

EN

EN

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.10.2009
COM(2009) 576 final

2009/0161 (COD)

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

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Experience of the financial crisis has exposed important failures in financial supervision, both in particular cases and in relation to the financial system as a whole. President Barroso therefore requested a group of high level experts, chaired by Mr Jacques de Larosière, to make proposals to strengthen European supervisory arrangements, with the objective of establishing a more efficient, integrated and sustainable European system of supervision. The Group presented its report on 25 February 2009. Building on its recommendations, the Commission set out proposals for a new European financial supervisory architecture in its Communication to the Spring European Council of March 2009. The Commission presented its ideas in more detail in its Communication of May 2009 which proposed:

- Establishing a *European System of Financial Supervisors (ESFS)*, consisting of a network of national financial supervisors working in tandem with new European Supervisory Authorities (ESAs), created by transforming the existing European supervisory committees¹ into a European Banking Authority (EBA), a European Insurance and Occupational Pensions Authority (EIOPA), and a European Securities and Markets Authority (ESMA), thereby combining the advantages of an overarching European framework for financial supervision with the expertise of local micro-prudential supervisory bodies that are closest to the institutions operating in their jurisdictions; and
- Establishing a European Systemic Risk Board (ESRB), to monitor and assess potential threats to financial stability that arise from macro-economic developments and from developments within the financial system as a whole. To this end, the ESRB would provide an early warning of system-wide risks that may be building up and, where necessary, issue recommendations for action to deal with these risks.²

The Communication also concluded that in order for the ESFS to work effectively, changes to the financial services legislation would be necessary, in particular to provide an appropriate scope to the more general powers provided for in the individual regulations establishing the Authorities, ensuring a more harmonised set of financial rules through the possibility to develop draft technical standards and facilitate the sharing, where necessary, of micro-prudential information.

2. CONSULTATION OF THE INTERESTED PARTIES

Two open consultations were conducted in the development of these proposals. Firstly, following the report of the high-level group chaired by Jacques de Larosière and the publication of the 4 March 2009 Commission Communication, the Commission organised a first consultation from 10 March to 10 April 2009 as input to its Communication on Financial Supervision in Europe published on 27 May 2009. A summary of the public submissions received can be found on:

¹ These are the Committee of European Banking Supervisors (CEBS), the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) and the Committee of European Securities Regulators (CESR).

² It should be noted that this explanatory memorandum focuses on the proposals to establish the ESFS by transforming the existing European supervisory committees into ESAs. The proposal to establish the ESRB is being discussed in a separate memorandum.

http://ec.europa.eu/internal_market/consultations/docs/2009/fin_supervision/summary_en.pdf

Secondly, from 27 May to 15 July 2009, the Commission organised another consultation round, inviting all interested parties to comment on the more detailed reforms presented in the Communication on Financial Supervision in Europe of 27 May 2009. The responses received were for the greater part supportive of the suggested reforms, with comments on detailed aspects of the proposed ESRB and ESFS. A summary of the public submissions received can be found on:

http://ec.europa.eu/internal_market/consultations/docs/2009/fin_supervision_may/replies_summary_en.pdf

Additionally, a Commission Services Staff Working Paper was published on 23 September 2009 to preview the possible areas where amendments to sectoral legislation may be necessary.

3. IMPACT ASSESSMENT

The May Commission Communication on Financial Supervision in Europe was accompanied by an impact assessment analysing the main policy options for establishing the ESFS and ESRB. A second impact assessment accompanies these proposals, examining the options in more detail. The second impact assessment analysed the options for the appropriate powers for the Authority to work towards achieving a single set of harmonised rules and concluded that this capacity would be rightly limited to those areas to be defined in forthcoming sectoral legislation, and identified such potential areas. Additionally, in developing the draft technical standards themselves, the Authorities should undertake appropriate analysis of potential related costs and benefits and consult stakeholders before submitting them to the Commission.

The second impact assessment report is available on the Commission website.

4. LEGAL ELEMENTS OF THE PROPOSAL

Given that changes need to be introduced into existing Directives to ensure the development of a single rule book, an amending Directive is the most appropriate instrument. This amending Directive should have the same legal basis as the Directives it amends.

5. BUDGETARY IMPLICATIONS

The proposal has no implication for the Community budget.

6. DETAILED EXPLANATION OF THE PROPOSAL

On 23 September 2009, the Commission adopted proposals for a Regulation establishing a European Banking Authority, a Regulation establishing a European Insurance and Occupational Pensions Authority, and a Regulation establishing a European Securities and

Markets Authority.³ Along with those Regulations and in order for the ESFS to work effectively, changes to the sectoral legislation are necessary. The areas in which amendments are proposed fall broadly into the following categories:

- Definition of the appropriate scope of **technical standards** as an additional tool for supervisory convergence and with a view of developing a single rule book;
- To appropriately integrate the possibility for the authority to **settle disagreements** in a balanced way to those areas where common decision making processes already exist in sectoral legislation; and
- **General amendments** which are common to most sectoral legislation and necessary for the directives to operate in the context of new authorities for example, renaming the level 3 committees to the new authorities and ensuring the appropriate gateways for the exchange of information are present.

This amending directive is proposed to amend the following legislation:

- 2006/48/EC and 2006/49/EC: Capital Requirements Directive
- 2002/87/EC: Financial Conglomerates Directive
- 2003/41/EC: Institutions for Occupational Retirement Provisions Directive
- 2003/6/EC: Market Abuse Directive
- 2004/39/EC: Markets in Financial Instruments Directive
- 2003/71/EC: Prospectus Directive
- 1998/26/EC: Settlement Finality Directive
- 2004/109/EC: Transparency Directive
- 2005/60/EC: Anti Money-Laundering Directive
- 2009/65/EC: Undertakings for Collective Investments in Transferable Securities

Moreover, where appropriate, the Commission will make further proposals for amendments to the Solvency II Directive, which is currently being finalised, after publication of the Directive.

6.1. Technical Standards

The proposals for a Regulation establishing a European Banking Authority, a Regulation establishing a European Insurance and Occupational Pensions Authority and a Regulation establishing a European Securities and Markets Authority adopted by the Commission on 23 September 2009 provide that the Authorities may develop draft technical standards in the

3

areas specified in sectoral legislation. The identification of areas for technical standards is based on the following high level principles:

- **Technical issues:** those areas selected are genuinely technical, where the development of standards is best left to supervisory experts. They are areas which do not involve policy decisions.
- **Practical issues/cooperation procedures:** relate to practical issues like procedural approaches to information exchange which could enhance cooperation between supervisory authorities, and which are of a direct concern to the authorities involved. These areas should only include such issues where a common approach or predictability would be of benefit to all concerned.
- **Flexibility:** where it is important to have technical flexibility to respond rapidly to future market developments or where in some areas it is not necessary to make changes now but to have the option to do so if necessary at a later date.
- **Necessity:** Only those areas where detailed, technical and consistent rules are needed for financial stability, depositor, policy holder and investor protection, to ensure market efficiency and integrity or to strengthen the single market have been selected.

In practice, the types of areas covered by technical standards fall into three categories. Firstly, standards may be developed in those areas where detailed methodological or quantitative standards are required to ensure consistent application of certain rules and where there is generally less need for supervisory judgement. Secondly, in those areas that would benefit from a uniform approach to reporting or disclosure for example in facilitating work towards a uniform reporting format in banking by 2012. Finally, in those areas where supervisors would benefit from a consistent approach to cooperation processes including in terms of supervisory risk assessment and information sharing for example in situations where host supervisors of branches would benefit from a consistent minimum set of information from home supervisors.

In addition to the areas identified in this Directive, the Commission is considering further whether additional empowerments for technical standards should be made in some areas – in particular securities - which are covered by level 2 rules, which have been adopted on the basis of an empowerment to the Commission given under the Level 1 instruments, to determine the conditions of application those rules without supplementing the level 1 and 2 instruments concerned. These further amendments would concern in particular Directives 2003/6/EC, 2003/71/EC and 2004/39/EC and could form a second Omnibus Directive, along with proposals for amendments to the Solvency II Directive.

6.2. Settlement of disagreements between national supervisory authorities

In the regulations setting up the European Supervisory Authorities, a mechanism is proposed to ensure that relevant national supervisory authorities take due account of the interests of other Member States as well as the soundness and stability of the European system as a whole.

In general, disagreements between supervisors are fully covered by the regulation with no consequential changes to the sectoral legislation required. However, in those areas where there is already some form of non-binding mediation process possible, or where there are time limits for joint decisions to be taken by one or more supervisors, amendments will be needed

to incorporate in an appropriate way the possibility for the authorities to settle disagreements. Such amendments should have the objective to ensure there is clarity over and minimum disruption to the process for reaching a joint decision, but also that, where necessary, the Authorities are able to resolve disagreements.

6.3. General amendments

There are a number of areas where consequential amendments which are common to most sectoral legislation and necessary for the directives to operate in the context of new authorities should be made, outlined below.

To discharge the current tasks of the present Level 3 Committees

In order to ensure that the new Authorities can continue to undertake the current tasks of the level 3 Committees smoothly, in all of the directives listed above, the following references will be renamed to:

'Committee of European Banking Supervisors' with 'European Banking Authority'

'Committee of European Insurance and Occupational Pensions Supervisors' with 'European Insurance and Occupational Pensions Authority'

'Committee of European Securities Regulators' with 'European Securities and Markets Authority'

Cooperation obligations and information sharing with the ESAs

The new supervisory architecture will require national supervisory authorities to cooperate closely with the European Supervisory Authorities. In particular, they should receive sufficient information from the national supervisory authorities in order to be able to discharge their duties under the regulation.

Where necessary, specific information sharing requirements to facilitate the above will be set out in sectoral legislation. Amendments to the relevant legislation clarify the obligations on national supervisors to provide the necessary information for the discharge of the tasks of the authorities and appropriate information gateways to ensure there are no legal obstacles to the information sharing obligations included in the Regulations establishing the Authorities.

International and advisory role

The ESAs could serve as helpful contact points for supervisory authorities from third countries. In this context, they may, without prejudice to the competences of the European Institutions, enter into administrative arrangements with international organisations and the administrations of third countries. The ESAs may also assist in preparing equivalence decisions pertaining to supervisory regimes in third countries. Moreover, the ESAs may, upon request or on their own initiative, provide advice to the European Parliament, the Council and the Commission or publish opinions, including with respect to the prudential assessments of cross-border mergers and acquisitions. The latter should provide for additional safeguards to ensure a sound and objective assessment of future cross-border mergers or acquisitions.

List keeping and other amendments

It is proposed that the ESAs will be given the duty to establish, publish and regularly update registers and lists of financial actors in the Community and other important issues, which is currently the duty of each national competent authority, e.g. to keep the register of all investment firms according to Art 5 (3) MiFID or the list of regulated markets according to Art 47 MiFID. Having one consolidated list or register for each category of financial actors in the Community may improve transparency and better reflects the single financial market

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 44, 47 (2), 55 and 95 thereof,

Having regard to the proposal from the Commission⁴,

Having regard to the opinion of the European Economic and Social Committee⁵,

Having regard to the opinion of the European Central Bank⁶,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁷,

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 Community law and trust between national supervisors.
- (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 Community. That group of experts also concluded that a European System of Financial Supervisors should be created, comprising three European Supervisory Authorities, one for the banking sector, one for the securities

⁴ OJ C , , p. .

⁵ OJ C , , p. .

⁶ OJ C , , p. .

⁷ OJ C , , p. .

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"⁸ proposed to bring forward draft legislation creating a European System of Financial Supervisors, and in its Communication of 27 May 2009 entitled "European Financial Supervision"⁹ 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 a European System of Financial Supervisors, comprising three new European Supervisory Authorities, 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 European Supervisory Authorities should also have supervisory powers for credit rating agencies and invited the Commission to prepare concrete proposals on how the European System of Financial Supervisors could play a strong role in crisis situations.
- (5) On 23 September 2009, the Commission adopted proposals for three Regulations establishing the European System of Financial Supervisors including the creation of the three European Supervisory Authorities.
- (6) In order for the European System of Financial Supervisors to work effectively, changes to Community legislation in the field of operation of the three Authorities are necessary. These changes concern the definition of the scope of certain powers of the European Supervisory Authorities, the integration of certain powers in existing processes established in relevant Community legislation and amendments to ensure a smooth and effective functioning in the context of the European System of Financial Supervisors.
- (7) The establishment of the three European Supervisory Authorities (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 European Supervisory Authorities 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 European Supervisory Authorities are empowered to develop draft technical standards.
- (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.

⁸ COM (2009) 114 final.

⁹ COM (2009) 252 final.

- (9) Matters subject to technical standards should be genuinely technical, where their development requires the expertise of supervisory experts. The technical standards should 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 implementing measures without amending non-essential elements of those acts, *inter alia* by deleting some of those elements or by supplementing the act by the addition of new non-essential elements. Technical standards should not therefore involve policy choices. In cases where the technical standards are designed to determine the conditions of application of a Commission implementing measure, they should only be developed once the Commission implementing measure has been adopted. In certain cases where at present the Commission is empowered to adopt implementing measures in accordance with committee procedures pursuant to Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission¹⁰, and the content of those implementing measures is limited to determining the conditions of application of rules included in the basic instruments, which do not require further supplementing, it is appropriate for the sake of consistency to introduce the procedure for adoption of technical standards provided for in Article 7 of Regulations (EC) No. .../...[EBA], No. .../... [ESMA], and No. .../... [EIOPA].
- (10) As set out in the Regulations establishing the ESFS, before submitting the technical standards to the Commission, the European Supervisory Authorities should, where appropriate, conduct open public consultations on them and analyse the potential related costs and benefits.
- (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 where the relevant legislation requires cooperation, coordination or joint decision making by competent national authorities from more than one Member State, the European Supervisory Authorities, at the request of one of the competent authorities concerned, may assist the 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 European Supervisory Authorities may settle the matter.
- (12) In general, the provision that provides the possibility for disputes to be resolved in the Regulations establishing the ESFS does not require consequential changes to the relevant legislation. However, 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 European Supervisory Authorities are able to resolve disagreements.

¹⁰ OJ L 184, 17.7.1999, p. 23.

- (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 institutions¹¹ provides for mediation or joint decisions as regards the determination of significant branches for the purposes of supervisory college membership, model validation and group risk assessment. In all of these areas, an amendment should clearly state that in the event of disagreement during the specified time period, the European Banking Authority may resolve the disagreement using the process outlined in Regulation .../... [EBA]. 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 European Supervisory Authorities continue to undertake the current tasks of the level 3 Committees smoothly, references to the Committee of European Banking Supervisors, the Committee of European Insurance and Occupational Pensions Supervisors or the Committee of European Securities Regulators should be replaced in all the relevant legislation with references to the European Banking Authority, the European Insurance and Occupational Pensions Authority or the European Securities and Markets Authority respectively.
- (15) The new supervisory architecture established by the ESFS will require national supervisory authorities to cooperate closely with the European Supervisory Authorities. Amendments to the relevant legislation should ensure there are no legal obstacles to the information sharing obligations included in the Regulations proposed by the Commission establishing the European Supervisory Authorities.
- (16) The Regulations establishing the ESFS proposed by the Commission provide that the European Supervisory Authorities may develop contacts with supervisory authorities from third countries and shall assist in preparing equivalence decisions pertaining to supervisory regimes in third countries. Directives 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments¹² and Directive 2006/48/EC should be amended to allow the European Supervisory Authorities 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 actors in the Community, which is currently the duty of each national competent authority, will improve transparency and better reflects the single financial market. The European Supervisory Authorities should be given the duty to establish, publish and regularly update registers and lists of financial actors within the Community. 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 European Securities and Markets Authority 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

¹¹ OJ L 177, 30.6.2006, p. 1.

¹² OJ L 145, 30.4.2004, p. 1.

published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC¹³.

- (18) In those areas where the Authorities 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 Authorities.
- (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 Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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.
- (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,¹⁴ 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 and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council¹⁵, Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)¹⁶, 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,¹⁷ 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 and amending Directive 2001/34/EC¹⁸, 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,¹⁹ 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 institutions²⁰, 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

¹³ OJ L 345, 31.12.2003, p. 64.

¹⁴ OJ L 166, 11.6.1998, p. 45.

¹⁵ OJ L 35, 11.2.2003, p. 1.

¹⁶ OJ L 96, 12.4.2003, p. 16.

¹⁷ OJ L 235, 23.9.2003, p. 10.

¹⁸ OJ L 390, 31.12.2004, p. 38.

¹⁹ OJ L 309, 25.11.2005, p. 15.

²⁰ OJ L 177, 30.6.2006, p. 1.

institutions,²¹ and Directive 2009/65/EC of the European Parliament and of the Council of ...on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)²² should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Amendments to Directive 1998/26/EC

Directive 1998/26/EC is 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 established by Regulation.../...of the European Parliament and of the Council²³ and shall communicate to the latter all information essential to achieve its tasks."

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

Article 2
Amendments to Directive 2002/87/EC

Directive 2002/87/EC is 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 42 of Regulation .../..., Regulation .../... and

²¹ OJ L 177, 30.6.2006, p. 201.

²² OJ L

²³ OJ L

Regulation .../... of the European Parliament and of the Council²⁴ (hereinafter 'Joint Committee')."

(b) the following paragraph 3 is added:

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

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

"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 Community, 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 Community 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 before Article 20 is replaced by the following:

" CONFERRED POWERS AND COMMITTEE PROCEDURES"

(4) In Article 20(1) the following sentence is added:

"Those measures shall not include the determination of the conditions of application 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 21a is inserted:

*"Article 21a
Technical Standards*

1. In order to ensure uniform application of this Directive, 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 determine the conditions of application of Article 17 of Council Directive 78/660/EEC²⁵ in the context of this Directive;

²⁴

OJ L

²⁵

OJ L 222, 14.8.1978, p. 11. Directive as last amended by [...]

- (b) Article 2(17) in order to determine the conditions of application relating to the procedures for the determination of 'relevant competent authorities';
- (c) Article 3(5) in order to determine the conditions of application of the alternative parameters for the identification of a financial conglomerate;
- (d) Article 6(2) in order to determine the conditions of application of the calculation methods listed in Annex I part II, but without prejudice to article 6(4);
- (e) Article 7(2) in order to determine the modalities for including the items within the scope of the definition of 'risk concentrations' in the supervisory overview referred to in the second sub paragraph;
- (f) Article 8(2) in order to determine 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 sub paragraph.

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 Community.

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."

Article 3
Amendments to Directive 2003/6/EC

Directive 2003/6/EC is amended as follows:

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

"Without prejudice to Article 226 of the Treaty, 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 non-compliance to the attention of the European Securities and Markets Authority established by Regulation.../...of the European Parliament and of the Council²⁶, which may act in accordance with the powers conferred on it by that Regulation".

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

²⁶ OJ L

"Without prejudice to the provisions of Article 226 of the Treaty, 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 non-compliance to the attention of the European Securities and Markets Authority, which may act in accordance with the powers conferred on it by Regulation .../... [ESMA] ".

(3) In Article 16, paragraph 5 is replaced by the following:

"In order to ensure uniform application of paragraphs 2 and 4, the European Securities and Markets Authority may develop draft technical standards to determine the conditions of application regarding the conduct of requests for exchange of information and cross border inspections.

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 is amended as follows:

(1) Article 13 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 the directive, the European Insurance and Occupational Pension Authority established by Regulation.../...of the European Parliament and of the Council²⁷ shall develop draft technical standards concerning information provided to the competent authorities. 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 .../.... [EIOPA]. "

(2) In Article 20, the following paragraph 11 is added:

"11. In order to ensure uniform application of this Directive, the European Insurance and Occupational Pension Authority shall develop draft technical standards listing for each Member State 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. The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

²⁷ OJ L

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].

The European Insurance and Occupational Pension Authority shall update the information on that legislation on a regular basis and at least every two years."

Article 5
Amendments to Directive 2003/71/EC

Directive 2003/71/EC is amended as follows:

1. In Article 8, the following paragraph 5 is added:

"5. In order to ensure uniform application of paragraph 2 and to take account of technical developments on financial markets, the European Securities and Markets Authority established by Regulation.../...of the European Parliament and of the Council²⁸ shall develop draft technical standards to determine the conditions of application of the implementing measures adopted by the Commission according to paragraph 4. 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 .../.... [ESMA]."

2. Article 13 is amended as follows:

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

"The competent authority shall notify the European Securities and Markets Authority of the approval of the prospectus 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."

- (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 European Securities and Markets Authority 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."

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

²⁸ OJ L

"4a. The European Securities and Markets Authority 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 shall remain on the website for a period of at least 12 months."

4. In Article 16, the following paragraph 3 is added:

"3. In order to ensure uniform application of this Article and to take account of technical developments on financial markets, the European Securities and Markets Authority shall develop draft technical standards to determine the conditions of application of the obligation to provide a supplement to the prospectus in case of a significant new factor, material mistake or inaccuracy relating to the information included in the prospectus. 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 .../.... [ESMA]."

5. In Article 17, paragraph 1 is replaced by the following:

"1. Without prejudice to Article 23, where an offer to the public or admission to trading on a regulated market is provided for in one or more Member States, or in a Member State other than the home Member State, the prospectus approved by the home Member State and any supplements thereto shall be valid for the public offer or the admission to trading in any number of host Member States, provided that the European Securities and Markets Authority 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. In Article 18, the following paragraphs 3 and 4 are added:

"3. The competent authority of the home Member State shall notify to the European Securities and Markets Authority 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 European Securities and Markets Authority and the competent authority of the host Member State shall publish on their websites the list of certificates of approval notified in accordance with this article, 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 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 European Securities and Markets Authority may develop draft technical standards to determine the conditions of application relating to the 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. In Article 21(2), the third subparagraph is replaced by the following:

"Member States shall inform the Commission, the European Securities and Markets Authority 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 confidential information to the European Securities and Markets Authority or the European Systemic Risk Board. Information exchanged between competent authorities and the European Securities and Markets Authority or the European Systemic Risk Board 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 European Securities and Markets Authority may develop draft technical standards to specify the conditions of cooperation and exchange of information between competent authorities, including the development of standard forms or templates for such cooperation and 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]."

Article 6
Amendments to Directive 2004/39/EC

Directive 2004/39/EC is 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.

The European Securities and Markets Authority established by Regulation.../...of the European Parliament and of the Council²⁹ shall establish a list of all investment firms in the Community. The European Securities and Markets Authority shall publish that list and shall keep it up to date.”

- (2) In Article 7, the following paragraph 4 is added:

"4. In order to ensure uniform application of this Article and of Articles 7, 9(2)-(4), 10(1)-(2), and 12, the European Securities and Markets Authority may develop draft technical standards to determine the conditions of application of the requirements and procedures for such authorisation as laid down in this Article and in Articles 7, 9(2)-(4), 10(1)-(2) and 12.

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) In Article 10a, the following paragraph 8 is added:

"8. In order to ensure uniform application of this Article, the European Securities and Markets Authority shall develop draft technical standards to determine the conditions of application relating to the list of information required for the assessment of an acquisition as referred to in paragraph 1 and the modalities of the consultation process between the relevant competent authorities as referred to in Article 10 (4). 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 .../.... [ESMA]."

- (4) In Article 31, the following paragraph 7 is added:

"7. In order to ensure uniform application of this Article and establish a uniform notification procedure, the European Securities and Markets Authority may develop draft technical standards to determine the conditions of application regarding the obligation to notify information according to paragraphs 2 and 4 and the process of transmitting this information according to paragraphs 3 and 6, including the development of standard forms and templates.

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 32, the following paragraph 10 is added:

"10. In order to ensure uniform application of this Article and establish a uniform notification procedure, the European Securities and Markets Authority may develop draft technical standards to determine the conditions of application regarding the

²⁹ OJ L

obligation to notify information according to paragraphs 2 and 4 and the process of transmitting this information according to paragraph 3, including the development of standard forms and templates.

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 European Securities and Markets Authority. A similar communication shall be effected in respect of each change to that list. The European Securities and Markets Authority 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, the European Securities and Markets Authority 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 second subparagraph is replaced by the following:

"Member States shall inform the Commission, the European Securities and Markets Authority 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. The European Securities and Markets Authority 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) In Article 53, the following paragraph 3 is added:

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

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

- (9) In Article 56, the following paragraph 6 is added:

"6. In order to ensure uniform application of paragraphs 1 and 2, the European Securities and Markets Authority may develop draft technical standards to determine the conditions of application relating to the obligation for competent authorities to cooperate according to paragraph 1 and to the content of the cooperation agreements according to paragraph 2, including the development of standard forms and templates.

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 renumbered as paragraph 1.

(b) The following paragraph 2 is added:

"2. In order to ensure uniform application of paragraph 1, the European Securities and Markets Authority may develop draft technical standards to determine the conditions of application of the obligation for competent authorities to cooperate in supervisory activities, on-the-spot-verifications, and investigations.

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) Article 58 is amended as follows:

(a) Paragraph 4 is replaced by the following:

"4. In order to ensure uniform application of paragraphs 1 and 2, the European Securities and Markets Authority may develop draft technical standards to determine the conditions of application of the obligation to exchange information, including the development of standard forms or templates.

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]."

(b) Paragraph 5 is replaced by the following:

"Articles 54, 58 and 63 shall not prevent a competent authority from transmitting to the European Securities and Markets Authority, the European Systemic Risk Board established by Regulation .../... of the European Parliament and of the Council³⁰, to

³⁰ OJ L

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."

- (12) In Article 60, the following paragraph 4 is added:

"4. In order to ensure uniform application of this Article, the European Securities and Markets Authority may develop draft technical standards to determine the conditions of application of the obligation to consult other competent authorities prior to granting an authorisation, including the development of standard forms or templates.

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 European Securities and Markets Authority 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 European Securities and Markets Authority 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 European Securities and Markets Authority shall be informed of such measures without delay."

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

"1. Member States and the European Securities and Markets Authority 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 European Securities and Markets Authority may transfer personal data to a third country in accordance with Chapter IV of Directive 95/46/EC.

Member States and the European Securities and Markets Authority 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 is amended as follows:

- (1) Article 12 is amended as follows:
 - (a) In paragraph 8, point (a) is deleted;
 - (b) The following paragraph 9 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 established by Regulation.../...of the European Parliament and of the Council³¹ shall develop draft technical standards to establish a harmonised standard form 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 Authority shall submit the draft technical standards referred to in the first subparagraph to the Commission by 1 January 2014. The Commission may adopt the

³¹ OJ L

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) 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 European Securities and Markets Authority shall develop draft technical standards to establish a harmonised standard form to when notifying the required information to the issuer under paragraph 1 or when filing information under Article 19(3).

The Authority shall submit the draft technical standards referred to in the first subparagraph 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 .../.... [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 the European Securities and Markets Authority and the European Systemic Risk Board established by Regulation.../...of the European Parliament and of the Council³²."

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

Directive 2005/60/EC is amended as follows:

(1) In Article 31, the following paragraph 4 is added:

'4. In order to ensure the uniform application of this Article and to take account of technical developments in the fight against money laundering or terrorist financing, the European Banking Authority, the European Securities and Markets Authority and the European Insurance and Occupational Pensions Authority may develop draft technical standards in accordance with Articles 42 of Regulation .../..., Regulation .../... and Regulation .../... of the European Parliament and of the Council³³ to determine the type of additional measures referred to in Article 31(3) 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.

³² OJ L

³³ OJ L

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]';

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

'4. In order to ensure the uniform application of this Article and to take account of technical developments in the fight against money laundering or terrorist financing, the European Banking Authority, the European Securities and Markets Authority and the European Insurance and Occupational Pensions Authority may develop draft technical standards in accordance with Articles 42 of Regulation .../..., Regulation .../... and Regulation .../... of the European Parliament and of the Council to determine the conditions of application relating to 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

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

"In order to ensure uniform application of this Article, the European Banking Authority established by Regulation .../... of the European Parliament and of the Council³⁴ may develop draft technical standards to determine the conditions of application of the requirements and procedures for such authorisation as laid down in Articles 7, 8, 10, 11 and 12, with the exception of the conditions established in the second sentence of Article 11(1).

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]."

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

"Article 14

"Every authorisation shall be notified to the European Banking Authority.

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

³⁴ OJ L

- (3) In Article 19, the following paragraph 9 is added:

"9. In order to ensure uniform application of this Article, the European Banking Authority shall develop draft technical standards regarding the list of information required for the assessment of an acquisition as referred to in paragraph 1 and on the consultation process between the relevant competent authorities as referred to in Article 19b(1). 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]."

- (4) In Article 26, the following paragraph 5 is added :

"5. In order to ensure uniform application of Article 25 and this Article, and establish a uniform notification procedure by electronic means, the European Banking Authority shall develop draft technical standards to determine the conditions of application of the information referred to in Article 25 and in this Article and the process for transmitting this information. 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]."

- (5) In Article 28, the following paragraph 4 is added :

"4. In order to ensure uniform application of this Article and establish a uniform notification procedure by electronic means, the European Banking Authority shall develop draft technical standards to determine the conditions of application of the information referred to in this Article and the process for transmitting this information. 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]."

- (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 European Banking Authority and the competent authorities of the other Member States concerned shall be informed of such measures at the earliest opportunity."

- (7) In Article 42, the following paragraph is added:

"In order to ensure uniform application of this Article, the European Banking Authority shall develop draft technical standards to determine the procedures,

methods and conditions of application of the information sharing requirements for the information which is likely to facilitate the monitoring of credit institutions. 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]".

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

"If, at the end of the two month period, a competent authority has referred the matter to the European Banking Authority in accordance with Article 11 of Regulation .../... [EBA], the consolidating supervisor shall await any decision that the European Banking Authority may take in accordance with Article 11(3) of that Regulation, and shall act in conformity with that decision. The two month period shall be deemed the conciliation period within the meaning of that Regulation. The European Banking Authority shall take its decision within one month. The matter shall not be referred to the Authority after the end of the two month period or after a joint decision has been reached".

- (9) Article 42b is amended as follows:

(a) Paragraph 1 is replaced by the following:

"In the exercise of their duties, 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 European Banking Authority,
- (b) the competent authorities follow the guidelines and recommendations of the European Banking Authority, 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 that Authority under this Directive.

(b) Paragraph 2 is deleted.

- (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 European Banking Authority in accordance with this Directive and with other Directives applicable to credit institutions. That information shall be subject to the conditions of professional secrecy set out in paragraph 1".

- (11) In Article 46, the first paragraph is replaced by the following:

"Member States and the European Banking Authority 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) only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in Article 44(1)".

(12) Article 49 is amended as follows:

(a) In the first paragraph, a following point (c) is added:

"(c) the European Systemic Risk Board where this information is relevant for the exercise of its statutory tasks under Regulation .../... of the European Parliament and of the Council [ESRB]³⁵."

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

"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 European Systemic Risk Board when this information is relevant for the exercise of its statutory tasks."

(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 European Banking Authority under paragraph 6".

(b) Paragraph 6 is replaced by the following:

"6. In order to ensure uniform application of paragraph 1 of this Article and the convergence of supervisory practices, the European Banking Authority shall develop draft technical standards to determine the conditions of application of the provisions governing 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 European Banking Authority shall also issue guidelines in relation to instruments referred to in point (a) of the first paragraph of Article 57.

³⁵ OJ L

The European Banking Authority shall monitor the application of the technical standards referred to in the first subparagraph."

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

"For the communication of these calculations by credit institutions, competent authorities shall apply, from 31 December 2012, uniform formats, frequencies, language and dates of reporting. In order to ensure uniform application of the directive, the European Banking Authority shall develop draft technical standards to introduce, within the Community, uniform formats, frequencies, languages 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.

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]".

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

"In order to ensure uniform application of this Article, the European Banking Authority, in consultation with the European Securities and Market Authority, shall develop draft technical standards to determine the conditions of application of the assessment methodology relating to credit assessments. 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 second subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [EBA]".

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

"In order to ensure uniform application of this paragraph, the European Banking Authority may develop draft technical standards to determine the practical and procedural application of the conditions 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) In Article 97(2), the following subparagraphs are added:

"In order to ensure uniform application of this Article, the European Banking Authority, in consultation with the European Securities and Market Authority, shall develop draft technical standards to determine the conditions of application of the assessment methodology relating to credit assessments. 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 second subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [EBA]".

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

"In order to ensure uniform application of this Article, the European Banking Authority may develop draft technical standards to determine the practical and procedural application of the conditions 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:

"In order to ensure uniform application of this Paragraph, the European Banking Authority shall develop draft technical standards in order to determine the conditions of application of the exemptions in point (c) and (d). The Authority 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, language and dates of reporting. In order to ensure uniform application of the directive, the European Banking Authority shall develop draft technical standards to introduce, within the Community, uniform formats, frequencies, language 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.

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]."

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

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

In order to ensure uniform application of this Article, the European Banking Authority shall develop draft technical standards to determine the conditions of application of this Article, including the measures taken in case of breach of the due diligence and risk management obligations. 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 second subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [EBA]."

- (22) In Article 124, the following paragraph 6 is added:

"6. In order to ensure uniform application of this Article, the European Banking Authority shall develop draft technical standards to determine the conditions of application of this Article and a common risk assessment procedure. 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]".

(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, a competent authority has referred the matter to the European Banking Authority in accordance with Article 11 of Regulation .../... [EBA], the consolidating supervisor shall await any decision that the European Banking Authority may take in accordance with Article 11(3) of that regulation, and shall act in conformity with that decision. The six month period shall be deemed the conciliation period within the meaning of the Regulation. The European Banking Authority shall take its decision within one month. The matter shall not be referred to the Authority after the end of the six month period or after a joint decision has been reached".

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

(a) In the third sub-paragraph , "Committee of European Banking Supervisors" is replaced by "European Banking Authority".

(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, a competent authority has referred the matter to the European Banking Authority in accordance with Article 11 of Regulation .../... [EBA], the consolidating supervisor shall await any decision that the European Banking Authority may take in accordance with Article 11(3) of that Regulation, and shall act in conformity with that decision. The four month period shall be deemed the conciliation period within the meaning of the Regulation. The European Banking Authority shall take its decision within one month. The matter shall not be referred to the Authority 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, the consolidating supervisor has referred the matter to the European Banking Authority in accordance with Article 11 of Regulation .../... [EBA], the competent authorities shall await any decision that the European Banking Authority shall take in accordance with Article 11(3) of that Regulation, and shall act in conformity with that decision. The four month period shall be deemed the conciliation period within the meaning of that Regulation. The European Banking Authority shall take its decision within one month. The matter shall not be referred to the Authority 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 European Banking Authority 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 European Banking Authority shall develop draft technical standards to determine the conditions of application of the joint decision process referred to in this paragraph, with regard to the application of Articles 123, 124 and 132(2) and with a view to facilitating joint decisions. The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

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 European Banking Authority 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 European Banking Authority."

- (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, 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 European Banking Authority 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 European Banking Authority shall develop draft technical standards for the operational functioning of colleges, including in relation to Article 42a(3). 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 second subparagraph in accordance with the procedure laid down in Article 7 of Regulation .../.... [EBA]".

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

"The consolidating supervisor, subject to the confidentiality requirements under Chapter 1, Section 2, shall inform the European Banking Authority of the activities of the college of supervisors, including in emergency situations, and communicate to that Authority 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 European Banking Authority 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 subparagraph of paragraph 1 shall take into account any such guidance. For this purpose, the competent authority shall consult the European Banking Authority before adopting a decision".

- (29) In Article 144, the following paragraph is added:

"In order to ensure uniform application of this Article, the European Banking Authority 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 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 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. The European Banking Authority 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 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]."

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

Article 10 *Amendments to Directive 2006/49/EC*

In Article 18 of Directive 2006/49/EC, the following paragraph is added:

"5. In order to ensure uniform application of paragraph 1, the European Banking Authority established by Regulation.../...of the European Parliament and of the Council may develop draft technical standards for endorsement by the Commission to determine the practical and procedural application of the conditions under which competent authorities permit credit 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 is amended as follows:

1. In Article 5, the following paragraph 8 is added:

"8. In order to ensure uniform application of this Article, the European Securities and Markets Authority established by Regulation.../...of the European Parliament and of the Council³⁶ may develop draft technical standards to determine the conditions of application relating to 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]."

2. In Article 7, the following paragraph 6 is added:

"6. In order to ensure uniform application of this Article, the European Securities and Markets Authority may develop draft technical standards to further determine the conditions of application of the requirements for the authorisation of the management company, with the exception of the conditions established in paragraph 1(b) 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]."

3. In Article 12, the following paragraph 4 is added:

"4. In order to ensure uniform application of this Article, the European Securities and Markets Authority may develop draft technical standards to determine the conditions of application of 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. In Article 14, the following paragraph 3 is added:

"3. In order to ensure uniform application of this Article, the European Securities and Markets Authority may develop draft technical standards to determine the conditions of application of the implementing measures adopted by the Commission regarding the criteria, principles and steps referred to in points (a), (b), and (c) of the first subparagraph of this Article.

³⁶ OJ L

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

6. In Article 29, the following paragraph 5 is added:

"5. In order to ensure uniform application of this Article, the European Securities and Markets Authority may develop draft technical standards to determine the conditions of application of the conditions for the authorisation of the self-managed investment company, with the exception of the conditions established in paragraph 1(b) 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]."

7. In Article 43, the following paragraph 6 is added:

"6. In order to ensure uniform application of this Article, the European Securities and Markets Authority may develop draft technical standards to determine the conditions of application of 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. In Article 50, the following paragraph 4 is added:

"4. In order to ensure uniform application of this Article, the European Securities and Markets Authority may develop draft technical standards to determine the conditions of application of the provisions concerning the categories of assets in which UCITS can invest in accordance to 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]."

9. In Article 51, the following paragraph 5 is added:

"5. In order to ensure uniform application of this Article, the European Securities and Markets Authority may develop draft technical standards to determine the conditions

of application of 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 In Article 60, the following paragraph 7 is added:

"7. In order to ensure uniform application of this Article, the European Securities and Markets Authority may develop draft technical standards to determine the conditions of application of 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 In Article 61, the following paragraph 4 is added:

"4. In order to ensure uniform application of this Article, the European Securities and Markets Authority may develop draft technical standards to determine the conditions of application of 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 In Article 64, the following paragraph 5 is added:

"5. In order to ensure uniform application of this Article, the European Securities and Markets Authority may develop draft technical standards to determine the conditions of application of 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. In Article 69, the following paragraph 5 is added:

"5. In order to ensure uniform application of this Article, the European Securities and Markets Authority may develop draft technical standards to determine the conditions of application of 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. In Article 78, the following paragraph 8 is added:

"8. In order to ensure uniform application of this Article, the European Securities and Markets Authority may develop draft technical standards for endorsement by the Commission to determine the conditions of application of the implementing measures adopted by the Commission regarding the information referred to in 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]."

15. In Article 84, the following paragraph 4 is added:

"4. In order to ensure uniform application of this Article, the European Securities and Markets Authority may develop draft technical standards to determine the conditions of application of the conditions applying to the temporary suspension of the repurchase 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. In Article 95, paragraph 2 is replaced by the following:

"2. In order to ensure uniform application of Article 93, the European Securities and Markets Authority may develop draft technical standards to determine the conditions of application with regard to:

- (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 European Securities and Markets Authority 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.

The European Securities and Markets Authority may act in accordance with the powers conferred on it by Regulation .../... [ESMA].

9. In order to ensure uniform application of this Article, the European Securities and Markets Authority may develop draft technical standards to determine the conditions of application with regard to the conduct of 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 Community law applicable to UCITS or to undertakings contributing towards their business activity or from transmitting it to the European Securities and Markets Authority or the European Systemic Risk Board established by Regulation .../...of the European Parliament and of the Council³⁷. That information shall be subject to the conditions of professional secrecy laid down in paragraph 1."

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

"(d) the European Banking Authority established by Regulation .../... European Parliament and of the Council[EBA]³⁸, the European Insurance and Occupational Pensions Authority established by Regulation .../... of the European Parliament and of the Council³⁹ [EIOPA] and the European Systemic Risk Board established by Regulation .../... of the European Parliament and of the Council⁴⁰."

19. Article 105 is replaced by the following:

³⁷ OJ L
³⁸ OJ L
³⁹ OJ L
⁴⁰ OJ L

"Article 105

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

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 European Securities and Markets Authority, which may act in accordance with the powers conferred on it by Regulation .../... [ESMA].

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

Article 12 Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2010 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, 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 that of 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
[...]