to ensure uniform conditions of application of this Directive, EBA shall also develop draft implementing technical standards regarding IT solutions to be applied for such reporting.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the second and third subparagraphs in accordance with Article 15 of Regulation (EU) No 1093/2010.’

(22) In Article 81(2) the following subparagraphs are added:

‘In order to ensure consistent harmonisation of this Article, EBA, in consultation with the European Supervisory Authority (European Securities and Markets Authority) (hereinafter “ESMA”), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (*), shall develop draft regulatory technical standards to specify the assessment methodology relating to credit assessments. EBA shall submit those draft regulatory technical standards to the Commission by 1 January 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.

(*) OJ L 331, 15.12.2010, p. 84.’

(23) In Article 84(2), the following subparagraphs are added:

‘In order to ensure consistent harmonisation of this Article, EBA may develop draft regulatory technical standards to specify the assessment methodology under which the competent authorities permit credit institutions to use the IRB approach.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in point (a) of the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.’

(24) In Article 97(2), the following subparagraphs are added:

‘In order to ensure consistent harmonisation of this Article, EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify the assessment methodology relating to credit assessments. EBA shall submit those draft regulatory technical standards to the Commission by 1 January 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.’

(25) In Article 105(1), the following subparagraphs are added:

‘In order to ensure consistent harmonisation of this Article, EBA may develop draft regulatory technical standards to specify the assessment methodology under which the competent authorities permit credit institutions to use Advanced Measurement Approaches.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.’

(26) In Article 106(2), the second subparagraph is replaced by the following:

‘In order to ensure consistent harmonisation of this paragraph, EBA shall develop draft regulatory technical standards in order to specify the exemptions in points (c) and (d) as well as to specify the conditions used to determine the existence of a group of connected clients, as stated in paragraph 3. EBA shall submit those draft regulatory technical standards to the Commission by 1 January 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to the second subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.’

(27) Article 110(2) is replaced by the following:

‘2. Member States shall provide that reporting shall be carried out at least twice a year. The competent authorities shall apply, from 31 December 2012, uniform formats, frequencies and dates of reporting. In order to ensure uniform conditions of application of this Directive, EBA shall develop draft implementing technical standards to introduce, within the Union, uniform formats (with associated instructions), frequencies and dates of reporting before 1 January 2012. The reporting formats shall be proportionate to the nature, scale and complexity of the credit institutions’ activities.

In order to ensure uniform conditions of application of this Directive, EBA shall also develop draft implementing technical standards regarding IT solutions to be applied for such reporting.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first and second subparagraphs in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1093/2010.’

(28) In Article 111(1), the fourth subparagraph is replaced by the following:

‘Member States may set a lower limit than EUR 150 million and shall inform EBA and the Commission thereof.’

(29) Article 122a(10) is replaced by the following:

‘10. EBA shall report to the Commission annually on the compliance with this Article by the competent authorities.

In order to ensure consistent harmonisation of this Article, EBA shall develop draft regulatory technical standards for the convergence of supervisory practices with regard to this Article, including the measures taken in case of breach of the due diligence and risk management obligations. EBA shall submit those draft regulatory technical standards to the Commission by 1 January 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.’

(30) In Article 124, the following paragraph is added:

‘6. In order to ensure consistent harmonisation of this Article, EBA may develop draft regulatory technical standards to specify this Article and a common risk assessment procedure and methodology.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.’

(31) Article 126(4) is replaced by the following.

‘4. The competent authorities shall notify the Commission and EBA of any agreement falling within paragraph 3.’

(32) Article 129 is amended as follows:

(a) in paragraph 1, the following subparagraph is inserted after the first subparagraph:

‘Where the consolidating supervisor fails to carry out the tasks referred to in the first subparagraph or where the competent authorities do not cooperate with the consolidating supervisor to the extent required in carrying out the tasks in the first subparagraph, any of the competent authorities concerned may refer the matter to EBA, which may act in accordance with Article 19 of Regulation (EU) No 1093/2010.’;

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

‘If, at the end of the six month period, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the consolidating supervisor shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation on its decision, and shall take its decision in conformity with the decision of EBA. The six-month period shall be deemed the conciliation period within the meaning of that Regulation. EBA shall take its decision within 1 month. The matter shall not be referred to EBA after the end of the six month period or after a joint decision has been reached.’;

(c) in paragraph 2, the following subparagraphs are added:

‘EBA may develop draft implementing technical standards to ensure uniform conditions of application of the joint decision process referred to in this paragraph, with regard to the applications for permissions referred to in Article 84(1), Article 87(9) and Article 105 and in Annex III part 6, with a view to facilitating joint decisions.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the sixth and the seventh subparagraphs in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1093/2010.’;

(d) paragraph 3 is amended as follows:

(i) in the third subparagraph, the term ‘Committee of European Banking Supervisors’ is replaced by ‘EBA’;

- (ii) the fourth subparagraph is replaced by the following:

'In the absence of such a joint decision between the competent authorities within 4 months, a decision on the application of Articles 123 and 124 and Article 136(2) shall be taken on a consolidated basis by the consolidating supervisor after duly considering the risk assessment of subsidiaries performed by relevant competent authorities. If, at the end of the four month period, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the consolidating supervisor shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with the decision of EBA. The four month period shall be deemed the conciliation period within the meaning of the Regulation. EBA shall take its decision within 1 month. The matter shall not be referred to EBA after the end of the four month period or after a joint decision has been reached.'

- (iii) the fifth subparagraph is replaced by the following:

'The decision on the application of Articles 123 and 124 and Article 136(2) shall be taken by the respective competent authorities responsible for supervision of subsidiaries of a Union parent credit institution or a Union parent financial holding company on an individual or sub-consolidated basis after duly considering the views and reservations expressed by the consolidating supervisor. If, at the end of the four-month period, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the competent authorities shall defer their decision and await any decision that EBA shall take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with the decision of EBA. The four month period shall be deemed the conciliation period within the meaning of that Regulation. EBA shall take its decision within 1 month. The matter shall not be referred to EBA after the end of the four-month period or after a joint decision has been reached.'

- (iv) the seventh subparagraph is replaced by the following:

'Where EBA has been consulted, all the competent authorities shall consider its advice, and explain any significant deviation therefrom.'

- (v) the tenth subparagraph is replaced by the following:

'EBA may develop draft implementing technical standards to ensure uniform conditions of application of the joint decision process referred to in this

paragraph, with regard to the application of Articles 123 and 124 and Article 136(2) with a view to facilitating joint decisions.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the tenth subparagraph in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1093/2010.'

- (33) In Article 130(1), the first and second subparagraphs are replaced by the following:

'1. Where an emergency situation, including a situation as defined in Article 18 of Regulation (EU) No 1093/2010 or a situation of adverse developments in markets, arises, which potentially jeopardises the market liquidity and the stability of the financial system in any of the Member State where entities of a group have been authorised or where significant branches referred to in Article 42a are established, the consolidating supervisor shall, subject to Chapter 1, Section 2, alert as soon as is practicable, EBA, ESRB and the authorities referred to in the fourth subparagraph of Article 49 and in Article 50 and shall communicate all information essential for the pursuance of their tasks. Those obligations shall apply to all competent authorities under Articles 125 and 126 and to the competent authority identified under Article 129(1).

If the authority referred to in the fourth paragraph of Article 49 becomes aware of a situation described in the first subparagraph, it shall alert as soon as is practicable the competent authorities referred to in Articles 125 and 126, and EBA.'

- (34) In Article 131, the third paragraph is replaced by the following:

'The competent authorities responsible for authorising the subsidiary of a parent undertaking which is a credit institution may, by bilateral agreement, in accordance with Article 28 of Regulation (EU) No 1093/2010, delegate their responsibility for supervision to the competent authorities which authorised and supervise the parent undertaking so that they assume responsibility for supervising the subsidiary in accordance with this Directive. EBA shall be kept informed of the existence and content of such agreements. It shall forward such information to the competent authorities of the other Member States and to the European Banking Committee.'

- (35) Article 131a is amended as follows:

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

'1. The consolidating supervisor shall establish colleges of supervisors to facilitate the exercise of the tasks referred to in Article 129 and Article 130(1) and subject to the confidentiality requirements of paragraph 2 of this Article and compatibility with Union law, ensure appropriate coordination and cooperation with relevant third-country competent authorities where appropriate.

EBA shall contribute to promoting and monitoring the efficient, effective and consistent functioning of colleges of supervisors referred to in this Article in accordance with Article 21 of Regulation (EU) No 1093/2010. To that end, EBA shall participate as it deems appropriate and shall be considered as a competent authority for that purpose.

Colleges of supervisors shall provide a framework for the consolidating Supervisor, EBA and the other competent authorities concerned to carry out the following tasks:

- (a) exchanging information among themselves and with EBA in accordance with Article 21 of Regulation (EU) No 1093/2010;
- (b) agreeing on voluntary entrustment of tasks and voluntary delegation of responsibilities where appropriate;
- (c) determining supervisory examination programmes based on a risk assessment of the group in accordance with Article 124;
- (d) increasing the efficiency of supervision by removing unnecessary duplication of supervisory requirements, including in relation to the information requests referred to in Article 130(2) and Article 132(2);
- (e) consistently applying the prudential requirements under this Directive across all entities within a banking group without prejudice to the options and discretions available in Union legislation;
- (f) applying Article 129(1)(c) taking into account the work of other forums that may be established in that area.

The competent authorities participating in the colleges of supervisors and EBA shall cooperate closely. The confidentiality requirements under Chapter 1, Section 2 shall not prevent the competent authorities from exchanging confidential information within colleges of supervisors. The establishment and functioning of colleges of supervisors shall not affect the rights and responsibilities of the competent authorities under this Directive.;

(b) in paragraph 2:

- (i) the second subparagraph is replaced by the following:

'In order to ensure consistent harmonisation of this Article, EBA may develop draft regulatory technical standards in order to specify general conditions of functioning of the colleges of supervisors.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.

In order to ensure uniform conditions of application of this Article, EBA may develop draft implementing technical standards in order to determine the operational functioning of the colleges of supervisors.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the fourth subparagraph in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1093/2010.;

- (ii) the sixth subparagraph is replaced by the following:

'The consolidating supervisor, subject to the confidentiality requirements under Chapter 1, Section 2, shall inform EBA of the activities of the college of supervisors, including in emergency situations, and communicate to EBA all information that is of particular relevance for the purposes of supervisory convergence.'

(36) Article 132(1) is amended as follows:

- (a) the following subparagraphs are inserted after the first subparagraph:

'The competent authorities shall cooperate with EBA for the purposes of this Directive, in accordance with Regulation (EU) No 1093/2010.

The competent authorities shall provide EBA with all information necessary to carry out its duties under this Directive and under Regulation (EU) No 1093/2010, in accordance with Article 35 of that Regulation.;

- (b) the following subparagraphs are added:

'The competent authorities may refer to EBA situations where:

- (a) a competent authority has not communicated essential information, or
- (b) a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within a reasonable time.

Without prejudice to Article 258 TFEU, EBA may, in situations referred to in the seventh subparagraph, act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1093/2010.'

(37) In Article 140, paragraph 3 is replaced by the following:

- '3. The competent authorities responsible for supervision on a consolidated basis shall establish lists of the financial holding companies referred to in Article 71(2). Those lists shall be communicated to the competent authorities of the other Member States, to EBA and to the Commission.'

(38) Article 143 is amended as follows:

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

(i) the following sentence is added at the end of the first subparagraph:

‘EBA shall assist the Commission and the European Banking Committee in carrying out those tasks, including as to whether such guidance should be updated.’;

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

‘The competent authority carrying out the verification referred to in the first subparagraph of paragraph 1 shall take into account any such guidance. For that purpose, the competent authority shall consult EBA before adopting a decision.’.

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

‘The supervisory techniques shall be designed to achieve the objectives of consolidated supervision as defined in this Chapter and shall be notified to the other competent authorities involved, EBA and the Commission.’.

(39) In Article 144, the following paragraphs are added:

‘In order to ensure uniform conditions of application of this Article, EBA shall develop draft implementing technical standards to determine the format, structure, contents list and annual publication date of the disclosures provided for in this Article. EBA shall submit those draft implementing technical standards to the Commission by 1 January 2014.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third paragraph in accordance with Article 15 of Regulation (EU) No 1093/2010.’.

(40) In Article 150, the following paragraph is added:

‘3. EBA shall develop draft implementing technical standards to ensure uniform conditions of application of this Directive with respect to the conditions of application of:

(a) points 15 to 17 of Annex V;

(b) point 23(l) of Annex V as regards the criteria to determine the appropriate ratios between fixed and the variable component of the total remuneration and of point 23(o)(ii) of Annex V as regards specifying the classes of instruments that satisfy the conditions laid down in that point.

(c) Part 2 of Annex VI as regards the quantitative factors referred to in point 12, the qualitative factors referred to in point 13 and the benchmark referred to in point 14;

EBA shall submit those draft implementing technical standards to the Commission by 1 January 2014.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1093/2010.’.

(41) Article 156 is amended as follows:

(a) the term ‘Committee of European Banking Supervisors’ is replaced by ‘EBA’;

(b) the first subparagraph is replaced by the following:

‘The Commission, in cooperation with EBA and the Member States, and taking into account the contribution of the European Central Bank, shall periodically monitor whether this Directive, together with Directive 2006/49/EC, has significant effects on the economic cycle and, in the light of that examination, shall consider whether any remedial measures are justified.’.

Article 10

Amendments to Directive 2006/49/EC

Directive 2006/49/EC is hereby amended as follows:

(1) In Article 18, the following paragraph is added:

‘5. The European Supervisory Authority (European Banking Authority) (hereinafter “EBA”) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council (*), may develop draft regulatory technical standards to specify the assessment methodology under which competent authorities permit institutions to use internal models for the purposes of calculating capital requirements under this Directive.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.

(*) OJ L 331, 15.12.2010, p. 12.’.

(2) In Article 22(1), the following subparagraph is added:

‘Where the competent authorities waive the application of capital requirements on a consolidated basis provided for in this Article, they shall notify the Commission and EBA.’.

(3) Article 32(1) is amended as follows:

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

‘The competent authorities shall notify EBA, the Council and the Commission of those procedures.’;

(b) the following subparagraph is added:

‘EBA shall issue guidelines in relation to the procedures referred to in this paragraph.’.

(4) Article 36(1) is replaced by the following:

‘1. Member States shall designate the authorities which are competent to carry out the duties provided for in this Directive. They shall inform EBA and the Commission thereof, indicating any division of duties.’

(5) In Article 38(1), the following subparagraphs are added:

‘The competent authorities shall cooperate with EBA for the purposes of this Directive, in accordance with Regulation (EU) No 1093/2010.

The competent authorities shall without delay provide EBA with all information necessary to carry out its duties under this Directive and under Regulation (EU) No 1093/2010, in accordance with Article 35 of that Regulation.’

Article 11

Amendments to Directive 2009/65/EC

Directive 2009/65/EC is hereby amended as follows:

(1) In Article 5, the following paragraph is added:

‘8. In order to ensure consistent harmonisation of this Article the European Supervisory Authority (European Securities and Markets Authority) (hereinafter “ESMA”), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (*) may develop draft regulatory technical standards to specify the information to be provided to the competent authorities in the application for authorisation of a UCITS.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

(*) OJ L 331, 15.12.2010, p. 84.’

(2) In Article 6(1) the following subparagraph is added:

‘ESMA shall be notified of every authorisation granted and shall publish and keep up-to-date a list of authorised management companies on its website.’

(3) In Article 7, the following paragraph is added:

‘6. In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to specify:

- (a) the information to be provided to the competent authorities in the application for the authorisation of the management company, including the programme of activity;
- (b) the requirements applicable to the management company under paragraph 2 and the information for the notification provided for in paragraph 3;

(c) the requirements applicable to shareholders and members with qualifying holdings, as well as obstacles which may prevent effective exercise of the supervisory functions of the competent authority, as provided for in Article 8(1) of this Directive and in Article 10(1) and (2) of Directive 2004/39/EC, in accordance with Article 11 of this Directive.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine standard forms, templates and procedures for the notification or provision of information provided for in points (a) and (b) of the first subparagraph.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’

(4) Article 9(2) is replaced by the following:

‘2. Member States shall inform ESMA and the Commission of any general difficulties which UCITS encounter in marketing their units in any third country.

The Commission shall examine such difficulties as quickly as possible in order to find an appropriate solution. ESMA shall assist it in discharging that task.’

(5) In Article 11, the following paragraph is added:

‘3. In order to ensure consistent harmonisation of this Directive, ESMA may develop draft regulatory technical standards to establish an exhaustive list of information, as provided for in this Article, with reference to Article 10b(4) of Directive 2004/39/EC, to be included by proposed acquirers in their notification, without prejudice to Article 10a(2) of that Directive.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the modalities of the consultation process between the relevant competent authorities, as provided for in this Article, with reference to Article 10(4) of Directive 2004/39/EC.

Power is conferred to the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’.

(6) Article 12 is amended as follows:

(a) paragraph 3 is amended as follows:

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

‘3. Without prejudice to Article 116, the Commission shall adopt, by means of delegated acts in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b, measures specifying the procedures and arrangements as referred to under point (a) of the second subparagraph of paragraph 1 and the structures and organisational requirements to minimise conflicts of interests as referred to under point (b) of the second subparagraph of paragraph 1.’;

(ii) the second subparagraph is deleted.

(b) the following paragraph is added:

‘4. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the conditions of applications of the delegated acts adopted by the Commission regarding the procedures, arrangements, structures and organisational requirements referred to in paragraph 3.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’.

(7) Article 14 is amended as follows:

(a) paragraph 2 is amended as follows:

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

‘2. Without prejudice to Article 116, the Commission shall adopt, by means of delegated acts in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b, measures with a view to ensuring that the management company complies with the duties set out in paragraph 1, in particular to:’;

(ii) the second subparagraph is deleted.

(b) the following paragraph is added:

‘3. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the delegated acts adopted by the Commission regarding the criteria, principles and steps referred to in paragraph 2.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’.

(8) In Article 17, the following paragraph is added:

‘10. In order to ensure consistent harmonisation of this Article ESMA may develop draft regulatory technical standards to specify the information to be notified in accordance with paragraphs 1, 2, 3, 8 and 9.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the transmission of information in accordance with paragraphs 3 and 9.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’.

(9) In Article 18, the following paragraph is added:

‘5. In order to ensure consistent harmonisation of this Article ESMA may develop draft regulatory technical standards to specify the information to be notified in accordance with paragraphs 1, 2 and 4.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the transmission of information in accordance with paragraphs 2 and 4.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’.

(10) In Article 20, the following paragraph is added:

‘5. In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to determine the information to be provided to the competent authorities in the application for managing a UCITS established in another Member State.

The Commission may adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for such provision of information.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’

(11) Article 21 is amended as follows:

(a) paragraph 5 is replaced by the following:

‘5. If, despite the measures taken by the competent authorities of the management company’s home Member State or because such measures prove to be inadequate or are not available in the Member State in question, the management company continues to refuse to provide the information requested by the management company’s host Member State pursuant to paragraph 2, or persists in breaching the legal or regulatory provisions, referred to in the same paragraph, in force in the management company’s host Member State, the competent authorities of the management company’s host Member State may take either of the following actions:

(a) after informing the competent authorities of the management company’s home Member State, take appropriate measures, including under Articles 98 and 99, to prevent or penalise further irregularities and, in so far as necessary, to prevent that management company from initiating any further transaction within its territory. Member States shall ensure that within their territories it is possible to serve the legal documents necessary for those measures on management companies. Where the service provided within the management company’s host Member State is the management of a UCITS, the management company’s host Member State may require the management company to cease managing that UCITS; or

(b) where they consider that the competent authority of the management company’s home Member State has not acted adequately, refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.’

(b) in paragraph 7, the first and second subparagraphs are replaced by the following:

‘7. Before following the procedure laid down in paragraphs 3, 4 or 5, the competent authorities of the management company’s host Member State may, in emergencies, take any precautionary measures necessary to protect the interests of investors and others for whom services are provided. The Commission, ESMA, and the competent authorities of the other Member

States concerned shall be informed of such measures at the earliest opportunity.

After consulting the competent authorities of the Member States concerned, the Commission may decide that the Member State in question must amend or abolish those measures, without prejudice to power of ESMA under Article 17 of Regulation (EU) No 1095/2010.’

(c) in paragraph 9, the first subparagraph is replaced by the following:

‘9. Member States shall inform ESMA and the Commission of the number and type of cases in which they refuse authorisation under Article 17 or an application under Article 20 and of any measures taken in accordance with paragraph 5 of this Article.’

(12) Article 23(6) is amended as follows:

(a) the first subparagraph is replaced by the following:

‘6. The Commission may adopt, by means of delegated acts in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b, measures in relation to the measures to be taken by a depositary in order to fulfil its duties regarding a UCITS managed by a management company established in another Member State, including the particulars that need to be included in the standard agreement to be used by the depositary and the management company in accordance with paragraph 5.’

(b) the second subparagraph is deleted.

(13) In Article 29, the following paragraphs are added:

‘5. In order to ensure consistent harmonisation of this Directive, ESMA may develop draft regulatory technical standards to specify:

(a) the information to be provided to the competent authorities in the application for the authorisation of the investment company, including the programme of operations; and

(b) the obstacles which may prevent effective exercise of the supervisory functions of the competent authority under paragraph 1(c).

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

6. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the provision of information referred to in point (a) of the first subparagraph of paragraph 5.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’

(14) Article 32(6) is replaced by the following:

‘6. Member States shall inform ESMA and the Commission of the identities of the investment companies benefiting from the derogations provided for in paragraphs 4 and 5.’

(15) Article 33(6) is amended as follows:

(a) the first subparagraph is replaced by the following:

‘6. The Commission may adopt, by means of delegated acts in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b, measures in relation to the measures to be taken by a depositary in order to fulfil its duties regarding a UCITS managed by a management company established in another Member State, including the particulars that need to be included in the standard agreement to be used by the depositary and the management company in accordance with paragraph 5.’

(b) the second subparagraph is deleted.

(16) Article 43 is amended as follows:

(a) in paragraph 5:

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

‘5. The Commission may adopt, by means of delegated acts in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b, measures specifying the detailed content, format and method by which to provide the information referred to in paragraphs 1 and 3.’

(ii) the second subparagraph is deleted.

(b) the following paragraph is added:

‘6. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the conditions of applications of the delegated acts adopted by the Commission regarding the content, format and method by which the information referred to in paragraphs 1 and 3 of this Article is to be provided.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’

(17) In Article 50, the following paragraph is added:

‘4. In order to ensure consistent harmonisation of this Article ESMA may develop draft regulatory technical standards to specify the provisions concerning the categories of assets in which UCITS can invest in accordance with this Article and with delegated acts adopted by the Commission which relate to such provisions.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.’

(18) Article 51 is amended as follows:

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

‘Competent authorities shall ensure that all information received under the third paragraph aggregated in respect of all the management or investment companies they supervise is accessible to ESMA in accordance with Article 35 of the Regulation (EU) No 1095/2010, and the European Systemic Risk Board (the “ESRB”) established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (*) in accordance with Article 15 of that Regulation for the purpose of monitoring systemic risks at Union level.

(*) OJ L 331, 15.12.2010, p. 1.’

(b) paragraph 4 is replaced by the following:

‘4. Without prejudice to Article 116, the Commission shall adopt, by means of delegated acts in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b, measures specifying the following:

(a) criteria for assessing the adequacy of the risk management process employed by the management company in accordance with the first subparagraph of paragraph 1;

(b) detailed rules regarding the accurate and independent assessment of the value of OTC derivatives; and

(c) detailed rules regarding the content of and procedure to be followed for communicating the information referred to in the third subparagraph of paragraph 1 to the competent authorities of the management company’s home Member State.’

(c) the following paragraph is added:

‘5. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the conditions of application of the delegated acts adopted by the Commission regarding the criteria and rules referred to in paragraph 4.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’

(19) In Article 52(4), the third subparagraph is replaced by the following:

'Member States shall send to ESMA and to the Commission a list of the categories of bonds referred to in the first subparagraph together with the categories of issuers authorised, in accordance with the laws and supervisory arrangements mentioned in that subparagraph, to issue bonds complying with the criteria set out in this Article. A notice specifying the status of the guarantees offered shall be attached to those lists. The Commission and ESMA shall immediately forward that information to the other Member States together with any comments they consider appropriate and shall make the information available to the public on their website. Such communications may be the subject of exchanges of views within the European Securities Committee referred to in Article 112(1).'

(20) Article 60 is amended as follows:

(a) in paragraph 6:

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

'6. The Commission may adopt, by means of delegated acts in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b, measures specifying:'

(ii) the second subparagraph is deleted;

(b) the following paragraph is added:

'7. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the conditions of application of the delegated acts adopted by the Commission regarding the agreement, measures and procedures referred to in paragraph 6.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with the Article 15 of Regulation (EU) No 1095/2010.'

(21) Article 61 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. The Commission may adopt, by means of delegated acts in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b, measures further specifying the following:

(a) the particulars that need to be included in the agreement referred to in paragraph 1; and

(b) the types of irregularities referred to in paragraph 2 which are deemed to have a negative impact on the feeder UCITS.'

(b) the following paragraph is added:

'4. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the conditions of application of the delegated acts adopted by the Commission regarding the agreement, measures and types of irregularities referred to in paragraph 3.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.'

(22) Article 62(4) is replaced by the following:

'4. The Commission may adopt, by means of delegated acts in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b, measures specifying the content of the agreement referred to in the first subparagraph of paragraph 1.'

(23) Article 64 is amended as follows:

(a) paragraph 4 is replaced by the following:

'4. The Commission may adopt, by means of delegated acts in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b, measures specifying:

(a) the format and the manner in which to provide the information referred to in paragraph 1; or

(b) in the event that the feeder UCITS transfers all or parts of its assets to the master UCITS in exchange for units, the procedure for valuing and auditing such a contribution in kind and the role of the depositary of the feeder UCITS in that process.'

(b) the following paragraph is added:

'5. In order to ensure uniform conditions of application in which the information is provided, ESMA may develop draft implementing technical standards to determine the conditions of application of the delegated acts adopted by the Commission regarding the format and the manner of the information provided and procedure referred to in paragraph 4.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.'

(24) In Article 69, the following paragraph is added:

'5. In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to specify the provisions concerning the content of the prospectus, the annual report and the half-yearly report as laid down in Annex I, and the format of those documents.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.’

(25) In Article 75, paragraph 4 is replaced by the following:

‘4. The Commission may adopt, by means of delegated acts in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b, measures which define the specific conditions which need to be met when providing the prospectus in a durable medium other than paper or by means of a website which does not constitute a durable medium.’

(26) Article 78 is amended as follows:

(a) paragraph 7 is replaced by the following:

‘7. The Commission shall adopt, by means of delegated acts in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b, measures which define the following:

(a) the detailed and exhaustive content of the key investor information to be provided to investors as referred to in paragraphs 2, 3 and 4;

(b) the detailed and exhaustive content of the key investor information to be provided to investors in the following specific cases:

(i) for UCITS having different investment compartments, the key investor information to be provided to investors subscribing to a specific investment compartment, including how to pass from one investment compartment into another and the costs related thereto,

(ii) for UCITS offering different share classes, the key investor information to be provided to investors subscribing to a specific share class,

(iii) for fund of funds structures, the key investor information to be provided to investors subscribing to a UCITS, which invests itself in other UCITS or other collective investment undertakings referred to in Article 50(1)(e),

(iv) for master-feeder structures, the key investor information to be provided to investors subscribing to a feeder UCITS,

(v) for structured, capital protected and other comparable UCITS, the key investor information to be provided to investors in relation to the special characteristics of such UCITS; and

(c) the specific details of the format and presentation of the key investor information to be provided to investors as referred to in paragraph 5.’;

(b) the following paragraph is added:

‘8. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the conditions of application of the delegated acts adopted by the Commission in accordance with paragraph 7 regarding the information referred to in paragraph 3.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’

(27) Article 81(2) is replaced by the following:

‘2. The Commission may adopt, by means of delegated acts in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b, measures which define the specific conditions which need to be met when providing key investor information in a durable medium other than on paper or by means of a website which does not constitute a durable medium.’

(28) In Article 83, the following paragraph is added:

‘3. In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to specify the requirements of this Article relating to borrowing.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.’

(29) In Article 84, the following paragraph is added:

‘4. In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to specify the conditions which need to be met by the UCITS after the adoption of the temporary suspension of the re-purchase or redemption of the units of the UCITS as referred to in paragraph 2(a), once the suspension has been decided.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.’

(30) Article 95 is replaced by the following:

‘Article 95

1. The Commission may adopt, by means of delegated acts in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b, measures specifying:

(a) the scope of the information referred to in Article 91(3);

- (b) the facilitation of access for the competent authorities of the UCITS host Member States to the information or documents referred to in Article 93(1), (2) and (3) in accordance with Article 93(7).

2. In order to ensure uniform conditions of application of Article 93, ESMA may develop draft implementing technical standards to determine:

- (a) the form and contents of a standard model notification letter to be used by a UCITS for the purpose of notification referred to in Article 93(1), including an indication as to which documents the translations refer to;
- (b) the form and contents of a standard model attestation to be used by competent authorities of Member States referred to in Article 93(3);
- (c) the procedure for the exchange of information and the use of electronic communication between competent authorities for the purpose of notification under Article 93.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010¹.

(31) Article 97(1) is replaced by the following:

‘1. Member States shall designate the competent authorities which are to carry out the duties provided for in this Directive. They shall inform ESMA and the Commission thereof, indicating any division of duties.’

(32) Article 101 is amended as follows:

- (a) the following paragraph is inserted:

‘2a. The competent authorities shall cooperate with ESMA for the purposes of this Directive, in accordance with Regulation (EU) No 1095/2010.

The competent authorities shall without delay provide ESMA with all information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010.’

- (b) paragraphs 8 and 9 are replaced by the following:

‘8. The competent authorities may refer to ESMA situations where a request:

- (a) to exchange information as provided for in Article 109 has been rejected or has not been acted upon within a reasonable time;
- (b) to carry out an investigation or on-the-spot verification as provided for in Article 110 has been rejected or has not been acted upon within a reasonable time; or

- (c) for authorisation for its officials to accompany those of the competent authority of the other Member State has been rejected or has not been acted upon within a reasonable time.

Without prejudice to Article 258 of the Treaty of the Functioning of the European Union (TFEU), ESMA may, in situations referred to in the first subparagraph, act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010, without prejudice to the possibilities for refusing to act on a request for information or for an investigation provided for in paragraph 6 of this Article and to the ability of ESMA to act in accordance with Article 17 of that Regulation in those cases.

9. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish common procedures for competent authorities to cooperate in on-the-spot verifications and investigations as referred to in paragraphs 4 and 5.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010².

(33) Article 102 is amended as follows:

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

‘2. Paragraph 1 shall not prevent the competent authorities of the Member States from exchanging information in accordance with this Directive or other Union legislation applicable to UCITS or to undertakings contributing towards their business activity or from transmitting it to ESMA in accordance with Regulation (EU) No 1095/2010 or the ESRB. That information shall be subject to the conditions of professional secrecy laid down in paragraph 1.’

- (b) in paragraph 5, the following point is added:

‘(d) ESMA, the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council (*), 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 (**) and the ESRB.

(*) OJ L 331, 15.12.2010, p. 12.

(**) OJ L 331, 15.12.2010, p. 48.’

(34) Article 103 is amended as follows:

- (a) paragraph 3 is replaced by the following:

‘3. Member States shall communicate to ESMA, to the Commission and to the other Member States the names of the authorities which may receive information pursuant to paragraph 1.’

(b) paragraph 7 is replaced by the following:

'7. Member States shall communicate to ESMA, to the Commission and to the other Member States the names of the authorities or bodies which may receive information pursuant to paragraph 4.'

(35) Article 105 is replaced by the following:

'Article 105

In order to ensure uniform conditions of application of the provisions in this Directive concerning the exchange of information, ESMA may develop draft implementing technical standards to determine the conditions of application with regard to the procedures for exchange of information between competent authorities and between the competent authorities and ESMA.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.'

(36) Article 108(5) is amended as follows:

(a) point (b) of the first subparagraph is replaced by the following:

'(b) if necessary, refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.;

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

'The Commission and ESMA shall be informed without delay of any measure taken pursuant to point (a) of the first subparagraph.'

(37) The title of chapter XIII is replaced by the following:

'DELEGATED ACTS AND POWERS OF EXECUTION'

(38) Article 111 is replaced by the following:

'Article 111

The Commission may adopt technical amendments to this Directive in the following areas:

(a) clarification of the definitions in order to ensure consistent harmonisation and uniform application of this Directive throughout the Union; or

(b) alignment of terminology and the framing of definitions in accordance with subsequent acts on UCITS and related matters.

The measures referred to in the first subparagraph shall be adopted by means of delegated acts in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b.'

(39) Article 112 is replaced by the following:

'Article 112

1. The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC.

2. The power to adopt the delegated acts referred to in Articles 12, 14, 23, 33, 43, 51, 60, 61, 62, 64, 75, 78, 81, 95 and 111 shall be conferred on the Commission for a period of 4 years from 4 January 2011. The Commission shall draw up a report in respect of delegated powers at the latest 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 them in accordance with Article 112a.

3. As soon as it adopts a delegated act, the Commission shall notify the European Parliament and the Council thereof simultaneously.

4. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 112a and 112b.'

(40) The following Articles are inserted:

'Article 112a

Revocation of the delegation

1. The delegation of power referred to in Articles 12, 14, 23, 33, 43, 51, 60, 61, 62, 64, 75, 78, 81, 95 and 111 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 delegated acts already in force. It shall be published in the *Official Journal of the European Union*.

Article 112b

Objections to delegated acts

1. The European Parliament or the Council may object to a delegated act within a period of 3 months from the date of notification. At the initiative of the European Parliament or the Council that period may be extended by 3 months.

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

The delegated act 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 delegated act 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 delegated act.'

Article 12

Review

The Commission shall, by 1 January 2014, submit to the European Parliament and to the Council a report specifying whether the ESA have submitted the draft regulatory technical standards and the draft implementing technical standards provided for in this Directive, whether the submission is mandatory or optional, with any appropriate proposals.

Article 13

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 1(1) and (2), Article 2(1)(a), Article 2(2), (5), (7) and (9), Article 2(11)(b), Article 3(4), Article 3(6)(a) and (b), Article 4(1)(a), Article 4(3), Article 5(5)(a), the first subparagraph of Article 5(5)(b), Article 5(6), (8), (9) (in relation to Article 18(3) of Directive 2003/71/EC), Article 5(10), Article 5(11)(a) and (b), Article 5(12), Article 6(1) (in relation to the first subparagraph of Article 5(3) of Directive 2004/39/EC), Article 6(3), Article 6(5)(a), Article 6(10), (13), (14) and (16), Article 6(17)(a) and (b), Article 6(18) and (19) (in relation to the first subparagraph of Article 53(3) of Directive 2004/39/EC), Article 6(21)(a) and (b),

Article 6(23)(b), Article 6(24), (25) and (27), Article 7(12)(a), Article 7(13), (14) (15) and (16), Article 9(1)(a), Article 9(2), (3), (4), (10), (11), (12), (15), (16), (17), (18), (20), (29) and (32), Article 9(33)(a) and (b), Article 9(33)(d)(ii) to (iv), Article 9(34) and (35), Article 9(36)(b)(ii), Article 9(37)(b), Article 9(38) and (39), Article 10(2), Article 10(3)(a), Article 10(4), Article 11(2), (4), (11), (14), (19) and (31), Article 11(32)(b) in regard to Article 101(8) of Directive 2009/65/EC, and Article 11(33), (34) and (36) of this Directive, by 31 December 2011. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 14

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 15

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 24 November 2010.

For the European Parliament
The President
J. BUZEK

For the Council
The President
O. CHASTEL