



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 9 April 2010**

**8382/10**

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**Interinstitutional File:  
2009/0161 (COD)**

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**EF 37  
ECOFIN 196  
SURE 18  
CODEC 290**

**NOTE**

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from:	Presidency
to:	Delegations
Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directives 1998/26/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 Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority - Presidency compromise

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Delegations will find attached a Presidency compromise on the above Commission proposal, following the meeting of 18 March 2010.

With respect to the Commission's proposal, additions/replacements are underlined and deletions indicated as "(...)". Additions to the last compromise are highlighted in bold.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

Amending Directives 1998/26/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 Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority

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 Articles 50, 53 (1), 62 and 114 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the European Central Bank<sup>2</sup>,

Acting in accordance with the procedure laid down in Article 294 of the Treaty on the Functioning of the European Union<sup>3</sup>,

Whereas:

- (1) The financial crisis in 2007/2008 exposed important shortcomings in financial supervision, both in particular cases and in relation to the financial system as a whole. National supervisory models have lagged behind the integrated and interconnected reality of European financial markets, in which many financial firms operate across borders and offer financial services to businesses and consumers. The crisis exposed shortcomings in the area of cooperation, coordination, consistent application of EU legislation and trust between national supervisors.

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ C , , p. .

- (2) A report published on 25 February 2009 by a high-level group of experts chaired by J. de Larosière, requested by the Commission, concluded that the supervisory framework needs to be strengthened to reduce the risk and severity of future financial crises. Accordingly, it recommended far-reaching reforms to the supervisory structure of the financial sector within the European Union. That group of experts also concluded that a European System of Financial Supervisors (ESFS) should be created, comprising three European Supervisory Authorities (ESA), one for the banking sector, one for the securities sector and one for the insurance and occupational pensions sector, and the creation of a European Systemic Risk Board.
- (3) The Commission in its Communication of 4 March 2009 entitled "Driving European Recovery"<sup>4</sup> proposed to bring forward draft legislation creating the ESFS, and in its Communication of 27 May 2009 entitled "European Financial Supervision"<sup>5</sup> provided more detail about the possible architecture of such a new supervisory framework.
- (4) The European Council, in its conclusions of 19 June 2009, recommended that the ESFS, 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 and 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.
- (5) On 23 September 2009, the Commission adopted proposals for three Regulations establishing the ESFS including the creation of the three ESA.

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<sup>4</sup> COM (2009) 114 final.

<sup>5</sup> COM (2009) 252 final.

- (6) In order for the ESFS to work effectively, changes to European Union legislation in the field of operation of the three ESA are necessary. These changes concern the definition of the scope of certain powers of the ESA, the integration of certain powers in existing processes established in relevant European Union legislation and amendments to ensure a smooth and effective functioning in the context of the ESFS.
- (7) The establishment of the three ESA should be accompanied by the development of a single set of harmonised rules so as to ensure uniform application and thus contribute to a more effective functioning of the Internal Market. The Regulations establishing the ESFS provide that the ESA may develop draft technical standards in the areas specifically set out in the relevant legislation, to be submitted to the Commission for adoption by means of Regulations or Decisions. The relevant legislation should define those areas where the ESA are empowered to develop draft technical standards. This Directive identifies a first set of such areas and should be without prejudice to inclusion of other areas in the future.
- (7a) In addition, in order to ensure the common, uniform and consistent application of European Union legislation, the ESA should be empowered to issue guidelines and recommendations addressed to competent authorities or financial institutions. These guidelines and recommendations may complement the technical standards in areas not covered by them. However, where the ESA are required to develop draft technical standards, they should not adopt guidelines in place of such standards but only as a complement to them.
- (8) The identification of areas for technical standards should strike an appropriate balance between building a single set of harmonised rules, without unduly complicating regulation. Only those areas should be selected where consistent technical rules will contribute significantly to financial stability, depositor, policy holder and investor protection, market efficiency and integrity, and eliminate distortions of competition and risks of regulatory arbitrage.

- (9) Matters subject to technical standards should be genuinely technical, where their development requires the expertise of supervisory experts. The technical standards should further develop, specify or determine the conditions of application of the rules included in basic instruments adopted by the European Parliament and the Council and, where applicable, in Commission delegated acts and implementing measures. Technical standards should therefore not involve policy choices.
- (9a) The European Council endorsed the so-called Lamfalussy four-level approach to make the regulatory process for EU financial legislation more efficient and transparent. The Commission is empowered to adopt implementing acts in many areas, and a wide set of level-2 Commission Regulations and Directives is in force. In cases where the technical standards are designed to further develop, specify or determine the conditions of application of such level-2 measures, they should only be adopted once this level-2 measure has been adopted and should respect the content of the level-2 measure. (...).
- (9b) 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 EU legislative acts are not fully harmonised at the current stage, technical standards developing, specifying or determining the conditions of application for these 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 these **legislative acts** so provide.
- (10) 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 on them and analyse the potential related costs and benefits. Technical standards may provide for transitional measures, providing for adequate deadlines, if the costs of immediate implementation would be excessive compared to the benefits involved.

- (11) The Regulations establishing the ESFS provide for a mechanism to settle disagreements between competent national authorities. Where a competent authority disagrees on the procedure or content of an action or inaction by another competent authority in areas specified in EU legislation referred to in the Regulations establishing ESA where the relevant legislation requires cooperation, coordination or joint decision making by competent national authorities from more than one Member State, the ESA, at the request of one of the competent authorities concerned, may assist these authorities in reaching an agreement within the time limit set by the European Supervisory Authority which takes 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 may settle the matter.
- (12) The Regulations establishing the ESA require that the cases where the mechanism to settle disagreements between competent national authorities may be applied are to be specified in the sectoral legislation. This Directive should identify a first set of such cases and be without prejudice to future inclusion of other cases. Nor should it prevent the ESA from acting in accordance with other powers or fulfilling tasks specified in their establishing Regulations, including non-binding mediation and ensuring the consistent, efficient and effective application of EU legislation. Moreover, in those areas where some form of non-binding mediation is already established in the relevant legislation, or where there are time limits for joint decisions to be taken by one or more competent national authorities, amendments are needed to ensure clarity and minimum disruption to the process for reaching a joint decision, but also that where necessary, the ESA are able to resolve disagreements.

- (12a) This Directive identifies a first set of situations where a procedural or a substantive issue of compliance with EU legislation may need resolving and the supervisors may not be able to resolve the matter on their own. In such a situation, one of the supervisors involved may raise the issue to the competent European Supervisory Authority, which should act in accordance with its establishing Regulation. It may 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 EU legislation, with binding effects for the competent authorities concerned. In cases where the relevant EU legislation confers discretion on Member States, decisions taken by the ESA cannot replace the exercise in compliance with European Union law of that discretion.
- (13) 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<sup>6</sup> 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 these areas, an amendment should clearly state that in the event of disagreement during the specified time period, the European Banking Authority (EBA) may resolve the disagreement using the process outlined in Regulation .../... [EBA]<sup>7</sup>. This approach makes it clear that disagreements can be resolved and cooperation strengthened before a final decision is made or issued to an institution.
- (14) In order to ensure that the new ESA continue to undertake the current tasks of the Committee of European Banking Supervisors (CEBS), the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) or the Committee of European Securities Regulators (CESR) smoothly, references to these Committees should be replaced in all the relevant legislation with references to the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) or the European Securities and Markets Authority (ESMA), respectively.

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<sup>6</sup> OJ L 177, 30.6.2006, p. 1.

<sup>7</sup> OJ L ... p ... .

- (15) The new supervisory architecture established by the ESFS will require national supervisory 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.
- (16) The Regulations establishing the ESFS provide that the ESA may develop contacts with supervisory authorities from third countries and shall 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<sup>8</sup> 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 of professional secrecy.
- (17) Having a single consolidated list or register for each category of financial firms in the European Union, which is currently the duty of each national competent authority, will improve transparency and better reflects the single financial market. The ESA should be given the duty to establish, publish and regularly update registers and lists of financial actors within the European Union. This concerns the list of authorisations of credit institutions granted by national supervisors. It also concerns the register of all investment firms and the list of regulated markets under Directive 2004/39/EC. Similarly, the ESMA should be given the duty to establish, publish and regularly update 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<sup>9</sup>.
- (18) 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 three years of the creation of the ESA.

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<sup>8</sup> *OJ L 145, 30.4.2004, p. 1.*

<sup>9</sup> *OJ L 345, 31.12.2003, p. 64.*



- (18a) The tasks of the ESMA 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<sup>10</sup> 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) of the TFEU.
- (18b) The technical standards to be drafted by the EIOPA 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<sup>11</sup> 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.
- (18c) According to Article 13(5) of Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading, 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 authority. Article 13(3) of Regulation .../... [ESMA] requires that, in general, such delegation agreements be notified to the Authority at least one month before they are put into effect. However, given the experience in transfer of approval under Directive 2003/71/EC, which includes shorter deadlines, it is appropriate not to apply Article 13(3) of that Regulation to this situation.

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<sup>10</sup> OJ L 166, 11.6.1998, p. 45.

<sup>11</sup> OJ L 235, 23.9.2003, p. 10.

- (18d) The ESA should not at this stage 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 as to ensure their sound and prudent management. However, given the importance of these requirements, the ESA should give priority to identify the best practices in guidelines and to ensure the convergence of supervisory and prudential practices towards these best practices. They should do the same with respect to prudential requirements relative to the head office of these institutions.
- (18e) 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 competent authorities. These standards should allow competent authorities to permit institutions to develop different approaches based on their experience and specificities, within the requirements of Directives 2006/48 and 2006/49 and subject to the requirements of the technical standards.
- (19) 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 of the financial system, and strengthening international supervisory coordination, cannot be sufficiently achieved by the Member States and can, therefore, by reason of scale of the action, be better achieved at European Union level, the European Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). 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.

- (19a) In accordance with point 34 of the Inter-institutional Agreement on Better law-making, Member States are encouraged to draw up, for themselves and in the interest of the **Union** their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.
- (19b) The Commission should, by 1 January 2014, report to the European Parliament and the Council on the submission by the ESA of the draft technical standards foreseen in this Directive and present any appropriate proposals.**

(20) Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems,<sup>12</sup> Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (...) <sup>13</sup>, Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)<sup>14</sup>, 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 (...), Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing,<sup>15</sup> Directive 2006/48/EC (...), 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,<sup>16</sup> 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)<sup>17</sup> should therefore be amended accordingly,

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<sup>12</sup> OJ L 166, 11.6.1998, p. 45.

<sup>13</sup> OJ L 35, 11.2.2003, p. 1.

<sup>14</sup> OJ L 96, 12.4.2003, p. 16.

<sup>15</sup> OJ L 309, 25.11.2005, p. 15.

<sup>16</sup> OJ L 177, 30.6.2006, p. 201.

<sup>17</sup> OJ L 302, 17.11.2009, p. 32.

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*  
*Amendments to Directive 1998/26/EC*

Directive 1998/26/EC shall be amended as follows:

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

"3. The Member State referred to in paragraph 2 shall immediately notify other Member States (...) and the European Securities and Markets Authority (ESMA) established by Regulation.../...of the European Parliament and of the Council\*.

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\* OJ L ... ..”

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

"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 the ESMA and inform it of the authorities chosen in accordance with Article 6(2). The ESMA shall publish that information on its website."

*Article 2*  
*Amendments to Directive 2002/87/EC*

Directive 2002/87/EC shall be amended as follows:

(1) Article 4 is amended as follows:

(a) Paragraph 2 is replaced by the following:

"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 established by Articles 40 of Regulation .../...\*, Regulation .../...\*\* and Regulation .../...\*\*\* of the European Parliament and of the Council (hereinafter 'Joint Committee').

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\* OJ L ... . . . .

\*\* OJ L ... . . . .

\*\*\* OJ L ... . . . ."

(b) The following paragraph 3 is added:

"3. The Joint Committee shall publish the list of identified financial conglomerates on its website and shall keep the list up-to-date."

- (2) Article 18(1) is replaced by the following:

"1. Without prejudice to the sectoral rules, in the case referred to in Article 5(3), competent authorities shall verify whether the regulated entities, the parent undertaking of which has its head office outside the European Union, are subject to supervision by a third-country competent authority, which is equivalent to that provided for by the provisions of 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 European Union or on its own initiative. That competent authority shall consult the other relevant competent authorities, and shall take into account any applicable guidance prepared through the Joint Committee in accordance with Article 21a(2). For this purpose the competent authority shall consult the Joint Committee before taking a decision."

- (3) The title of Chapter III is replaced by the following:

"CONFERRED POWERS AND COMMITTEE PROCEDURES"

- (4) The following sentence is added to Article 20(1):

"Those measures shall not include the determination of the conditions of application or the specification of the provisions which are the subject matter of the items listed in Article 21a."

- (5) Article 21(5) is deleted.

(6) The following Article is inserted:

"Article 21a

Technical Standards and Guidance

1. The European Supervisory Authorities, in accordance with Articles 42 of Regulation .../... [EBA], Regulation .../... [EIOPA], and Regulation .../... [ESMA] may develop draft 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 ensure uniform application of this Directive and to specify the alternative parameters for the identification of a financial conglomerate;
  - (d) Article 6(2), in order to ensure uniform application of this Directive and to specify the calculation methods listed in Annex I part II, but without prejudice to article 6(4);
  - (e) Article 7(2) in order to ensure uniform application of this Directive and to specify the modalities for including the items within the scope of the definition of 'risk concentrations' in the supervisory overview referred to in the second subparagraph of that Article;



- (f) Article 8(2) in order to ensure uniform application of this Directive and to specify the modalities 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 that Article.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 7 of Regulation .../... [EBA], Regulation .../... [EIOPA], and Regulation .../... [ESMA].

2. The Joint Committee may provide general guidance as to whether the supplementary supervision arrangements of competent authorities in third countries are likely to achieve the objectives of the supplementary supervision as provided for in this Directive, in relation to the regulated entities in a financial conglomerate, the head of which has its head office outside the European Union.

The Joint Committee shall regularly review such guidance and take into account any changes to the supplementary supervision carried out by the relevant competent authorities.

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\* OJ L 222, 14.8.1978, p. 11."

*Article 3*  
*Amendments to Directive 2003/6/EC*

Directive 2003/6/EC shall be amended as follows:

(0)     In Article 1, point 5 is replaced by the following:

"(5) "Accepted market practices" shall mean practices that are reasonably expected in one or more financial markets and are accepted by the competent authority.

In order to ensure uniform application of this Directive, the European Securities and Markets Authority (ESMA) established by Regulation.../...of the European Parliament and of the Council\* may develop draft technical standards to further specify the definition of "accepted market practices" established in the implementing measures adopted by the Commission according to the last paragraph of this Article.

The Commission may adopt the draft technical standards referred to in the second subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA]."

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\* OJ L ... .."

(0a)     The following paragraph is added to Article 6:

"11. In order to ensure uniform application of this Directive and to ensure fair presentation to investors, the ESMA may develop draft technical standards to further specify the implementing measures adopted by the Commission according to the sixth indent of paragraph 10.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA].”

(0b) The following changes are made to Article 8:

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

(b) The following two paragraphs are added:

"2. In order to ensure uniform application of this Directive, the ESMA may develop draft technical standards to further specify the implementing measures adopted by the Commission according to the first paragraph of this Article.

3. The Commission may adopt the draft technical standards referred to in the second paragraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA].”

(1) In Article 16(2), the fourth subparagraph is replaced by the following:

"Without prejudice to Article 258 of the TFEU, a competent authority whose request for information is not acted upon within a reasonable time or whose request for information is rejected may bring that rejection or absence of action within a reasonable timeframe to the attention of the ESMA. In such a case, ESMA may act in accordance with Article 11 of Regulation ... [ESMA], without prejudice to the possibilities for refusing to act on a request for information foreseen in the second subparagraph".

- (2) In Article 16(4), the fifth subparagraph is replaced by the following:

"Without prejudice to the provisions of Article 258 of the 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 bring that rejection or absence of action within a reasonable timeframe to the attention of the ESMA. In such a case, ESMA may act in accordance with Article 11 of Regulation .../..... [ESMA], without prejudice to the possibilities for refusing to act on a request for information foreseen in the fourth subparagraph of Article 16(4)".

- (3) Article 16(5) is replaced by the following:

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

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA]".

*Article 4*  
*Amendments to Directive 2003/41/EC*

Directive 2003/41/EC shall be amended as follows:

(1) Article 13 is amended as follows:

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

(b) The following paragraph is added:

"2. In order to ensure uniform application of this Directive, the European Insurance and Occupational Pension Authority (EIOPA) established by Regulation.../...of the European Parliament and of the Council\* may develop draft technical standards specifying the information to be provided to the competent authorities under point (...) c) of the first paragraph of this Article. (...)

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [EIOPA].

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\* OJ L ... .. "

(2) The following paragraph is added to Article 20

“11. Member States shall report to the 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 this information on a regular basis and at least every two years and the EIOPA shall make this information available on its website.

**In order to ensure uniform application of this paragraph,** the EIOPA shall develop draft technical standards specifying the procedures to be followed and formats and templates to be used by competent authorities of the Member States when transmitting and updating the relevant information to the EIOPA.

The Commission may adopt the draft technical standards referred to in the second subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [EIOPA].”

*Article 5*  
*Amendments to Directive 2003/71/EC*

Directive 2003/71/EC shall be amended as follows:

(0) The following subparagraphs are added to Article 5(2):

“In order to ensure uniform application of this Article and to allow investors to compare the security concerned with other relevant products, the European Securities and Markets Authority (ESMA) established by Regulation .../... of the European Parliament and of the Council\* shall develop draft technical standards to further specify the delegated acts adopted by the Commission according to paragraph (5) of this article in relation to a uniform template for the presentation of the summary.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA].

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\* OJ L ... ..”

(0a) The following paragraph is added to Article 7:

“4. In order to ensure the uniform application of this Directive, the ESMA may develop draft technical standards to further specify the measures adopted by the Commission according to paragraph 1 of this Article.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA].”

- (1) The following paragraph is added to Article 8:

"5. In order to ensure uniform application of paragraph 2 and to take account of technical developments on financial markets, the ESMA may develop draft technical standards to further specify the implementing measures adopted by the Commission according to paragraph 4 (...). The Authority shall submit those draft technical standards to the Commission(...).

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA]."

- (2) Article 13 is amended as follows:

- (a) The following subparagraph is added to paragraph 2:

"The competent authority shall notify the ESMA of the approval of the prospectus and the supplement thereto at the same time as this 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 notify the ESMA at the same time and provide it with a copy of the said prospectus and the 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 the ESMA and the agreement of the competent authority. This 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 13(3) of Regulation .../... [ESMA] shall not apply to the transfer of the approval of the prospectus according to this paragraph.

In order to ensure uniform application of this Directive and to facilitate communications between supervisors and with the ESMA, the latter may develop draft technical standards to establish standard forms, templates and procedures for the notifications foreseen in this paragraph.

The Commission may adopt those draft technical standards in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA]."

3. In Article 14, the following paragraph 4a is inserted:

"4a. The 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."

- (4) The following paragraph is added to Article 16:

"3. In order to specify the requirements laid down in this Article and to take account of technical developments on financial markets, the ESMA shall develop draft 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. (...). The ESMA shall submit those draft technical standards to the Commission by 1 January 2014.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA]."

- (5) Article 17(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 the ESMA and the competent authority of each host Member State is notified in accordance with Article 18. Competent authorities of host Member States shall not undertake any approval or administrative procedures relating to prospectuses. "

(6) The following paragraphs are added to Article 18:

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

The ESMA and the competent authority of the host Member State shall publish on their websites the list of certificates of approval of prospectuses (including, if applicable, supplements thereto) which are notified in accordance with this article, including, if applicable, a hyperlink to these items 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 websites for a period of at least 12 months. “

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

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA]."

- (7) The third subparagraph of Article 21(2) is replaced by the following:

"Member States shall inform the Commission, the 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."

- (8) Article 22 is amended as follows:

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

"3. Paragraph 1 shall not prevent the competent authorities from exchanging confidential information or from transmitting it to ESMA or European Systemic Risk Board. Such information 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."

- (b) The following paragraph 4 is added:

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

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA]."

9. 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 breaches have been committed of the obligations attaching to the issuer 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. The Commission and the ESMA shall be informed of such measures at the earliest opportunity.”

*Article 6*  
*Amendments to Directive 2004/39/EC*

Directive 2004/39/EC shall be amended as follows:

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

“3. Member States shall establish a register of 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 Securities and Markets Authority (ESMA) established by Regulation .../... of the European Parliament and of the Council\*.

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

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\* OJ L ... ..”

- (2) The following paragraph is added to Article 7:

"4. (...) The ESMA may develop draft technical standards to specify:

- a) The information to be provided to the competent authorities under Article 7(2), including the programme of operations, and, **in order to ensure uniform application of this Article,** to establish standard forms, templates and procedures for such provision of information.

- b) the requirements applicable to the management of investment firms under Article 9(4), and the information for the notifications foreseen in Article 9(2) and, in order to ensure uniform application of this Directive, to establish standard forms, templates and procedures for these notifications.
- 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 foreseen in Articles 10(1) and 10(2).

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA]."

- (3) The following paragraph is added to Article 10b:

"8. In order to ensure uniform application of this Directive, the ESMA may develop draft technical standards to:

- a) establish an exhaustive list of information, referred to in paragraph 4, to be included by proposed acquirers in their notification, without prejudice to Article 10a(2) and
- b) establish standard forms, templates and procedures for the modalities of the consultation process between the relevant competent authorities as referred to in Article 10 (4) (...)

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA]."

(3a) In article 19(6), the first indent is replaced by the following:

“- the above services 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 the ESMA shall publish a list of those markets that are to be considered as equivalent. This list shall be updated periodically. ESMA shall assist the Commission in this assessment of third country markets.”

(4) The following paragraph is added to Article 31:

"7. In order to ensure uniform application of this Article ESMA may develop draft technical standards to specify the information to be notified according to paragraphs 2,4 and 6 and to establish standard forms, templates and procedures for the transmission of information according to paragraphs 3, 4 and 6.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA]."

(5) The following paragraph is added to Article 32:

"10. (...) In order to ensure uniform application of this Article the ESMA may develop draft technical standards to specify the information to be notified according to (...) paragraphs 2,4 and 9 and to establish standard forms, templates and procedures for the transmission of information according to paragraphs 3 and 9.



The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA]."

- (6) 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 the ESMA. A similar communication shall be effected in respect of each change to that list. The ESMA shall publish a list of all regulated markets on its website and shall keep it up to date."

- (7) 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 a list of the competent authorities referred to in paragraphs 1 and 2 on its website and shall keep it up to date".

(8) The following paragraph is added to Article 53:

"3. The competent authorities shall notify to ESMA the extra-judicial mechanisms as referred to in paragraph 1 which are active under its jurisdictions.

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

(9) Article 56 is amended as follows:

1. 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 one single competent authority as a contact point for the purposes of this Directive. Member States shall communicate to the Commission, the 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. The ESMA shall publish a list with these authorities on its website and shall keep it up to date."

2. The following paragraph is added:

"6. (...) The ESMA may develop draft technical standards to specify the obligation for competent authorities to cooperate according to paragraph 1 and the content of the cooperation arrangements according to paragraph 2, and, in order to ensure uniform application of this Article, to establish respective standard forms, templates and procedures for such cooperation arrangements.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA]."

- (10) Article 57 is amended as follows:

- (a) The existing text is numbered as paragraph 1.
- (b) The following paragraph 2 is added:

"2. In order to ensure uniform application of paragraph 1, the ESMA may develop draft technical standards to establish standard forms, templates and procedures for (...) competent authorities to cooperate in supervisory activities, on-the-spot-verifications, and investigations, as well as to specify the information to be exchanged in these cases.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA]."

- (11) In Article 58, paragraphs 4 and 5 are replaced by the following:

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

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA].

5. Articles 54, 58 and 63 shall not prevent a competent authority from transmitting to the ESMA, the European Systemic Risk Board established by Regulation .../... of the European Parliament and of the Council\*, to 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.

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\* OJ L ... .."

- (12) The following paragraph is added to Article 60:

"4. In order to ensure uniform application of this Article, the ESMA may develop draft technical standards to establish standard forms, templates and procedures for the consultation of other competent authorities prior to granting an authorisation (...).

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA]."

(13) Article 62 is amended as follows:

- (a) In paragraph 1, the third sentence in the second subparagraph is replaced by the following:

"The Commission and the ESMA shall be informed of such measures without delay."

- (b) In paragraph 2, the second sentence in the third subparagraph is replaced by the following:

"The Commission and the ESMA shall be informed of such measures without delay."

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

"The Commission and the ESMA shall be informed of such measures without delay."

(14) Article 63 (1) is replaced by the following

"1. Member States and, in accordance with Article 18 of Regulation ..../... [ESMA], the 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 the ESMA may transfer personal data to a third country in accordance with Chapter IV of Directive 95/46/EC.

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

- (a) the supervision of credit institutions, other financial organisations, insurance undertakings and the supervision of financial markets;
- (b) the liquidation and bankruptcy of investment firms and other similar procedures;
- (c) carrying out 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) overseeing the bodies involved in the liquidation and bankruptcy of investment firms and other similar procedures;
- (e) overseeing 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 only be concluded where 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 authorities or bodies or natural or legal persons."

*Article 7*  
*Amendments to Directive 2004/109/EC*

Directive 2004/109/EC shall be amended as follows:

(1) Article 12 is amended as follows:

(a) In paragraph 8, point (a) is deleted;

(b) The following paragraph is added:

'9. In order to ensure the uniform application of paragraph 1 of this Article and to take account of technical developments in financial markets, the European Securities and Markets Authority (ESMA) established by Regulation.../...of the European Parliament and of the Council\* may develop draft 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) of this Directive.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA].

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\* OJ L ... ..!;

(2) Article 13 is amended as follows:

(a) in paragraph 2, point (c) is replaced by the following:

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

(b) the following paragraph is added:

'3. In order to ensure the uniform application of paragraph 1 and to take account of technical developments on financial markets, the ESMA may develop draft 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).

The Commission may adopt those draft technical standards in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA].';

(3) In Article 25(3), the first sentence is replaced by the following:

"Paragraph 1 shall not prevent the competent authorities from exchanging confidential information or from transmitting it to ESMA and the European Systemic Risk Board (ESRB) established by Regulation.../...of the European Parliament and of the Council\*

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\* OJ L ... .."

(4) 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 the 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. The Commission and the ESMA shall be informed of such measures at the earliest opportunity.”

*Article 8*  
*Amendments to Directive 2005/60/EC*

Directive 2005/60/EC shall be amended as follows:

- (1) The following paragraph is added to Article 31:

'4. In order to take account of technical developments in the fight against money laundering or terrorist financing, the European Banking Authority (EBA), established by Regulation .../...[EBA] of ...\*, the European Securities and Markets Authority (ESMA), established by Regulation .../... [ESMA] of ...\*\* and the European Insurance and Occupational Pensions Authority (EIOPA), established by Regulation .../... [EIOPA] of ...\*\*\*, taking into account the existing framework and co-operating, as appropriate, with other relevant EU bodies in the field of anti-money laundering and combating of financing of terrorism, may develop draft technical standards in accordance with Articles 42 of these Regulations 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.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 7 of Regulation .../.... [EBA], .../..., Regulation .../... [ESMA] and .../..., Regulation .../....[ EIOPA]

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\* OJ L ... . .

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(2) The following paragraph is added to Article 34:

' 3. In order to ensure uniform application of this Directive and to take account of technical developments in the fight against money laundering or terrorist financing, the EBA, the ESMA and the EIOPA, taking into account the existing framework and co-operating, as appropriate, with other relevant EU bodies in the field of anti-money laundering and combating of financing of terrorism, may develop draft technical standards in accordance with Articles 42 of Regulation .../...[EBA], Regulation .../...[ESMA] and Regulation .../... [EIOPA] of the European Parliament and of the Council to specify the minimum content of the communication referred to in paragraph 2.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 7 of Regulation .../.... [EBA] ], .../..., Regulation .../... [ESMA] and .../..., Regulation .../....[ EIOPA].';

*Article 9*  
*Amendments to Directive 2006/48/EC*

Directive 2006/48/EC shall be amended as follows:

(1) The following paragraphs are added to Article 6:

"(...) The European Banking Authority established by Regulation .../... [EBA] of the European Parliament and of the Council\* may develop draft technical standards to specify:

a) the information to be provided to the competent authorities in the application (...) for the authorisation of credit institutions, including the programme of operations foreseen in Article 7, and, in order to ensure uniform application of this Article, establish standard forms, templates and procedures for such provision of information;

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

c) 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 foreseen in Article 12.

The Commission may adopt the draft technical standards referred to in the second paragraph of this Article in accordance with the procedure laid down in Article 7 of Regulation .../.... [EBA].

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\* OJ L ... .."

(1a) In Article 9(2), point b is replaced by the following:

"(b) the Member States concerned shall notify the Commission and the EBA of their reasons for exercising this option; and"

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

"Article 14

Every authorisation shall be notified to the EBA.

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

- (3) The following paragraph is added to Article 19:

"9. In order to ensure uniform application of this Directive, the EBA may develop draft technical standards to:

(a) establish an exhaustive list of information, referred to in Article 19a(4), to be included by proposed acquirers in their notification, without prejudice to Article 19(3) and

(b) establish common procedures, forms and templates for the modalities of the consultation process between the relevant competent authorities as referred to in Article 19b. (...)

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [EBA]."

- (3a) The following paragraph is added to Article 22:

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

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [EBA]".

- (4) The following paragraph is added to Article 26:

"5. In order to ensure uniform application of Article 25 and this Article, the EBA may develop draft technical standards to establish standard forms, templates and procedures for such notification and specify the information to be notified in accordance with Article 25 and this Article(...).

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [EBA]".

- (5) The following paragraph is added to Article 28:

"4. (...) In order to ensure uniform application of this Article the EBA may develop draft technical standards to establish standard forms, templates and procedures for such notification and specify the information to be notified in accordance with this Article.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [EBA]".

- (6) 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, the EBA and the competent authorities of the other Member States concerned shall be informed of such measures at the earliest opportunity."

- (6a) Article 36 is replaced by the following:

"Article 36

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

- (6b) Article 38(2) is replaced by the following:

"2. The competent authorities shall notify the Commission, the EBA and the European Banking Committee of all authorisations for branches granted to credit institutions having their head office outside the European Union."

- (7) The following paragraph is added to Article 42:

"In order to specify and to ensure uniform application of this Article, the EBA shall develop draft technical standards to establish standard forms, templates and procedures for the information sharing requirements which are likely to facilitate the monitoring of credit institutions, as well as to specify the information contained therein. The EBA shall submit those draft technical standards to the Commission by 1 January 2014.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [EBA]".

- (8) In Article 42a(1), the following is added at the end of the fourth sub-paragraph:

"If, at the end of the initial two month period, any of the competent authorities concerned has referred the matter to the EBA in accordance with Article 11 of Regulation .../... [EBA], the competent authorities of the host Member State shall defer their decision and await the decision that the EBA may take in accordance with Article 11(3) of that Regulation, and shall take their decision in conformity with the decision of the EBA. The two month period shall be deemed the conciliation period within the meaning of that Regulation. The EBA shall take its decision within one month. The matter shall not be referred to the EBA after the end of the initial two month period or after a joint decision has been reached."

- (9) Article 42b is replaced by the following:

"Article 42b

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 the EBA,
- (b) the competent authorities follow the guidelines and recommendations of the EBA, and shall 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 the EBA under this Directive."



- (10) 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 the EBA in accordance with this Directive and with other Directives applicable to credit institutions, as well as with Articles 16 and 20 of Regulation .../... [EBA]. That information shall be subject to the conditions of professional secrecy set out in paragraph 1".

- (11) Article 46 is replaced by the following:

"Article 46

Member States and the EBA, in accordance with Article 18 of Regulation .../... [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 Articles 47 and 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 these authorities or bodies.

Where the information originates in another Member State, it may 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."

(12) Article 49 is replaced by the following:

“Article 49

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 this 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, to other public authorities responsible for overseeing payment systems;
- (c) the European Systemic Risk Board (ESRB) where this information is relevant for the exercise of its statutory tasks under Regulation .../... of the European Parliament and of the Council [ESRB]\*.

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

Information received in this context shall be subject to the conditions of professional secrecy specified in Article 44(1).

In an emergency situation as referred to in Article 130(1), Member States shall allow competent authorities to communicate information to the central banks in the European system of the central banks when this 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 when this information is relevant for the exercise of its statutory tasks.

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\* OJ L ... .."

(13) 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 the EBA under paragraph 6".

(b) Paragraph 6 is replaced by the following:

"6. In order to ensure the convergence of supervisory practices, the EBA shall develop draft technical standards to specify (...)the requirements applicable to the instruments referred to in paragraph 1 of this Article. The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [EBA].

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

The EBA shall monitor the application of these guidelines."

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

"In order to ensure uniform application of this Directive, for the communication of these calculations by credit institutions, competent authorities shall apply, from 31 December 2012, uniform formats, frequencies and dates of reporting. In order to ensure uniform application of the directive, the EBA shall develop draft technical standards to introduce, within the European Union, uniform formats (with associated specifications), 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 application of this Directive, EBA shall also develop draft technical standards regarding IT solutions to be applied for such reporting.

The Commission may adopt the draft technical standards referred to in the second subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [EBA]".

- (15) The following subparagraphs are added to Article 81(2):

" EBA, in consultation with the ESMA, shall develop draft technical standards to specify the assessment methodology relating to credit assessments. The EBA shall submit those draft technical standards to the Commission by 1 January 2014.

The Commission may adopt the draft technical standards referred to in the second subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../....  
[EBA]."

- (16) The following subparagraphs are added to Article 84(2):

" EBA may develop draft technical standards to specify the assessment methodology under which competent authorities permit credit institutions to use the IRB Approach.

The Commission may adopt the draft technical standards referred to in the third subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../....  
[EBA]."

- (17) The following subparagraphs are added to Article 97(2):

" EBA, in consultation with the ESMA, shall develop draft technical standards to specify the assessment methodology relating to credit assessments. The EBA shall submit those draft technical standards to the Commission by 1 January 2014.

The Commission may adopt the draft technical standards referred to in the second subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [EBA]".

- (18) The following subparagraphs are added to Article 105(1):

"EBA may develop draft technical standards to specify the assessment methodology under which competent authorities permit credit institutions to use the Advanced Measurement Approaches.

The Commission may adopt the draft technical standards referred to in the second subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [EBA]".

- (19) In Article 106(2), the last sub-paragraph is replaced by the following:

" EBA shall develop draft technical standards in order to specify the exemptions in point (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).

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

The Commission may adopt those draft technical standards in accordance with the procedure laid down in Article 7 of Regulation .../.... [EBA]".

(20) 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 application of this Directive, the EBA shall develop draft technical standards to introduce, within the European Union, uniform formats (with associated specifications), 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 application of this Directive, EBA shall also develop draft technical standards regarding IT solutions to be applied for such reporting.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [EBA]."

(20a) 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 the EBA and the Commission thereof."

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

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

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

The Commission may adopt the draft technical standards referred to in the second subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [EBA]."

(22) The following paragraph is added to Article 124:

"6. EBA may develop draft technical standards to specify this Article and a common risk assessment procedure and methodology. (...)

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [EBA]."



(23) In Article 129(2), the fifth subparagraph is replaced by the following:

"In the absence of a joint decision between the competent authorities within six months, the competent authority referred to in paragraph 1 shall make its own decision on the application. The decision shall be set out in a document containing the fully reasoned decision and shall take into account the views and reservations of the other competent authorities expressed during the six months period. The decision shall be provided to the applicant and the other competent authorities by the competent authority referred to in paragraph 1. If, at the end of the six month period, any of the competent authorities concerned has referred the matter to the EBA in accordance with Article 11 of Regulation .../... [EBA], the consolidating supervisor shall defer its decision and await any decision that the EBA may take in accordance with Article 11(3) of that Regulation on its decision, and shall take its decision in conformity with the decision of the EBA. The six month period shall be deemed the conciliation period within the meaning of that Regulation. The EBA shall take its decision within one month. The matter shall not be referred to the EBA after the end of the six month period or after a joint decision has been reached”.

(23a) The following subparagraph is added to Article 129(2):

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

The Commission may adopt these draft technical standards in accordance with the procedure laid down in Article 7 of Regulation .../.... [EBA]”.

(24) Article 129(3) is amended as follows:

- (a) In the third sub-paragraph, the term "Committee of European Banking Supervisors" is replaced by "EBA".
- (b) The fourth subparagraph is replaced by the following:

"In the absence of such a joint decision between the competent authorities within four 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 the EBA in accordance with Article 11 of Regulation .../... [EBA], the consolidating supervisor shall defer its decision and await any decision that the EBA may take in accordance with Article 11(3) of that Regulation , and shall take its decision in conformity with the decision of the EBA. The four month period shall be deemed the conciliation period within the meaning of the Regulation. The EBA shall take its decision within one month. The matter shall not be referred to the EBA after the end of the four month period or after a joint decision has been reached."

- (c) The fifth sub-paragraph 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 an EU parent credit institution or an EU 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 the EBA in accordance with Article 11 of Regulation .../... [EBA], the competent authorities shall defer their decision and await any decision that the EBA shall take in accordance with Article 11(3) of that Regulation, and shall take its decision in conformity with the decision of the EBA. The four month period shall be deemed the conciliation period within the meaning of that Regulation. The EBA shall take its decision within one month. The matter shall not be referred to the EBA after the end of the four month period or after a joint decision has been reached."

- (d) The seventh sub-paragraph is replaced by the following:

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

- (e) The tenth sub-paragraph is replaced by the following:

"In order to ensure uniform application of this Article, the EBA may develop draft technical standards to specify the joint decision process referred to in this paragraph, with regard to the application of Articles 123, 124 and 136(2), with a view to facilitating joint decisions. (...)

The Commission may adopt these draft technical standards referred to in the tenth subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [EBA]"

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

"Where an emergency situation, including adverse developments in financial 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, the EBA and the authorities referred to in the fourth subparagraph of Article 49 and 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 of this paragraph, it shall alert as soon as is practicable the competent authorities referred to in Articles 125 and 126, and the EBA."

(26) 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 (13) of Regulation .../... [EBA], 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. The 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".

(27) Article 131a(2) is amended as follows:

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

"In order to ensure uniform application of this Article and Article 42a(3), the EBA may develop draft technical standards for the operational functioning of colleges, including in relation to Article 42a(3). (...)

The Commission may adopt the draft technical standards referred to in the third paragraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [EBA]."

- (b) The sixth subparagraph is replaced by the following:

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

(28) Article 143(2) is amended as follows:

(a) The following sentence is added at the end of the first sub-paragraph:

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

(b) The second sub-paragraph is replaced by the following:

"The competent authority carrying out the verification referred to in the first sub-paragraph of paragraph 1 shall take into account any such guidance. For this purpose, the competent authority shall consult the EBA before adopting a decision".

(29) The following paragraph is added to Article 144:

"In order to ensure uniform application of this Article, the EBA shall develop draft technical standards to determine the key aspects on which aggregate statistical data are to be disclosed and the format, structure, contents list and annual publication date of the disclosures provided for in this Article. The EBA shall submit those draft technical standards to the Commission by 1 January 2014.

The Commission may adopt the draft technical standards referred to in the third paragraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [EBA]."

(30) Article 150 is amended as follows:

- (a) In paragraph 2, points (d) and (e) are deleted.
- (b) The following paragraph 3 is added:

"3. In order to ensure uniform application of this Directive, the EBA shall develop draft technical standards to determine:

- (a) the conditions of application of points 15 to 17 of Annex V;
- (b) the conditions of application of Part 2 of Annex VI in respect of the quantitative factors referred to in point 12, the qualitative factors referred to in point 13 and the benchmark referred to in point 14;

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

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [EBA]".

(31) In Article 156, the term "Committee of European Banking Supervisors" is replaced by "EBA".

Article 10  
Amendments to Directive 2006/49/EC

The following paragraph is added to Article 18:

"5. The European Banking Authority (EBA) established by Regulation.../...of the European Parliament and of the Council may develop draft 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.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [EBA](...)"



Article 11  
Amendments to Directive 2009/65/EC

Directive 2009/65/EC shall be amended as follows:

- (1) The following paragraph is added to Article 5:

"8. The European Securities and Markets Authority (ESMA) established by Regulation.../...of the European Parliament and of the Council\* may develop draft technical standards to specify the (...) information to be provided to the competent authorities in the application for authorisation of a UCITS.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA].

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\* OJ L ... .."

- (2) The following paragraph is added to Article 7:

"6. ESMA may develop draft 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, and, in order to ensure uniform application of this Article, establish standard forms, templates and procedures for such provision of information.
- (b) the requirements applicable to the management company under article 7(2) and the information for the notification foreseen in Article 7(2) and , in order to ensure uniform application of this Directive, to establish standard forms, templates and procedures for these notifications.

- (c) 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 foreseen in Articles 8(1) and Articles 10(1)-(2) of Directive 2004/39/EC, as referred to in Article 11 of this Directive.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA]."

- (2a) The following paragraph is added to Article 11:

"3. In order to ensure uniform application of this Directive, the ESMA may develop draft technical standards to:

- establish an exhaustive list of information, as foreseen 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 and;
- establish standard forms, templates and procedures for the modalities of the consultation process between the relevant competent authorities, as foreseen in this article, with reference to Article 10 (4) of Directive 2004/39/EC.

- (3) The following paragraph is added to Article 12:

"4. In order to ensure uniform application of this Article, the ESMA may develop draft technical standards to further specify the implementing measures adopted by the Commission regarding the procedures, arrangements, structures and organisational requirements referred to in paragraph 3 of this Article.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA]."

- (4) The following paragraph is added to Article 14:

"3. In order to ensure uniform application of this Article, the ESMA may develop draft technical standards to further specify the implementing measures adopted by the Commission regarding the criteria, principles and steps referred to in points (a), (b), and (c) of the second paragraph of this Article.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../....  
[ESMA]."

- (5) In Article 21(7), the first subparagraph is replaced by the following:

"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, the ESMA, and the competent authorities of the other Member States concerned shall be informed of such measures at the earliest opportunity."

- (6) The following paragraph is added to Article 29:

"5. ESMA may develop draft 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, **in order to ensure uniform application of this Article**, establish standard forms, templates and procedures for this provision of information;

b) the obstacles which may prevent effective exercise of the supervisory functions of the competent authority, as set under article 29(1)c.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA]."

(7) The following paragraph is added to Article 43:

"6. In order to ensure uniform application of this Article, the ESMA may develop draft technical standards to further specify the implementing measures adopted by the Commission regarding the content, format and method by which the information referred to in paragraphs 1 and 3 of this Article should be provided.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA]."

(8) The following paragraph is added to Article 50:

"4. ESMA may develop draft technical standards to specify the provisions concerning the categories of assets in which UCITS can invest in accordance with this Article and with implementing measures adopted by the Commission which relate to such provisions.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA]."

- (9) The following paragraph is added to Article 51:

"5. In order to ensure uniform application of this Article, the ESMA may develop draft technical standards to further specify the implementing measures adopted by the Commission regarding the criteria and rules referred to in points (a), (b) and (c) of paragraph 4.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../....  
[ESMA]."

- (10) The following paragraph is added to Article 60:

"7. In order to ensure uniform application of this Article, the ESMA may develop draft technical standards to further specify the implementing measures adopted by the Commission regarding the agreement, measures and procedures referred to in points (a), (b) and (c) of paragraph 6.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../....  
[ESMA]."

- (11) The following paragraph is added to Article 61:

"4. In order to ensure uniform application of this Article, the ESMA may develop draft technical standards to further specify the implementing measures adopted by the Commission regarding the agreement and types of irregularities referred to in points (a) and (b) of paragraph 3.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA]."

- (12) The following paragraph is added to Article 64:

"5. In order to ensure uniform application of this Article, the ESMA may develop draft technical standards to further specify the implementing measures adopted by the Commission regarding the information and procedure referred to in points (a) and (b) of paragraph 4.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA]."

- (13) The following paragraph is added to Article 69:

"5. The ESMA may develop draft 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 these documents.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA]."

- (14) The following paragraph is added to Article 78:

"8. In order to ensure uniform application of this Article, the ESMA may develop draft technical standards (...) to further specify the implementing measures adopted by the Commission regarding the information referred to in paragraph 3, as specified in the implementing measure.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA]."

- (14a) The following paragraph is added to Article 83:

"3. The ESMA may develop draft technical standards in order to specify the requirements of this Article relating to borrowing.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA]."

- (15) The following paragraph is added to Article 84:

"4. ESMA may develop draft 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 point (a) of paragraph 2, once the suspension has been decided.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA]."

(16) Article 95(2) is replaced by the following:

"2. In order to ensure uniform application of Article 93, the ESMA may develop draft technical standards to specify:

- (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 the provisions of Article 93.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA]."

(17) In Article 101, paragraphs 8 and 9 are replaced by the following:

"8. Competent authorities may bring to the attention of the 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 the provisions of Article 258 of the TFEU, in these cases ESMA may act in accordance with the powers conferred on it by article 11 of Regulation .../... [ESMA], without prejudice to the possibilities for refusing to act on a request for information or for an investigation foreseen in paragraph 6 of this Article."

9. In order to ensure uniform application of this Article, the ESMA may develop draft 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.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA]."

(18) Article 102 is amended as follows:

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

"Paragraph 1 shall not prevent the competent authorities of the Member States from exchanging information in accordance with this Directive or other European Union legislation applicable to UCITS or to undertakings contributing towards their business activity or from transmitting it to the ESMA in accordance with Regulation .../... or the European Systemic Risk Board established by Regulation .../... of the European Parliament and of the Council\*. That information shall be subject to the conditions of professional secrecy laid down in paragraph 1 of this Article.

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\* OJ L ... .."

(b) The following point is added to paragraph 5:

"(d) the European Securities and Market Authority (ESMA) established by Regulation .../... of the European Parliament and of the Council\*, the European Banking Authority (EBA) established by Regulation .../... European Parliament and of the Council[EBA]\*\*, the European Insurance and Occupational Pensions Authority (EIOPA) established by Regulation .../... of the European Parliament and of the Council [EIOPA] \*\*\* and the ESRB.

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\* OJ L ... ..

\*\* OJ L ... ..

\*\*\* OJ L ... .."

(19) Article 105 is replaced by the following:

*"Article 105*

In order to ensure uniform application of the provisions in this Directive concerning the exchange of information, the ESMA may develop draft technical standards to establish procedures, templates and formats for the exchange of information between competent authorities and between the competent authorities and the ESMA.

The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [ESMA]."

(20) In Article 108(5), point (b) of the first subparagraph and the second subparagraph are replaced by the following:

"(b) if necessary, bring the matter to the attention of the ESMA, which may act in accordance with the powers conferred on it by article 11 of Regulation .../... [ESMA].

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

#### *Article 11a*

##### *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 technical standards foreseen in this Directive, where such submission is mandatory or optional, with any appropriate proposals.**

*Article 12*  
*Transposition*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1, 2(1)(a), 2(2), 3(1), 3(2), the first subparagraph of 4(2), 5(2)(a), the first subparagraph of 5(5), the first subparagraph of 5(6), 5(7), 5(8)(a), 5(9), the first subparagraph of 6(1), 6(6), letters (a) and (b) of 6(7), the first subparagraph of 6(8), the first subparagraph of 6(9), the last subparagraph of 6(11), 6(13), 7(3), 7(4), 9(1a), the first subparagraph of 9(2), 9(6), 9(6a), 9(6b), 9(8), 9(9), 9(10), 9(12), 9(20a), 9(23), letters (a) to (d) of 9(24), 9(25), 9(26), 9(27)(b), 9(28)(b), 11(5), the change to Article 101(8) in Directive 2009/65/EC under Article 11(17) of this Directive, 11(18) and Article 11(20) of this Directive no later than 18 months after its entry into force (...). They shall forthwith communicate to the Commission the text of those measures.  
When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication.  
Member States shall determine how such reference is to be made.
  
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 13*  
*Entry into force*

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

*Article 14*

*Addressees*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*

*The President*

[...]

*For the Council*

*The President*

[...]