| **Commission proposal** | **Drafting Suggestions and comments** |
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|  | LU: (Drafting): LU: (Comments):We welcome the approach taken by the Presidency so far which allowed moving the file in the good direction. It is our reading from both of the last meetings that there is considerable support for the direction taken by the Presidency on the file. Most Member States, including LU, called for further movement in the direction taken. We would hence strongly encourage the Presidency to further develop and extend the landing zone paper in the direction supported by the large majority of Member States and to continue discussions with experts at least until a full first compromise text has been considered by the WP.The short time period does not allow for providing drafting comments, but we remain fully available to continue constructive discussions with experts on further compromise solutions on the various contentious provisions of the file.DE: (Comments):DE: As a more general comment and in line with our previous comments, in principle, the proposals below are a good basis for further and in-depth-discussions. In our view, they are built on the debates we had in the Council and take the thrust of Member States comments into account. Consequently, the Presidency rightly proposes to delete several COM proposals of major concern, like several direct powers for ESMA, information and data gathering powers or the idea of introducing a supervisor of the supervisors, which would second guess NCAs` decisions in the field of outsourcing and delegation, strategic planning or Internal Models.We agree with the Presidency not to introduce an Executive Board. While we are open to discussing targeted improvements to the existing Management Board, the changes should be in line with the underlying principle that the ESAs are member driven organizations and changes are made on the basis of the status quo. There is no need for a complete overhaul of the governance. Accordingly, there are still several aspects that need further work.We also welcome that the issue of Q & As and improving transparency, proportionality and subsidiarity has been made an integral part of the package. We have always seen the ESA review as a chance to improve the functioning on the current ESA model. Therefore, we fully support the Presidency in addressing them as part of the package, given that they have also been identified by stakeholders as an issue to be tackled. As always the devil is in the details and further work is needed on the issues identified as is for seemingly technical or minor aspects not covered yet.We reserve the right to come back to certain points at a later stage. IE: (Comments):As indicated in our previous comments, we believe that the approach taken by the Presidency is a good starting point for Council to work upon. We have always believed that supervisory convergence can be achieved through a set of targeted amendments to the ESA Regulations. However, there remain a number of areas where further work would be required to ensure that supervisory convergence may be achieved.DK: (Comments):Below please find some comments from Denmark. We kindly note that any lack of comments cannot be understood as agreement or rejection. As for governance, we believe the text is going in the right direction and have a good basis to find an acceptable compromise. However, we are still worried about the overall governance structure as for MB composition, voting modalities, tasks. We are still considering concrete possibilities in this regard and expect to be able to revert soon. On the matter of direct supervisory powers to ESMA we continue to be of the view that these should not be included. |
| **Annex** |  |
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| **Amendments as compared to the version of the Council Working Party on 26 September are highlighted in green.** | LU: (Comments):Comments made on the landing zone paper at the last WP meetings and submitted in writing remain valid. They will not be reiterated fully here. The comments herein are relating to the changes outlined in the revised landing zone paper.Although we see some progress and support the direction taken by the Presidency, a number of elements need to be further explored and discussed with experts in the WP.The short time period granted does not allow for providing drafting comments, but we remain fully available to continue constructive discussions with experts on further compromise solutions on the various contentious provisions of the file. |
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| **REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL Amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority); Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority); Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority); Regulation (EU) No 345/2013 on European venture capital funds; Regulation (EU) No 346/2013 on European social entrepreneurship funds; Regulation (EU) No 600/2014 on markets in financial instruments; Regulation (EU) 2015/760 on European long-term investment funds; Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds; and Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market** |  |
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| **Article 1** |  |
|  | DE: (Drafting):Article 1 is amended as follows:[…](c) In paragraph 5 the following subparagraph is added:“**The content and form of the Authority’s actions and measures shall not exceed what is necessary to achieve the objectives of this Regulation or the acts referred to in paragraph 2 and shall be proportionate to the nature, scale and complexity of the risks inherent in the business of an institution, undertaking, other subject or a financial activity, that is affected by the Authority’s action.**”DE: (Comments):DE: The ESAs should always act with special regard to the principle of proportionality. |
| Article 6 is amended as follows: |  |
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| (a) point (2) is replaced by the following: |  |
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| "(2) a~~n~~ ~~Executive~~ Management Board, which shall exercise the tasks set out in Article 47;"; | LU: (Comments):Please refer to our comments below on the management board.DE: (Comments):DE: We agree with the Presidency not to introduce an Executive Board, reference to Executive Board to be deleted.IE: (Comments):This amended proposal on governance is a step in the right direction, and we welcome returning to the Management Board structure. |
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| (b) point (4) is deleted; | CZ: (Drafting):~~(b) point (4) is deleted;~~CZ: (Comments):We do not support changes in the current model. We consider the current governance model as appropriate and we are not aware of any significant shortcomings.  |
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| Article 8 is amended as follows: |  |
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| (a) paragraph 1 is amended as follows: |  |
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| (i) the following point (aa) is replaced: |  |
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| "(aa) to develop and maintain an up to date Union supervisory handbook on the supervision of financial institutions in the Union;"; |  |
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| (ii) the following point (ab) is inserted: |  |
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| "(ab) to develop and maintain up to date a Union resolution handbook on the resolution of financial institutions in the Union ~~which sets out supervisory best practices and high quality methodologies and processes;";~~ | NL: (Comments):With regard to this proposal, the amendments proposed in the Finnish non-paper are especially relevant. The Netherlands agree that the decision making in resolution matters, such us the development of a resolution handbook, should be the responsibility of the representatives of resolution authorities. LU: (Comments):We can agree with the deletion of the last part of the sentence. DE: (Comments):DE: As the SRB develops resolution handbooks with regard to BU, duplication of work should be avoided. EBA should, where possible, build on existing SRB-work. This could be clarified within a recital.FI: (Comments):As we have stated before, we find it technically inconsistent and unclear in the EBA regulation that at times we refer to resolution as „resolution“, but at times it is supposed to be covered by the term „supervision“. (This is more of a general techncial comment maybe for the Commission to review.)FR: (Drafting):"(ab) to develop and maintain up to date a Union resolution handbook on the resolution of financial institutions in the Union **which sets out supervisory best practices and high quality methodologies and processes;";**FR: (Comments):We deem appropriate to define the content of this handbook.  |
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| (iii) points (e) and (f) are replaced by the following: |  |
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| "(e) to organise and conduct peer reviews of competent authorities and, in that context, to issue guidelines and recommendations and to identify best practices, with a view to strengthening consistency in supervisory outcomes; | DE: (Comments):DE: We agree to remain with the concept of peer reviews. |
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| (f) to monitor and assess market developments in the area of its competence including where relevant, developments relating to trends in credit, in particular, to households and SMEs and in innovative financial services;";  |  |
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| (iv) point (h) is replaced by the following: |  |
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| "(h) to foster depositor, consumer and investor protection;"; |  |
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| (b) in paragraph 1a, the following point (c) is inserted: |  |
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| "(c) take account of technological innovation, innovative and sustainable business models, and the integration of environmental, social and governance related factors."; |  |
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| (c) in paragraph 2, the following are amended |  |
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| (i) point (ca) is deleted: |  |
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| ~~"(ca) issue recommendations as laid down in Articles 29a and 31a;";~~ | DE: (Comments):DE: We agree, to be deleted. |
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|  ii) point h) is replaced by the following: |  |
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| "(h) collect the necessary information concerning financial institutions as provided for in Article 35 ~~and Article 35b~~"; |  |
|  | DE: (Drafting):paragraph 2a is replaced by the following:“2a. When carrying out the tasks referred to in paragraph 1 and exercising the powers referred to in paragraph 2, the Authority shall have due regard to the principles of **proportionality, subsidiarity and** better regulation, including the results of cost-benefit analyses produced in accordance with this Regulation.”DE: (Comments):DE: The ESAs should always act with special regard to the principles of proportionality and subsidiarity. |
| Article 16: the inserted para (5) is deleted | LU: (Comments):We would welcome some clarification on the reason for deleting Article 16, para. 5 that empowers the Stakeholder Group to issue a reasoned opinion if it is of the opinion that the relevant ESA has exceeded its competence by issuing a guideline or a recommendation. This mechanism constitutes an addition light safeguard to avoid that level 1 provisions are second-guessed by means of guidelines or recommendations. Please also refer to our initial comments on article 16 (1)&(2).DE: (Drafting):Article 10 paragraph 1 is amended as follows:[…]“Regulatory technical standards shall be technical, shall not imply strategic decisions or policy choices***,*** their content shall be delimited by the legislative acts on which they are based**, and they shall take into account the principle of proportionality and subsidiarity**.Before submitting them to the Commission, the Authority shall conduct open public consultations on draft regulatory technical standards and analyse the potential related costs and benefits, unless **in exceptional circumstances where** such consultations and analyses are disproportionate in relation to the scope and impact of the draft regulatory technical standards concerned or in relation to the particular urgency of the matter. The Authority shall also request the opinion of the Banking Stakeholder Group referred to in Article 37. **The authority shall state in the impact assessment of the draft regulatory standard how it took into account the principles of proportionality and subsidiarity. In the case where the Authority did not conduct open public consultations, the Authority shall state the exceptional circumstances in the impact assessment of the draft regulatory standard.****[…]”**Article 15 is amended as follows:“The Authority may develop implementing technical standards, by means of implementing acts under Article 291 TFEU, in the areas specifically set out in the legislative acts referred to in Article 1(2). Implementing technical standards shall be technical, shall not imply strategic decisions or policy choices, their content shall be to determine the conditions of application of those acts***,* and they shall take into account the principle of proportionality and subsidiarity**. The Authority shall submit its draft implementing technical standards to the Commission for endorsement.[…]”Article 16 is amended as follows:(a) paragraph 1 is amended as follows:“1. The Authority shall, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of Union law, **and where an act referred to in paragraph 2 of Article 1 or a delegated act based on an act referred to in paragraph 2 of Article 1 delegates this power to the Authority, or where the Board of Supervisors decided on their development,** issue guidelines and recommendations addressed to competent authorities or financial institutions. **Such guidelines and recommendations shall take into account the principles of proportionality and subsidiarity.****Guidelines and recommendations shall not imply strategic decisions or policy choices and their content shall be delimited by the legislative act they refer to. The Authority shall not issue guidelines and recommendations on issues covered by regulatory or implementing technical standards.”**(b)paragraph 2 is replaced by the following:“2. The Authority shall, **save in exceptional circumstances**, conduct open public consultations regarding the guidelines and recommendations which it issues and shall analyse the related potential costs and benefits of issuing such guidelines and recommendations. Those consultations and analyses shall be proportionate in relation to the scope, nature and impact of the guidelines or recommendations. The Authority shall, **save in exceptional circumstances**, also request opinions or advice from the Banking Stakeholder Group referred to in Article 37.**In the case where the Authority did not conduct open public consultations, the Authority shall state the exceptional circumstances in the respective guideline or recommendation. The Authority shall state in the respective guideline or recommendation on a factual basis how it contributes to the establishment of consistent, efficient and effective supervisory practices within the ESFS and ensures the common, uniform and consistent application of Union law. The Authority shall state in the respective guideline or recommendation how it took into account the principles of proportionality and subsidiarity. The Authority shall state in the respective guideline or recommendation how the limits of the power to issue guidelines and recommendations according to the first sentence of the second subparagraph of paragraph one have been respected.”**DE: (Comments):DE: We agree with deletion of paragraph 5 of Article 16. However, other amendments are needed in order to improve the processes around Level 2 and Level 3 measures.The ESAs should always act with special regard to the principles of proportionality and subsidiarity, particularly when publishing technical standards, guidelines, recommendations, opinions or FAQs. We see it as absolutely necessary to amend the respective Articles 10, 15, 16, 16a and 29 , accordingly. Furthermore, transparency with regard to these measures should be improved. |
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| Article 16a is inserted:  |  |
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| *“Art 16a* | PL: (Comments):The existence of two categories of Q&A is a rational proposal and a step in the right direction. Given the non-binding nature of Q&A, it is justified and appropriate to conduct a public consultation and a cost-benefit analysis only in relation to Q&A with a potential significant impact on the common market or financial stability, which also applies to the principle of prioritizing these Q&A over others. The solution for SHG is acceptable since ESAs or 3 NCAs will be able to request consultations with SHG on a case-by-case basis.DE: (Comments):DE: We highly welcome the Presidency’s effort to address the issues of transparency and procedures for Level 3, especially Q & As, as this is an essential aspect for improving the functioning of the ESAs. Streamlining the Q & A procedures between the ESAs and strengthening the role of the stakeholder group as proposed by the Presidency, while important, is only one aspect. It is key to have clear procedures for Level 3 measures and address their transparency, as this is also a manifestation of the principles of proportionality and subsidiarity. Better yet would be to have these guiding principles explicitly spelled out in the ESA Regulations as well.We are aware that some Member States want to preserve the flexibility of the tool but we think framing the procedures further does not put flexibility of the tool at stake. Therefore we would prefer some aspects to be developed further, f.i. and especially to introduce consultations as a rule. Please see our detailed comments below as well.CZ: (Comments):We do not consider the Q&A to be anchored in Level 1. We believe that it is essential to ensure that this instrument is sufficiently flexible. However, we have concerns that this may be somewhat limited by the formalization of the whole process.IE: (Comments):We believe it is important to formalise the Q&A process within the ESAs. While Q&As are non-binding instruments, we must be realistic that the market reacts to them as if they are. We can support the additional changes proposed by the Presidency, but we would also see the importance of the need for the text to reflect the issues of proportionality and subsidiarity. |
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| *Questions and Answers* | LV: (Comments):It should be ensured that any procedures foreseen are not burdensome, to maintain the flexibility of the instrument.HR: (Comments):We can accept the majority of the AT PRES compromise text (new Article 16.a). We still have concerns on the involvement of stakeholder groups, and consider the threshold of three competent authorities (required for the SHG to be involved) too low. We also still have concerns on the proposed consultation procedure for prioritized Q&As (“6. The Authority shall have in place adequate internal procedures to conduct open public consultations for or to analyse potential related costs and benefits of questions referred to in paragraph (1)b, unless the Board of Supervisors objects to such consultations and analyses.”). If a Q&A is so complex as to require public consultation of this nature, the question likely falls out of scope of a Q&A tool. On the other hand, we would not object to a procedure that would ensure that high impact Q&As are subject an analysis of potential related costs and benefits.LU: (Comments):Level 3 measures including Q&As are an important tool of convergence promoting common supervisory approaches. Formalizing this tool in the ESA regulation will increase its legitimacy. Practice has showed that the Q&A instrument is used very differently by the ESAs and process is not fully transparent. Given the substantial practical impact of certain Q&As, adequate transparency and impact assessments, in line with the principles of better regulation are key. The principles of subsidiarity and proportionality need to be fully respected by the answers provided. We consider the Presidency’s proposal on Q&As as a starting point for further discussions. We see however room for further improvements as regards the process through a better framing in the level 1 text in order to enhance transparency and to ensure compliance of Q&As with level 1 and 2 provisions.SI: (Comments):We have some reservations towards introduced new category of Q&As and obligatory involvement of the Stakeholders Group /public consultations, set in Level 1 text.DK: (Comments):We believe it is important to maintain a high degree of flexibility and transparency in the use of this tool. This entails that the framework for addressing the issues is simple, ensures adherence to level 1 scope with the right to challenge potential transgressions. It should also include transparency of processes and while taking into account that not all issues are appropriate for stakeholder consultation. In order to cater for these concerns we have suggested a few amendments.  |
|  | SI: (Comments):We do, however, welcome the streamlining of the process between ESAs. |
| 1. Questions relating to the practical application or implementation of provisions of legislative acts referred to in Article 1 (2), associated delegated and implementing acts, as well as guidelines and recommendations adopted under these legislative acts, may be submitted by any natural or legal person, including competent authorities and EU institutions, to the Authority in any official language of the Union. | ES: (Comments):Missing part of the text on the categorisation of questions as well as Art 16a.2In Art.16a.1.b we suggest the following amendment - Change the word “as well” for “or” when presenting the prioritisation process. Current drafting would imply that the decision of 3 competent authorities could be overruled, which would be unbalanced.**(b) Questions referred to in (a) of this paragraph that are perceived the Authority ~~as well as~~ OR at least three competent authorities as having a high impact on the single market or on the financial stability and therefore will be prioritized over questions referred to in (a);**Also, we would like to clarify what exactly is meant by “The Authority” in this context. Does it refer to the staff of the institution or to the institution itself (i.e. the BoS)? DE: (Drafting):1. Questions relating to the practical application or implementation of provisions of legislative acts referred to in Article 1 (2), associated delegated and implementing acts, as well as guidelines and recommendations adopted under these legislative acts, may be submitted by any natural or legal person, including competent authorities and EU institutions, to the Authority in any official language of the Union.Before submitting a question to the Authority, financial institutions shall assess whether to firstly address the question to their competent authority. **~~The questions can be categorized as follows:~~** **~~(a) Questions regarding the practical implementation or application of provisions of the regulatory framework referred to in Article 1 (2);~~** **~~(b) Questions referred to in (a) of this paragraph that are perceived by the Authority as well as at least three competent authorities as having a high impact on the single market or on the financial stability and therefore will be prioritized over questions referred to in (a);~~**DE: (Comments):DE: Intended clearification may not be helpful, as only cost/benefit analyses and public consultations would clearify the impact of a question.DK: (Drafting):1. ~~Questions relating to the practical application or implementation of provisions of legislative acts referred to in Article 1 (2), associated delegated and implementing acts~~ **The Authority shall, with a view to enabling practical application or implementation of Union law** as well as guidelines and recommendations adopted under Union law ~~under these legislative acts~~, **publish non-binding answers to questions submitted to the Authority. Questions** may be submitted by any natural or legal person, including competent authorities and EU institutions, to the Authority in any official language of the Union.DK: (Comments):Proposals to simplify the structure of para 1 and 2 by mentioning expressly and in the same place a) the possibility of submitting Q&As, b) the Authorities obligation to publish non-binding answers and c) the subjects who can submit questions. FI: (Comments):Instead of having such detailed rules on level 1 text, we would prefer an alternative option, i.e. the development of a policy by the ESAs and introduction of Q&A within the level 1 text in more general way. We do not want to jeopardize the flexibility of the instrument. We are concerned that the proposal might lead to a process that is too detailed and too burdensome for ESAs. Having such detailed rules might limit the ESAs possibilities to find more efficient solutions in the future.  |
|  | UK: (Drafting):2. Answers by the Authority to questions referred to in paragraph (1)a and (1)b as well as answers published by the Authority on behalf of the European Commission referred to in paragraph 7 of this Article are non-binding. ~~and shall be considered suitable to comply with the requirements of the legislative acts referred to in Article 1(2), associated delegated and implementing acts and guidelines and recommendations adopted under these legislative acts.~~UK: (Comments):We beleive this section should be deleted to ensure that Q&As remain non-binding and do not create any legal or supervisory safe harbour, which would be against the current spirit of Q&As.LU: (Comments):**The new categorization process outlined in the revised landing zone paper has not been integrated in this document. We wonder whether it is just an omission?**As clearly stated at the last WP, the categorization process that has been proposed presents weaknesses and does not address our concerns. The safeguard for triggering public consultation and a comprehensive impact assessment is too restrictive and does not cater for sufficient consultation and transparency. We disagree with the cumulative conditions that should be met in order to trigger the public consultation and cost-benefit analyses. We understand that the baseline scenario would even be that category A Q&A’s would not benefit from any consultation at all, which is not satisfactory. We see room for substantial improvements since more transparency and more consultation should be the benchmark, in line with the principles for better regulation, rather than the exception.DK: (Drafting):Before submitting a question to the Authority, financial institutions shall assess whether to firstly address the question to their competent authority. ~~The questions can be categorized as follows:~~ ~~(a) Questions regarding the practical implementation or application of provisions of the regulatory framework referred to in Article 1 (2);~~ ~~(b)~~ Questions ~~referred to in (a) of this paragraph~~ that are perceived by the Authority ~~as well as~~ **or** at least three competent authorities **or the Stakeholder Group** as having a high impact on the single market or on the financial stability ~~and therefore will~~ **shall** be prioritized ~~over questions referred to in (a)~~;DK: (Comments):It seemed to be unnecessarily complicated so we propose to only state what type of question would receive preferential treatment. Also part of the proposal for para 1 and para 2 was not included in this table version, so it has been reinserted.Considering the somewhat more qualitative assessment included in the last subpara, one might consider making it to a separate paragraph.  |
|  | DE: (Drafting):2. Answers by the Authority to questions **~~referred to in paragraph (1) a and (1) b~~** as well as answers published by the Authority on behalf of the European Commission referred to in paragraph 7 of this Article are non-binding and shall **respect the principles of proportionality and subsidiarity ~~be considered suitable to comply with the requirements of the legislative acts referred to in Article 1(2), associated delegated and implementing acts and guidelines and recommendations adopted under these legislative acts~~**.DE: (Comments):DE: See comment above.Furthermore, we agree that a definition of Q & As as non-binding instruments is needed. We are not fully convinced by the proposed safe-harbor rule, as it could raise doubts with regard to the principles of proportionality and subsidiarity and could potentially blur the lines with regard to Guidelines.DK: (Drafting):Deletion. DK: (Comments):The content of para 2 seems unclear and requires knowledge that certain questions are referred to the Commission for responses as they pertain to legal interpretation. We propose deleting this para and include the elements on publication of questions received and answers given as well as setting out that answers are non-binding in para 1 above as it is one of the main functions of the article. We find the wording with regard to suitability to be unnecessary and confusing. Therefore, we propose to delete it. The publication of the COM answers are also deleted (entirely) as we noted that the Commission would not agree to this option and it could be problematic to publish something on behalf of other entities. We would be open to further considering a solution. .  |
| 3. The Authority shall set up or develop further a web based tool available on its website to ensure a uniform process for the submission of questions and the timely publication of all answers to all admissible questions pursuant to paragraph 1, unless such publication is in conflict with the legitimate interest of those persons or would involve risks to the stability of the financial system. Rejected questions shall be published by the Authority on its website for a period of two months. | LV: (Comments):We agree with the suggestion by the Presidency to streamlining of the Q&A processes between the ESAs as well as the introduction of Q&A within the Level 1 text.DK: (Drafting):3. The Authority shall ~~set up or develop further~~ **establish and maintain** a web based tool available on its website ~~to ensure a~~ ~~uniform process~~ for the submission of questions and the timely publication of all answers to all ~~admissible~~ questions pursuant to paragraph 1, unless such publication is in conflict with the legitimate interest of those persons or would involve risks to the stability of the financial system. ~~Rejected~~ ~~q~~**Q**uestions **that the Authority assesses to be inadmissible or have to be submitted firstly to a national competent authority in accordance with paragraph 1** shall be published by the Authority on its website for a period of two months.DK: (Comments):Amended wording to be more consistent with wording elsewhere in the Regulation concerning websites, etc. We are unsure what would be the basis for rejecting a Q&A. We propose it to be an assessment by the Authority to result in e.g. inadmissibility or referral to an NCA. |
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| 4. The Authority shall set up internal processes to ensure the involvement of competent authorities ~~and of the relevant Stakeholder Group referred to in Article 37~~ during the preparation of answers for all admissible questions. . The Authority shall set up internal processes to ensure the involvement of the Stakeholder Group referred to in Article 37 during the preparation of answers for admissible questions where the Authority or at least three competent authorities consider this involvement as appropriate. In this process, due care of confidentiality shall be guaranteed. | LV: (Comments):We support approach for the enhanced monitoring of the Q&A process by the NCAs.We also support that consultation with the SHG should be on case-by-case basis, not the mandatory involvement.EL: (Drafting):The Authority shall set up internal processes to ensure the involvement of competent authorities ~~and of the relevant Stakeholder Group referred to in Article 37~~ during the preparation of answers for all admissible questions. ~~. The Authority shall set up internal processes to ensure the involvement of the Stakeholder Group referred to in Article 37 during the preparation of answers for admissible questions where the Authority or at least three competent authorities consider this involvement as appropriate.~~ In this process, due care of confidentiality shall be guaranteed.EL: (Comments):Please, consider deleting the Stakeholder Group involvement.ES: (Comments):See clarification requested above.We would like to clarify what exactly is meant by “The Authority” in this context. Does it refer to the staff of the institution or to the institution itself (i.e. the BoS)?NL: (Comments):As we’ve mentioned before, we are hesitant towards the proposed role for the Stakeholder group (SHG). This group is so diversified that we cannot fully expect them to give input on all technical questions. We therefore welcome the deletion of SHG in this paragraph for all QandA’s. LU: (Comments):The Stakeholder Group can be a positive element for a light consultation. The safeguard for triggering the involvement of the Stakeholder Group would be too restrictive in the new proposal. DE: (Drafting):4. The Authority shall set up internal processes to ensure the involvement of competent authorities **and of the relevant Stakeholder Group referred to in Article 37**during the preparation of answers for all admissible questions. In this process, due care of confidentiality shall be guaranteed.DE: (Comments):DE: The role of the Stakeholder Group should be strengthened and therefore, the previous proposal by the Presidency should be kept.DK: (Drafting):4. The Authority shall set up internal processes to ensure the involvement of competent authorities ~~and of the relevant Stakeholder Group referred to in Article 37~~ during the preparation of answers for all admissible questions. . The Authority shall set up internal processes to ensure the involvement of the Stakeholder Group referred to in Article 37 during the preparation of answers for admissible questions where the Authority or at least three competent authorities **or the Stakeholder Group** consider this involvement **to be**~~as~~ appropriate. In this process, due care of confidentiality shall be guaranteed.DK: (Comments):Considering the wish for transparency and stakeholder involvement, we propose the possibility of the stakeholder group getting involved on an own initiative basis as well. FI: (Comments):We welcome that the involvement of the SHG would not be mandatory anymore, as the SHG might actually not have the appropriate knowledge for each issue dealt with in the Q&As due to their composition. We understand that this drafting would give the ESAs the necessary leeway to consult more technical subgroups of the SHG instead of the SHG itself?FR: (Drafting):4. The Authority shall set up internal processes to ensure the involvement of competent authorities during the preparation of answers for all admissible questions. The Authority shall set up internal processes to ensure the involvement of the Stakeholder Group referred to in Article 37 during the preparation of answers for admissible questions where **~~the Authority or at least three competent authorities consider this involvement as~~** appropriate. In this process, due care of confidentiality shall be guaranteed.FR: (Comments):One should not formalise too much the process for Q&As at Level 1, and maintain the flexibility that is necessary and of the essence of these level 3 tools (in any case, 3 NCAs would be too narrow a group to make decisions). |
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| 5. The Authority shall have in place adequate internal procedures to ensure that competent authorities may put forward the stance of a potential transgression of competences of the Authority or may propose to address the issue of the admissible question in guidelines referred to in Article 16; ~~to conduct open public consultations on draft questions and answers or to analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft questions and answers concerned or in relation to the particular urgency of the matter~~ or to review questions and answers at appropriate intervals. The Authority shall have in place internal procedures to ensure that a stance or proposal put forward by at least three competent authorities shall be subject to discussion of an internal committee prior to submission to the Board of Supervisors for decision. | EL: (Drafting):~~5. The Authority shall have in place adequate internal procedures to ensure that competent authorities may put forward the stance of a potential transgression of competences of the Authority or may propose to address the issue of the admissible question in guidelines referred to in Article 16; to conduct open public consultations on draft questions and answers or to analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft questions and answers concerned or in relation to the particular urgency of the matter or to review questions and answers at appropriate intervals. The Authority shall have in place internal procedures to ensure that a stance or proposal put forward by at least three competent authorities shall be subject to discussion of an internal committee prior to submission to the Board of Supervisors for decision.~~EL: (Comments):This paragraph is unclear and we propose to delete it.SE: (Drafting):5. The Authority shall have in place adequate internal procedures to ensure that competent authorities may put forward the stance of a potential transgression of competences of the Authority or may propose to address the issue of the admissible question in guidelines referred to in Article 16; to conduct open public consultations on draft questions and answers or to analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft questions and answers concerned or in relation to the particular urgency of the matter or to review questions and answers at appropriate intervals. The Authority shall have in place internal procedures to ensure that a stance or proposal put forward by at least three competent authorities shall be subject to discussion of an internal committee prior to submission to the Board of Supervisors for decision.SE: (Comments):**SE** prefers to keep a flexible approach to consultation and that proportionality could be taken into account when deciding on consultation and cost/benefit analysis. We therefore propose to keep the green deleted text. NL: (Comments):Still looking if the procedure is not too burdensome in some respect*.*LU: (Comments):Open public consultations and an analysis of the potential related costs and benefits are an essential feature of better regulation and of modern democracy. They should be the benchmark rather than the exception. We hence deplore this deletion, in particular in light of the fact that the new categorization process does not provide for a sufficiently transparent process.DE: (Comments):DE: We would be open to having a more flexible way to review answers to questions. Monitoring/Review process for Q & As could be applied automatically, e.g. after a period of no longer than two years or a certain amount of reasonable complaints.DK: (Drafting):5. The Authority shall have in place adequate internal procedures to ensure **evaluation of the a) admissibility of a question,** ~~hat competent authorities may put forward the stance of a~~ **b) scope of the Authority’s competencies in accordance with article 1(2)** ~~potential transgression of competences of the Authority~~ or **c)** **use of other possible measures and d)** ~~may propose to address the issue of the admissible question in guidelines referred to in Article 16; to conduct open public consultations on draft questions and answers or to analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft questions and answers concerned or in relation to the particular urgency of the~~ matter ~~or to~~ review **of** questions and answers at appropriate intervals. The Authority shall have in place internal procedures to ensure that ~~a stance or proposal~~ **requests for evaluations as mentioned above** put forward by at least three competent authorities shall be subject to discussion of an internal committee prior to submission to the Board of Supervisors for decision.DK: (Comments):We believe it is not only important but also an obligation that NCAs can question the use of Q&As. We also know that his has been challenging in practice. However, we find it difficult to include this explicitly in the level 1 text. Firstly, we find that such is implicit when considering the possible scope for application of Q&As compared to guidelines. Secondly, inclusion of such a right specifically for Q&As should not impede a similar action with regard to the use of guidelines. It may therefore be preferable to include wording on this in the recitals rather than the articles themselves. FR: (Drafting):…The Authority shall have in place internal procedures to ensure that such a stance or proposal **~~put forward by at least three competent authorities~~** shall be subject to discussion of an internal committee prior to submission to the Board of Supervisors for decision.FR: (Comments):Same comment as above |
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| 6. The Authority shall have in place adequate internal procedures to conduct open public consultations for or to analyse potential related costs and benefits of questions referred to in paragraph (1)b, unless the Board of Supervisors objects to such consultations and analyses. | LV: (Comments):We support that questions are categorized and that additional category is introduced (priority over other questions) for questions having a potential high impact on the single market or on financial stability and that a public consultations and cost-benefit analysis is mandatory for that category.EL: (Drafting):~~6. The Authority shall have in place adequate internal procedures to conduct open public consultations for or to analyse potential related costs and benefits of questions referred to in paragraph (1)b, unless the Board of Supervisors objects to such consultations and analyses.~~EL: (Comments):We consider the process to be too burdensome. We propose deletion.ES: (Drafting):6. The Authority shall have in place adequate internal procedures to conduct open public consultations for or to analyse potential related costs and benefits of questions referred to in paragraph (1)b, unless the Board of Supervisors objects to such consultations and analyses by simple majority voting.ES: (Comments):Specification needed. Unclear otherwise.LU: (Comments):We are of the view that open public consultations and analyses of potential related costs and benefits should be the benchmark, given the very often substantive impacts of Q&A. DE: (Drafting):6. The Authority shall have in place adequate internal procedures to**, as a rule,** conduct open public consultations for or to analyse potential related costs and benefits of questions ~~referred to in paragraph (1)b, unless the Board of Supervisors objects to such consultations and analyses.~~**to frequently asked questions, unless in exceptional circumstances where such consultations and analyses are disproportionate in relation to the scope and impact of the draft questions and answers concerned or in relation to the particular urgency of the matter. The Authority shall have in place adequate internal procedures to ensure that the issue of having no or limited consultations or analyses shall be subject to discussion of an internal committee prior to submission to the Board of Supervisors for decision.** **In the case where the Authority did not conduct open public consultations, the Authority shall state the exceptional circumstances according to this paragraph in the published answer.**DE: (Comments):DE: In our view, consultations of Q & As should be the rule, only in exceptional cases (case-by-case) when discussed in internal committees and decided by the BoS consultations and cost-benefit analyses should be limited, shortened or not take place at all. The reasons for limiting transparency should be made public by the ESA.DK: (Drafting):6. The Authority shall have in place adequate internal procedures to conduct open public consultations for or to analyse potential related costs and benefits of questions referred to in paragraph (1)~~b,~~ unless the Board of Supervisors objects to such consultations and analyses.DK: (Comments):Consequential change from paragraph (1)b to (1). FI: (Drafting):6. The Authority shall have in place adequate internal procedures to conduct open public consultations for or to analyse potential related costs and benefits of questions referred to in paragraph (1)b, ~~unless the Board of Supervisors objects to such consultations and analyses~~ where the Board of Supervisors deems such consultations and anayses necessary.FI: (Comments):To avoid unnecessary burden and to keep the flexibility, we would prefer having no consultation or analysis as the default procedure, and only having these processes where deemed necessary by the BoS.FR: (Drafting):6. The Authority shall have in place adequate internal procedures to conduct ~~open public~~ consultations for **~~or to analyse potential related costs and benefits of~~** questions referred to in paragraph (1)b, unless the Board of Supervisors objects to such consultations **~~and analyses~~**.FR: (Comments):One should be careful not to impose *impact assessments* for Q&As, which would be too heavy processes for these level 3 tools – the use of Q&As should remain as flexible and swift as possible. In general, as stated above, processes for Q&As should not be formalized at level 1. |
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| 7. The Authority shall publish the answers to questions regarding the legal explanation of provisions of the regulatory framework on behalf of the European Commission. It shall be clearly stated that the Court of Justice of the European Union is the competent body to provide the definitive interpretations of European legislation. | DE: (Comments):DE: Unclear, better to delete…DK: (Drafting):Deletion.DK: (Comments):This paragraph seems unclear and adds to the complexity in the level 1 text as it presupposes knowledge of a process of referring questions to the Commission for answering when it concerns legal explanations. As far as we are aware this has only been explicitly formalised in the EBA. As to the issue of the CJE interpretation this would in effect be true for all answers and therefore seems unnecessary to include. However, we would not oppose inclusion of a reference to the CJEU competence if the Council would wish to do so. Otherwise we propose deletion of the whole para. FR: (Drafting):7. The Authority shall publish the answers to questions regarding the legal explanation of provisions of the regulatory framework on behalf of the European Commission. **~~It shall be clearly stated that the Court of Justice of the European Union is the competent body to provide the definitive interpretations of European legislation.~~**FR: (Comments):Since the Court of Justice of the European Union has been designed to interpret the European legislation, there is no point in reiterating this here.  |
|  | LU: (Comments):We want to reemphasize that some important elements are missing in the current proposal to improve the transparency and efficiency of the tool. This would be inter alia 1/ the inclusion in the level 1 text of principles that would help specifying which topics should be addressed through a guideline rather than a Q&A; 2/ a complementary safeguard that ensures that level 1 and level 2 provisions are not second-guessed via Q&As; 3/ a legal provision stating that the answers provided shall fully respect the principles of subsidiary and proportionality. |
| *~~Alternative option:~~* | FI: (Comments):As stated above, we support the alternative option, because in our view it would ensure more flexibility for the ESAs in the development of Q&As. |
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| ~~3. By DD.MM.YY the Authority shall develop a joint policy on the process for questions and answers and shall conduct an open public consultation. The joint policy on questions and answers shall encompass measures to establish a uniform process for the submission of questions and the timely publication of all answers to all admissible questions pursuant to paragraph 1; the involvement of competent authorities and of the Banking Stakeholder Group, the Securities and Markets Stakeholder Group, the Insurance and Reinsurance Stakeholder Group, and the Occupational Pensions Stakeholder Group referred to in Article 37 during the preparation of answers for all admissible questions as well as procedures in cases of a potential transgression of~~ competences, the transformation of questions and answers into guidelines or regarding public consultations, cost benefit analyses or the review of questions and answers.” | LV: (Drafting):LU: (Comments):We agree with the deletion of the alternative option.FR: (Drafting):…~~competences, the transformation of questions and answers into guidelines or regarding public consultations, cost benefit analyses or the review of questions and answers.”~~FR: (Comments):Drafting error |
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| in paragraph 2 of Article 17 the following subparagraphs deleted: | DE: (Comments):DE: We agree, to be deleted. |
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| ~~"~~**~~Without prejudice to the powers laid down in Article 35, t~~**~~he Authority may address a duly justified and reasoned request for information directly to other competent authorities or relevant financial institutions, whenever it is deemed necessary for the purpose of investigating an alleged breach or non-application of Union law. Where it is addressed to financial institutions, the reasoned request shall explain why the information is necessary for the purposes of investigating an alleged breach or non-application of Union law.~~ |  |
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| ~~The addressee of such a request shall provide the Authority with clear, accurate and complete information without undue delay.~~  |  |
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| ~~Where a request for information has been addressed to a financial institution, the Authority shall inform the relevant competent authorities of such a request. The competent authorities shall assist the Authority in collecting the information, where so requested by the Authority.";~~ |  |
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| Article 19 para 3 is amended as follows: | LV: (Drafting): |
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| “Where the competent authorities concerned fail to reach an agreement within the conciliation phase referred to in paragraph 2, the Authority may take a decision in accordance with Article 44(4) requiring those authorities to take specific action or to refrain from certain action in order to settle the matter, in order to ensure compliance with Union law. The decision of the Authority shall be binding on the competent authorities concerned. . The Authority’s decision may require competent authorities to revoke or amend a decision that they have adopted or to make use of the powers which they have under the relevant Union law.” | LV: (Drafting):LV: (Comments):Separate extended competences of the ESAs with regard to the interpretation and application of the final decision, conflicts with the competences of the institutions established in the EU framework, such as the competence of the Court of Justice of the European Union with regard to the official interpretation of EU law.HR: (Comments):We do not agree with the reference to Article 44(4) in amended Article 19 para 3. Please see our comments on Article 44(4) for more details. LU: (Comments):Please correct the reference. Simple majority voting should be the general rule as laid down in art 44(1).Please also refer to our initial comments on art 19(1a)&(1b).DE: (Comments):DE: With regard to Article 44 (4), see comments below.CZ: (Comments):We do not agree with this procedure due to the proposed change in BoS decision making process. DK: (Comments):As the issue of voting modalities is tied into governance issues whjch we do not find are in place yet we do not support the reference to proposed art. 44(4). |
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| Article 22 is amended as follows:  |  |
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| paragraph 1a is deleted; |  |
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| in paragraph 4, the second subparagraph is replaced by the following: |  |
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| "For those purposes, the Authority may use the powers ~~may use the powers~~ conferred on it under this Regulation, including Article 35 ~~and 35b~~."; | DE: (Comments):DE: We agree, information gathering powers to be deleted. |
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| Article 29 paragraph 1 is amended as follows: | LV: (Drafting): |
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|  (i) the following point (aa) is amended: | LV: (Drafting): |
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| “(aa) establishing coordination groups ~~platforms~~ in accordance with Art 45c to promote supervisory convergence and identify best practices. “~~issuing the Strategic Supervisory Plan in accordance with Article 29a;";~~ | LV: (Drafting):LV: (Comments):We are rather sceptical are “coordination groups” necessary, because the regulation already foresees the possibility for the ESAs to create the subcommittees; there is not necessity to set two different structures in the regulation with the same task (as was mentioned in previous CWP meeting). Therefore, we prefer to delete article 45c.EL: (Comments):Although we could welcome the introduction of the coordination groups, it seems that their role and their areas of relevance are not clearly defined. We need more clarifications in this respect. HR: (Comments):While we are generally supportive of the idea of cooperation groups, we would prefer more clarity in Level 1 text on what these cooperation platforms do, what is expected from the competent authorities and how operationally burdensome this may be (i.e. what is the expected scope, areas and number of such groups). We would also need to make sure that these groups do not duplicate the work already done by other internal committees. LU: (Comments):Please refer to our comments on art 45c.DK: (Comments):Please see comments to proposed art. 45c.  |
|  | DE: (Drafting):(i) the following subparagraph is added:“**Opinions referred to in point (a) shall take into account the principles of proportionality and subsidiarity**.”DE: (Comments):DE: See above. |
| The following Article 29a is inserted: |  |
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| "Article 29a | HR: (Comments):We can accept the direction of the AT PRES compromise text. However, we would point out that supervisory priorities for small markets may and likely will differ from those that are relevant for larger and more complex markets, especially in the field of financial services. In that context, we are supportive of the smaller number of common supervisory priorities, and would suggest that the NCAs may elaborate in their work programmes why these supervisory priorities may not be applicable to them, based on objective criteria. We are concerned that EU wide supervisory priorities may not coincide with the situation “on the ground” in all MS. We are not in favour of introducing an obligation for NCAs to transmit their work programmes to the Authority. We are also hesitant to support the follow up in guidelines and peer on these supervisory priorities, as we are not sure what such a follow-up would entail. We would suggest deleting this.  |
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| ~~Strategic Supervisory Plan~~ Common Supervisory Priorities | DE: (Comments):DE: We agree, Strategic Supervisory Planning to be deleted.IE: (Comments):We welcome the targeted amendments proposed by the PCY to the Common Supervisory Priorities text. It is important that NCAs continue to determine their own priorities, but the requirement of NCAs to determine two priorities of Union wide relevance is appropriate.  |
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| Each year the Board of Supervisors may identify up to two priorities of union wide relevance which shall be based on suggestions by competent authorities and shall reflect future developments and trends. Competent authorities shall take the priorities highlighted by the Board of Supervisors into account when drawing up their work programmes. The Board of Supervisors shall discuss the relevant activities by the competent authorities in the following year and draw conclusions. For that purpose the competent authorities shall inform the Authority about the priorities set in their work programmes and transmit their work programmes. The Authority shall discuss possible follow up which may include inter alia guidelines, recommendations and peer reviews in the respective area~~.” on a possible follow up.”~~ | LV: (Comments):We support Presidency proposal to leave the limit up to two priorities identified by BoS. In addition, Presidency proposal that NCAs should submit their national work programmes or to publish them on their website, for the purpose of discussion in the BoS, could be further discussed, however, the details of how it will be ensured in practice should be determined. (The question is in what language plans should be submitted/published? Currently, there are only in national language. Possibly, there is a rational in proposing to submit only an extract of the work programme where/how the EU priorities are incorporated).We share the Presidency view included in the compromise that all administrative burdens and hard requirements shall be removed from the proposal. Moreover, it would be important to ensure that the EU priorities are closely coordinated and where possible - joint for all the three ESAs, to ensure that in the situation where there is a single supervisor (NCA) for the whole financial sector, it does not have to ensure compliance with at least 6 different priorities (2 of each ESAs).BE: (Drafting):Each year the Board of Supervisors may identify up to two priorities of union wide relevance which shall be based on suggestions by competent authorities and shall reflect future developments and trends. Competent authorities shall take the priorities highlighted by the Board of Supervisors into account when drawing up their work programmes. The Board of Supervisors shall discuss the relevant activities by the competent authorities in the following year and draw conclusions. ~~For that purpose the competent authorities shall inform the Authority about the priorities set in their work programmes and transmit their work programmes. The Authority shall discuss possible follow up which may include inter alia guidelines, recommendations and peer reviews in the respective area~~BE: (Comments):We are not supportive of the transmission of work programmes to the ESAs. This implies an extra administrative burden without clear added value. There are other, more efficient means to discuss the way competent authorities have dealt with union wide priorities.EL: (Drafting):Each year the Board of Supervisors may identify up to two priorities of union wide relevance which shall be based on suggestions by competent authorities and shall reflect future developments and trends. Competent authorities shall take the priorities highlighted by the Board of Supervisors into account when drawing up their work programmes. The Board of Supervisors shall discuss the relevant activities by the competent authorities in the following year and draw conclusions. ~~For that purpose the competent authorities shall inform the Authority about the priorities set in their work programmes and transmit their work programmes. The Authority shall discuss possible follow up which may include inter alia guidelines, recommendations and peer reviews in the respective area.” on a possible follow up.”~~EL: (Comments):We do not support the proposed amendment (in green). This brings an unnecessary extra burden to the NCAs.PL: (Comments):We understand that it is important for ESAs to identify key areas at EU level and for NCAs to take them into account in their work. However, we have doubts about the fact that, due to the sensitive nature of supervisory plans, they should be treated as an internal NCA document and should not, in our view, be subject to ESAs consultation or publication requirements on websites. It should also be noted that the consultation procedure for work plans/priorities is unclear and contains only general deadlines. NCAs would have to wait annually for EU priorities in order to prepare national plans, which would then be subject to transmission, monitoring and reporting. A formalized consultation process would place a significant burden on the NCA and make it difficult to plan supervisory activities in a timely manner. ES: (Drafting):Each year the Board of Supervisors may identify up to two priorities of union wide relevance which shall be based on suggestions by competent authorities and shall reflect future developments and trends. Competent authorities shall take the priorities highlighted by the Board of Supervisors into account when drawing up their work programmes. The Board of Supervisors shall discuss the relevant activities by the competent authorities in the following year and draw conclusions. For that purpose the competent authorities shall inform the Authority about the priorities set in their work programmes and transmit their work programmes or publish them on their website. The Authority shall discuss possible follow up which may include inter alia guidelines, recommendations and peer reviews in the respective area~~.” on a possible follow up.”~~ES: (Comments):In the explanatory note, both the publication of the work programme and the transmission are presented on equal footing. HR: (Drafting):Each year the Board of Supervisors may identify up to two priorities of union wide relevance which shall be based on suggestions by competent authorities and shall reflect future developments and trends. Competent authorities shall take the priorities highlighted by the Board of Supervisors into account when drawing up their work programmes. The Board of Supervisors shall discuss the relevant activities by the competent authorities in the following year and draw conclusions. For that purpose the competent authorities shall inform the Authority about the priorities set in their work programmes ~~and transmit their work programmes~~. ~~The Authority shall discuss possible follow up which may include inter alia guidelines, recommendations and peer reviews in the respective area.” on a possible follow up.”~~UK: (Drafting):Each year the Board of Supervisors may identify up to two priorities of union wide relevance which shall be based on suggestions by competent authorities and shall reflect future developments and trends. Competent authorities shall take the priorities highlighted by the Board of Supervisors into account when drawing up their work programmes. **Competent authorities shall inform the Authority about the priorities set in their work programmes and transmit their work programmes as soon as they are publsihed.** The Board of Supervisors shall discuss the **work programmes submitted** ~~relevant activities~~ by the competent authorities in the following year and draw conclusions. **The Authority shall take the priorities of the union, competent authority work programmes and the Board of Supervisor’s conclusions into account when setting its priorities and programme for advancing supervisory convergence.** ~~For that purpose the competent authorities shall inform the Authority about the priorities set in their work programmes and transmit their work programmes. The Authority shall discuss possible follow up which may include inter alia guidelines, recommendations and peer reviews in the respective area”~~UK: (Comments):We suggest redrafting this paragraph to make the process clearer. We also suggest refining the Authorities role to focus on delviering superivsory convergence without specifying specific tools.LU: (Drafting):Each year the Board of Supervisors may identify up to two priorities of union wide relevance which shall be based on suggestions by competent authorities and shall reflect future developments and trends. Competent authorities shall take the priorities highlighted by the Board of Supervisors into account when drawing up their work programmes. The Board of Supervisors shall discuss the relevant activities by the competent authorities in the following year and draw conclusions. For that purpose the competent authorities shall inform the Authority about the priorities set in their work programmes ~~and transmit their work programmes~~. ~~The Authority shall discuss possible follow up which may include inter alia guidelines, recommendations and peer reviews in the respective area.” on a possible follow up.”~~LU: (Comments):We do not support the proposal to transmit work programs in full to the ESAs. It could be clarified that this only relates to the topic that has been identified as a common supervisory priority by the relevant ESA. We do not see any added value in the last sentence and suggest deleting it. The ESAs can act within the framework of the ESA regulation as a follow up to any topic on their table.DE: (Drafting):[…]**~~For that purpose the competent authorities shall inform the Authority about the priorities set in their work programmes and transmit their work programmes. The Authority shall discuss possible follow up which may include inter alia guidelines, recommendations and peer reviews in the respective area.~~**DE: (Comments):DE: These are priorities set by BoS, we don`t see the need for the addition.SI: (Comments):Although we could support the Board of Supervisors’ power to identify up to two priorities of union wide relevance and the involvement of competent authorities in the process, we have reservations towards obligation of national competent authorities to submit their national work plans or to publish them online.CZ: (Drafting):Each year the Board of Supervisors may identify up to two priorities of union wide relevance which shall be based on suggestions by competent authorities and shall reflect future developments and trends. Competent authorities shall take the priorities highlighted by the Board of Supervisors into account when drawing up their work programmes. The Board of Supervisors shall discuss the relevant activities by the competent authorities in the following year and draw conclusions. For that purpose the competent authorities shall inform the Authority about the priorities set in their work programmes ~~and transmit their work programmes.~~ The Authority shall discuss possible follow up. ~~which may include inter alia guidelines, recommendations and peer reviews in the respective area.~~CZ: (Comments):We do not support the proposed changes requiring national supervisors to submit their annual work programs. Instead of submitting annual work programs, national supervisors should only submit a summary of measures done aimed at meeting the two supervisory priorities that the BoS members agree to. DK: (Drafting):Each year the Board of Supervisors may identify up to two priorities of union wide relevance which shall be based on suggestions by competent authorities and shall reflect future developments and trends. Competent authorities shall take the priorities highlighted by the Board of Supervisors into account when drawing up their work programmes. The Board of Supervisors shall discuss the relevant activities by the competent authorities in the following year and draw conclusions. For that purpose the competent authorities shall inform the Authority about the priorities set in their work programmes **~~and transmit their work programmes.~~** The Authority shall discuss possible **effects on the priorities and work plan of the Authority for the following year** ~~follow up which may include inter alia guidelines, recommendations and peer reviews in the respective area.” on a possible follow up.~~”DK: (Comments):Data collection in all different languages is challenging. Therefore having the NCAs assist in assembling a basis for discussing the Authority’s priorities is appropriate. However, transmission of full work programmes are not relevant for such a discussion. The follow-up activity which is aimed at monitoring and sanctioning the NCAs adherence to the ESA priorities is reverting back to supervisory steering from the ESAs which has not been asked for. The discussions should underpin the potential changes to the focus of the work of the Authority. Alternative wording proposed. FI: (Drafting):Each year the Board of Supervisors may identify ~~up to two~~ priorities of union wide relevance which shall be based on suggestions by competent authorities and shall reflect future developments and trends. …FI: (Comments):We are supportive towards the amendments the PCY has made. We see merit in identifying EU-wide priorities. At the same time, we think that the proposal would not prevent the national authorities from taking into account national specificities when drawing up their work programmes. However, we are still questioning the limited number of priorities. If the BoS is able to come to a consensus on more than two priorities, the BoS should be able to identify them. We also welcome the suggested clarification with regards the follow up. FR: (Drafting):Each year the Board of Supervisors may identify **and publish** **~~up to two~~** priorities of union wide relevance which shall be based on suggestions by competent authorities and shall reflect future developments and trends. Competent authorities shall take the priorities highlighted by the Board of Supervisors into account when drawing up their work programmes. The Board of Supervisors shall discuss the relevant activities by the competent authorities in the following year and draw conclusions. **These conclusions are to be made public.** For that purpose the competent authorities shall inform the Authority about the priorities set in their work programmes and transmit their work programmes. The Authority shall discuss possible follow up which may include inter alia guidelines, recommendations and peer reviews in the respective area. **These follow up actions can be made public when appropriate**. **~~.” on a possible follow up.”~~**FR: (Comments):- We fail to see why the number of priorities should be limited to two and *a fortiori* this limitation set up in the level 1 text.- In order to foster convergence and the efficiency of this tool, we suggest to give publicity to the union wide priorities and follow up.- The follow up procedure established by the presidency is to be welcomed. |
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| ~~1. Upon the entry into application of Regulation [XXX insert reference to amending Regulation] and every three years thereafter by 31 March, the Authority shall issue a recommendation addressed to competent authorities, laying down supervisory strategic objectives and priorities ("Strategic Supervisory Plan") and, taking into account any contributions from competent authorities,. The Authority shall transmit the Strategic Supervisory Plan for information to the European Parliament, the Council and the Commission and shall make it public on its website.~~  |  |
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| ~~The Strategic Supervisory Plan shall identify specific priorities for supervisory activities in order to promote consistent, efficient and effective supervisory practices and the common, uniform and consistent application of Union law and to address relevant micro-prudential trends, potential risks and vulnerabilities identified in accordance with Article 32.~~ |  |
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| ~~2. By 30 September of each year, each competent authority shall submit a draft annual work programme for the following year to the Authority for consideration and specifically stipulate how that draft programme is aligned with the Strategic Supervisory Plan.~~  |  |
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| ~~The draft annual work programme shall contain specific objectives and priorities for supervisory activities and quantitative and qualitative criteria for the selection of financial institutions, market practices and behaviours and financial markets to be examined by the competent authority submitting the draft annual work programme during the year covered by that programme.~~ |  |
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| ~~3. The Authority shall assess the draft annual work programme and where there are material risks for not attaining the priorities set out in the Strategic Supervisory Plan, the Authority shall issue a recommendation to the relevant competent authority aiming at the alignment of the relevant competent authority's annual work programme with the Strategic Supervisory Plan.~~  |  |
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| ~~By 31 December of each year, the competent authorities shall adopt their annual work programmes taking into account any such recommendations.~~ |  |
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| ~~4. By 31 March of each year, each competent authority shall transmit to the Authority a report on the implementation of the annual work programme.~~  |  |
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| ~~The report shall include at least the following information:~~ |  |
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| ~~(a) a description of the supervisory activities and examinations of financial institutions, market practices and behaviours and of financial markets, and on the administrative measures and sanctions imposed against financial institutions responsible for breaches of Union and national law;~~ |  |
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| ~~5. The Authority shall assess the implementation reports of the competent authorities. Where there are material risks of not attaining the priorities set out in the Strategic Supervisory Plan the Authority shall issue a recommendation to each competent authority concerned on how the relevant shortcomings in its activities can be remedied.~~  |  |
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| ~~Based on the reports and its own assessment of risks, the Authority shall identify the activities of the competent authority that are critical to fulfilling the Strategic Supervisory Plan and shall, as appropriate, conduct reviews under Article 30 of those activities.~~ |  |
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| ~~6. The Authority shall make best practices identified during the assessment of the annual work programmes publicly available.";~~ |  |
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| Article 30 is amended as follows: | IE: (Comments):We see Peer Reviews as a powerful tool of the ESAs in order to ensure they achieve their objectives of promoting a common supervisory culture. Peer Reviews also ensure the sharing of best practice and enable different NCAs to learn from one another, which in turns strengthens Europe’s supervisory framework to the benefit of all citizens. We have always supported changes to the Peer Review framework and believe the steps taken here help achieve this objective, while ensuring that NCAs remain at the forefront of the process. Despite this we still believe some improvements can be made to the proposals below.  |
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| (a) the title of the article is replaced by the following: |  |
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| “Peer reviews of competent authorities” | HR: (Comments):We can accept the majority of the AT PRES proposed compromise text with regard to peer reviews, however there are several issues where we do not agree with the proposal (Art 30, par 3 and 3b and 4) – please see our comments below.We would be more in favor of only NCAs chairing the assessment groups, but we can accept the PRES approach as a compromise, under the assumption that Article 44(4) will be changed. LU: (Comments):We welcome the fact that the landing zone papers reverted back to the concept of traditional “peer” reviews. The active involvement of NCAs in the review process is necessary and useful in order to foster supervisory convergence. Due to their concrete expertise in supervision and enforcement of rules, NCAs can provide valuable input to the process. |
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| (b) paragraph 1 is replaced by the following: |  |
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| “1. The Authority shall periodically conduct peer reviews of some or all of the activities of competent authorities, to further strengthen consistency and effectiveness in supervisory outcomes. To that end, the Authority shall develop methods to allow for objective assessment and comparison between the competent authorities reviewed. When conducting reviews, existing information and evaluations already made with regard to the competent authority concerned, including all information provided to the Authority in accordance with Article 35, and any information from stakeholders shall be taken into account.” | LV: (Comments):We have pointed out that we wish to preserve national competent authorities’ involvement in the Peer Review process/retaining a central role for national competent authorities, therefore we welcome the compromise spirit that ensures to maintain the role of NCAs in the PR process. We think that MS members could chair Peer Review Committee.EL: (Comments):We need more clarifications for the meaning of “effectiveness”.NL: (Comments): LU: (Drafting):“1. The Authority shall periodically conduct peer reviews of some or all of the activities of competent authorities, to further strengthen consistency ~~and effectiveness~~ in supervisory outcomes. To that end, the Authority shall develop methods to allow for objective assessment and comparison between the competent authorities reviewed. When conducting reviews, existing information and evaluations already made with regard to the competent authority concerned, including all information provided to the Authority in accordance with Article 35, and any information from stakeholders shall be taken into account.”LU: (Comments):We suggest to delete the reference to effectiveness, it is difficult to do an objective assessment and comparison of the effectiveness of regulatory frameworks. |
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| (c) the following paragraph 1a is inserted: |  |
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| “1a. For the purposes of this Article, the Authority shall establish ~~a~~ peer review committees, which shall be composed of members of competent authorities with the participation of ~~at least one member of the~~ staff from the Authority. ~~exclusively composed of staff from the Authority. The Authority may delegate certain tasks or decisions to the review committee.~~" [*In case of peer reviews in relation to combating money-laundering and terrorist financing, the Peer Review Committees shall be chaired by a senior member of ESA staff*]; | LV: (Comments):As Presidency suggested, a senior EBA staff members could chair the relevant Peer Review Committee for AML issues as an exemption that could be subject to further discussion.EL: (Drafting):~~“1a. For the purposes of this Article, the Authority shall establish a peer review committees, which shall be composed of members of competent authorities with the participation of at least one member of the staff from the Authority. exclusively composed of staff from the Authority. The Authority may delegate certain tasks or decisions to the review committee." [~~*~~In case of peer reviews in relation to combating money-laundering and terrorist financing, the Peer Review Committees shall be chaired by a senior member of ESA staff~~*~~];~~EL: (Comments):We propose deletion of the establishment of a peer review committee. The peer review process has been so far a successful mechanism towards the supervisory convergence in the Union. Therefore, we do not consider necessary any further amendments.PL: (Comments):We support all peer review committees to be chaired by a representative of the NCAs.NL: (Drafting):“1a. For the purposes of this Article, the Authority shall establish ~~a~~ peer review committees, which shall be composed of members of competent authorities with the participation of ~~at least one member of the~~ staff from the Authority. **When establishing a peer review committee, the Authority shall guarantee a level playing field among the competent authorities subject to the peer reviews.** ~~exclusively composed of staff from the Authority. The Authority may delegate certain tasks or decisions to the review committee.~~" ~~[~~*~~In case of peer reviews in relation to combating money-laundering and terrorist financing, the Peer Review Committees shall be chaired by a senior member of ESA staff~~*~~];~~NL: (Comments):The Netherlands welcomes the compromise proposal of the Presidency that provides for the participation of both competent authorities and ESA staff in the peer review committees. The participation of ESA staff in the peer review committees contributes to the level of independence of the peer reviews, while the participation of competent authorities enables these authorities to learn from each other. We understand this new compromise proposal of the Presidency, that provides for flexibility concerning the level of support by the ESA staff. At the same time, however, we believe consistency in the participation of ESA staff and competent authorities might be necessary, to maintain a level playing field between individual peer reviews with regard to a specific topic or area of supervision. In a series of similar peer reviews of different competent authorities, there should be the same level of EBA staff involvement in every peer review committee. For that reason, it would be welcome to add to the proposal that this level playing field should be taken into account when composing a peer review committee. Furthermore, we question the need for a separate peer review process for AML/CFT aspects. We would welcome a further explanation of the Presidency’s reference to the ‘high sensitive and political focus’ of AML peer reviews (included in the Presidency’s explanatory note). At first sight, peer reviews in prudential supervision can be equally ‘high sensitive and political’. LU: (Drafting):“1a. For the purposes of this Article, the Authority shall establish ~~a~~ peer review committees, which shall be composed of members of competent authorities with the participation of ~~at least one member of the~~ staff from the Authority. ~~exclusively composed of staff from the Authority. The Authority may delegate certain tasks or decisions to the review committee." [~~*~~In case of peer reviews in relation to combating money-laundering and terrorist financing, the Peer Review Committees shall be chaired by a senior member of ESA staff~~*~~];~~LU: (Comments):We are as such not opposed to specify the involvement of ESAs staff in the process. The text should however better reflect the MS-driven character of the process and the role of the MB needs to be further assessed, also in light of the final design of the governance of the ESAs.We are more skeptical as regards the ESA staff potentially chairing the review committee. The leading function should be for the NCAs involved. It is our understanding that this view also gathered support at the last WP.CZ: (Drafting):“1a. For the purposes of this Article, the Authority shall establish a peer review committees, which shall be composed of members of competent authorities with the participation of of the staff from the Authority. ~~[In case of peer reviews in relation to combating money-laundering and terrorist financing, the Peer Review Committees shall be chaired by a senior member of ESA staff];~~CZ: (Comments):We are of the view that it is necessary to ensure that the eventually formalized Peer Review Committee is chaired by a member of the Board of Supervisors (BoS) of the relevant ESA and not by an ESA employee. We do not support the proposed changes to the voting rules. In our opinion, BoS should remain the main decision-making body to approve proposals submitted through the Peer Review Committee, in accordance with Article 44 (1), where the double majority rule will be maintained.IE: (Drafting):“1a. For the purposes of this Article, the Authority shall establish ~~a~~ peer review committees, which shall be composed of members of competent authorities with the participation of staff from the Authority. **The Peer Review process will be undertaken by an Assessment Group consisting of a balanced mix of representatives from the Authority and competent national authorities**. ~~exclusively composed of staff from the Authority. The Authority may delegate certain tasks or decisions to the review committee.~~" [*In case of peer reviews in relation to combating money-laundering and terrorist financing, the Peer Review Committees shall be chaired by a senior member of ~~ESA staff~~*~~];~~ **a competent national authority**.IE: (Comments):We do not support ESA staff chairing the AML Peer Review Committee. The ESAs are member organisations and should remain so. The chairing of Committees by ESA staff goes against this objective. In addition the specialist nature of AML/CFT, which spans a broad range of areas, means it is key that the AML Peer Reviews are considered by the Committee that is chaired by a senior member of a NCA who will have the knowledge and experience related to supervision.  We however do believe that ESA staff should be more heavily involved in the work of this committee. We would note that the text doesn‘t take into account the existence of the “Assessment Groups“ that actually undertake the actual Peer Review and produce the reports that are approved by the Committee. This group must contain ESA staff and we would call for the assessment group to be composed of a balanced mix of representatives of NCAs and ESA staff.DK: (Comments):We do not see a need for differentiating between AML/CF peer reviews and other peer reviews with regard to the Chairmanship. FI: (Drafting):“1a. For the purposes of this Article, the Authority shall establish ~~a~~ peer review committees, which shall be composed of members of competent authorities with the participation of ~~at least one member of the~~ staff from the Authority. The committee shall be chaired by a senior member of the staff of the Authority. ~~exclusively composed of staff from the Authority. The Authority may delegate certain tasks or decisions to the review committee.~~" [*In case of peer reviews in relation to combating money-laundering and terrorist financing, the Peer Review Committees shall be chaired by a senior member of ESA staff*];FI: (Comments):We support more flexibility the PCY has suggested with regards the participation of ESA staff. We see that one ESA staff might not be enough, so the adequate number should be decided on a case-by-case basis. However, we think that in any case peer review committees should be chaired by ESA staff members as this would bring more independence to the peer review process. We are also wondering the different process in case of peer reviews in relation to AML aspects and would like to hear further explanation for this. If ESA staff members chaired the peer review committees, it would be better in line with requirement of having a senior member when AML aspects are assessed. FR: (Drafting):For the purposes of this Article, the Authority shall establish a peer review committees, which shall be composed of members of competent authorities **and of ~~with the participation~~**  staff from the Authority. FR: (Comments):- For AML-CFT matters, what would be the articulation between the peer review committee and the internal permanent committee? - The internal permanent committee should give its opinion to EBA on AML/CFT peer reviews criteria, reports and work programme.- There is no point in differentiating the drafting for the staff of competent authorities (*composed of*) and the staff of the ESA (*with the participation of*) |
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| (d) paragraph 2 is amended as follows: |  |
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| (i) the introductory sentence is replaced by the following: |  |
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| "The peer review shall include an assessment of, but shall not be limited to:"; |  |
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| (ii) point (a) to (c) are ~~is~~ replaced by the following: |  |
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| "(a) the adequacy of resources, the degree of independence, and governance arrangements of the competent authority, with particular regard to the effective application of the Union acts referred to in Article 1(2) and the capacity to respond to market developments;  |  |
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| (b) the effectiveness and degree of convergence reached in the application of Union law and in supervisory practice, including regulatory technical standards and implementing technical standards, guidelines and recommendations adopted pursuant to Articles 10 to 16, and the extent to which the supervisory practice achieves the objectives set out in Union law; | EL: (Drafting):(b) the ~~effectiveness and~~ degree of convergence reached in the application of Union law and in supervisory practice, including regulatory technical standards and implementing technical standards, guidelines and recommendations adopted pursuant to Articles 10 to 16, and the extent to which the supervisory practice achieves the objectives set out in Union law;EL: (Comments):We propose to delete the amendment (in green) because peer reviews do not assess the effectiveness regarding the application of Union law, but rather the effectiveness of convergence regarding enforcement measures. LU: (Drafting):(b) the ~~effectiveness and~~ degree of convergence reached in the application of Union law and in supervisory practice, including regulatory technical standards and implementing technical standards, guidelines and recommendations adopted pursuant to Articles 10 to 16, and the extent to which the supervisory practice achieves the objectives set out in Union law;LU: (Comments):We suggest to delete the reference to effectiveness, it is difficult to do an objective assessment and comparison of the effectiveness of regulatory frameworks. |
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| (c) the application of best practices developed by some competent authorities which might be of benefit for other competent authorities to adopt;” |  |
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| (e) paragraph 3 is replaced by the following: |  |
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| "3. The Authority shall produce a report setting out the results of the review which shall be ~~is~~ prepared by the Peer Review Committee and adopted by the Board of Supervisors in accordance with Article 44(4). When drafting that report, the Peer Review Committee shall consult the Management Board in order to maintain consistency with other peer review reports. The Management Board shall assess in particular whether the methodology has been applied in the same manner. The~~at~~ report shall explain and indicate the follow-up measures that are ~~foreseen~~ deemed appropriate and necessary as a result of the review. Those follow-up measures may be adopted in the form of guidelines and recommendations pursuant to Article 16 and opinions pursuant to Article 29(1)(a).  | LV: (Drafting):"3. The Authority shall produce a report setting out the results of the review which shall be~~is~~ prepared by the Peer Review Committee and adopted by the Board of Supervisors in accordance with Article 44(4). When drafting that report, the Peer Review Committee shall consult the Management Board in order to maintain consistency with other peer review reports. The Management Board shall assess in particular whether the methodology has been applied in the same manner. The~~at~~ report shall explain and indicate the follow-up measures that are ~~foreseen~~deemed appropriate and necessary as a result of the review. Those follow-up measures may be adopted in the form of guidelines and recommendations pursuant to Article 16.HR: (Comments):We do not support the link to the changed article 44(4).UK: (Drafting):“[…] The~~at~~ report shall explain and indicate the follow-up measures that are ~~foreseen~~ deemed appropriate, **proportionate** and necessary as a result of the review […]”UK: (Comments):We suggest including the concept of proportionality here to ensure follw-up measures are targetted efficiently.LU: (Comments):As already stressed at the WP, we support the proposal to include a consistency check of the methodology that has been applied in the review process as well as the legal obligation to check the coherence with other peer reviews and corresponding reports that have been conducted and concluded previously. We consider this to be a sensible approach to avoid an unlevel-playing field in the areas of peer reviews. In that respect, a clearer formalization of the consistency check pertaining to the methodology applied should be laid down in the level 1 text in order to make the body conducting the consistency check liable regarding the fulfillment of a clear mandate laid down in the ESA regulations. We are open to further work on this issue.Please correct the reference to art 44.DE: (Comments):DE: With regard to Article 44 (3), see comments below.DK: (Comments):We note that, we do not support the adoption procedure in art. 44(4). FR: (Drafting):3. The Authority shall produce a report setting out the results of the review which shall be is prepared by the Peer Review Committee **~~and adopted by the Board of Supervisors in accordance with Article 44(4)~~.** When drafting that report, the Peer Review Committee shall consult the Management Board in order to maintain consistency with other peer review reports. The Management Board shall assess in particular whether the methodology has been applied in the same manner. The report shall explain and indicate the follow-up measures that are deemed appropriate and necessary as a result of the review. Those follow-up measures may be adopted in the form of guidelines and recommendations pursuant to Article 16 and opinions pursuant to Article 29(1)(a).FR: (Comments):This is a deterioration compared to the current situation, where the Board of Supervisors only approves the publication of the peer review report, not the report itself. |
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| In accordance with Article 16(3), the competent authorities shall make every effort to comply with any guidelines and recommendations issued. ~~Where competent authorities do not take action to address the follow-up measures indicated in the report, the Authority shall issue a follow-up report.~~  |  |
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| When developing draft regulatory technical standards or draft implementing technical standards in accordance with Articles 10 to 15, or guidelines or recommendations in accordance with Article 16, the Authority shall take into account the outcome of the peer review, along with any other information acquired by the Authority in carrying out its tasks, in order to ensure convergence of the highest quality supervisory practices."; |  |
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| (f) the following paragraphs 3a and 3b are inserted: |  |
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| "3a. The Authority shall submit an opinion to the Commission where, having regard to the outcome of the peer review or to any other information acquired by the Authority in carrying out its tasks, it considers that further harmonisation of the rules applicable to financial institutions or competent authorities would be necessary. |  |
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| 3b. The Authority shall undertake a follow up report after two years of the publication of the peer review report. The follow up report shall be prepared by the Peer Review Committee and adopted by the Board of Supervisors in accordance with Article 44(4). When drafting that report, the peer review committee shall consult the Management Board in order to maintain consistency with other follow up reports. The follow up report shall include an assessment of, but shall not be limited to, the adequacy and effectiveness of the actions undertaken by the competent authorities that are subject to the peer review in response to the follow up measures of the peer review report.”  | HR: (Comments):We do not support the link to the changed article 44(4).LU: (Comments):Please correct the reference to art 44.CZ: (Comments):The follow-up should target only the deficiencies identified during the original peer review, The proposed text makes impression that ESAs should undertake the same scope of peer review. Such process could draw resources from the ESA and instead resources could be used for other supervisory convergence work. The text should be clarified in this regard. DK: (Drafting): 3b. The Authority shall undertake a follow up report after two years of the publication of the peer review report. The follow up report shall be prepared by the Peer Review Committee and adopted by the Board of Supervisors in accordance with Article 44(4). When drafting that report, the peer review committee shall consult the Management Board in order to maintain consistency with other follow up reports. The follow up report shall include an assessment of~~, but shall not be limited to,~~ the adequacy and effectiveness of the actions undertaken by the competent authorities that are subject to the peer review in response to the follow up measures of the peer review report.”DK: (Comments):While the assessment underlying this follow up report must be thorough enough to provide a correct status of events, the wording suggests the possibility of more than a follow-up exercise on identified measures. The wording should be more precise by deleting „, but shall not be limited to,“.  |
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| (g) paragraph 4 is replaced by the following: |  |
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| “4. The Authority shall publish the main findings of the report referred to in paragraph 3 and the follow-up report referred to in paragraph 3b~~, the reports referred to in paragraph 3 including any follow-up report~~ , unless publication would involve risks to the stability of the financial system. If ~~T~~the competent authority that is subject to the review is concerned that the publication of the main findings of the reports would pose risks to the stability of the financial system, it shall have the possibility to refer the matter to the Board of Supervisors. The Board of Supervisors may decide by simple majority not to publish these extracts. ~~shall be invited to comment before the publication of any report. Those comments shall be made publicly available unless publication would involve risks to the stability of the financial system.~~"; | HR: (Comments):With regard to paragraph 4. of Article 30, we would suggest to change the approach when an NCA objects to publication of a peer review finding (or parts thereof) on grounds of risks to the stability of the financial system. From our point of view, if an NCA raises a justified concern linked to a risk to financial stability, the default position should be that the publication will not be made. If ESMA’s MB and/or the Peer review committee have doubts on whether or not the NCA’s position is justified, we could consider the possibility for ESMA to then refer the matter to a BoS decision. LU: (Comments):A careful assessment is needed on whether the peer review report and/or the follow-up report can be published without leading to undesirable/unintended consequences. Additional safeguards need to be in place in that regard and further work on the proposals is needed on this issue.IE: (Comments):While we support the publication of the main findings of the report, we believe there is also benefit of publishing the findings of the individual reports. FR: (Drafting):4. The Authority shall publish the main findings of the report referred to in paragraph 3 including any follow-up report referred to in paragraph 3b, unless publication would involve risks to the stability of the financial system. The competent authority that is subject to the review shall be invited to comment before the publication of any report. Those comments shall be made publicly available unless publication would involve risks to the stability of the financial system.If the competent authority that is subject to the review is concerned that the publication of the reports or its comments would pose risks to the stability of the financial system, it shall have the possibility to refer the matter to the Board of Supervisors. The Board of Supervisors may decide by simple majority not to publish these extracts.FR: (Comments):The competent authority concerned by the review should be invited to make comments before its publication. Those comments should be published as well, unless this publication would involve risks to the stability of the financial system. |
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| (h) paragraph 5 is inserted: | LV: (Drafting):(h) paragraph 5 is inserted: |
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| “5. For the purposes of this Article the Management Board shall make a proposal for a ~~draw up a~~ peer review work plan, which shall inter alia reflect the lessons learnt from the past peer review processes and the discussions of the ~~coordination~~ group platforms referred to in Art 29(1)aa. The peer review work plan shall constitute a separate part of the annual and multiannual working programme. It shall be made public.” | LV: (Drafting):“5. For the purposes of this Article the Management Board shall make a proposal for a ~~draw up a~~peer review work plan, which shall inter alia reflect the lessons learnt from the past peer review processes. The peer review work plan shall constitute a separate part of the annual and multiannual working programme. It shall be made public.”EL: (Drafting):~~“5. For the purposes of this Article the Management Board shall make a proposal for a draw up a peer review work plan, which shall inter alia reflect the lessons learnt from the past peer review processes and the discussions of the coordination group platforms referred to in Art 29(1)aa. The peer review work plan shall constitute a separate part of the annual and multiannual working programme. It shall be made public.”~~EL: (Comments):We propose to delete the paragraph. It is not necessary to specifically provide in a level 1 text specific reference to ESA’s additional work plans.LU: (Comments):We agree with the changes highlighted in para.5. Any proposal of the MB regarding the peer review work plan (if we stick to the MB concept) should be validated by the BoS. We remind that the BoS is the ultimate decision making organ of the ESAs and must therefore be involved in the validation of the Peer review and work plan. We still believe that BoS involvement must be confirmed in the text.IE: (Drafting):For the purposes of this Article the Management Board shall ~~make a~~ propos**e,**~~al~~**, for adoption by the Board of Supervisors,** **~~for~~ a** ~~draw up~~ **~~a~~ peer review work plan for the coming two years**, which shall inter alia reflect the lessons learnt from the past peer review processes and the discussions of the coordination group platforms referred to in Art 29(1)aa. The peer review work plan shall constitute a separate part of the annual and multiannual working programme. It shall be made public.”IE: (Comments):We see merit in the Management Board proposing for adoption by the Board of Supervisors a two year Peer Review work plan.FR: (Drafting):5. For the purposes of this Article the Management Board shall make a proposal for a ~~draw up~~ a peer review work plan, **based in particular on the risks assessments performed on competent authorities in accordance with article 9 a) §4 , and** which shall inter alia reflect the lessons learnt from the past peer review processes and the discussions of the **coordination** **groups**  ~~platforms~~ referred to in Art 29(1)aa. The peer review work plan shall constitute a separate part of the annual and multiannual working programme. It shall be made public.”FR: (Comments):The peer review work plan should take into account risks assessments performed by the EBA on competent authorities (article 9 a) § 4.).  |
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| Art 31a is deleted. | DE: (Comments):DE: We agree, Article 31a to be deleted.IE: (Comments):We fully support the deletion of Article 31a. We do not believe the framework proposed would help ensure supervisory convergence, and added unnecessary layers into approval processes and uncertainty into the supervisory process. DK: (Comments):We support the proposal for this deletion.**FR:** **(Drafting):****Article 31a - Coordination and convergence on delegation and outsourcing of activities** **1. The Authority shall use its powers under this Regulation to promote supervisory convergence amongst competent authorities with regard to the delegation and outsourcing of activities by financial market participants that are under the supervision of the competent authorities in accordance with the acts referred to in Article 1(2).****2. To that end, the Authority shall develop guidelines addressed to the competent authorities on the supervision and enforcement of the conditions under which financial market participants may outsource or delegate a material part of their activities or any of the key functions or the risk transfer of a material part of their activities to third countries. The guidelines shall be published by [enter date 1 year after entry into force of this Regulation].****4. Without prejudice to Article 30, the Authority shall organize and conduct regular peer reviews of the procedures and verifications performed by competent authorities when authorizing or registering a financial market participant whose business plan entails the outsourcing or delegation of a material part of its activities or any of the key functions or the risk transfer of a material part of its activities into third countries. The peer reviews shall assess in particular the impact of different approaches with regard to the application of the guidelines referred to in paragraph 1.****The report on the first review shall be published by [enter date [2/3] years after entry into application of this Regulation].**FR: (Comments):The framework principles applicable to delegation and outsourcing arrangements, that today exist in the form of ESA Opinions, should be formalized so as to have a stronger legal force; and an assessment of their supervision and enforcement across all Member States should be undertaken regularly. One should therefore:- transform the Opinions adopted by the ESA in July 2017 on delegation and outsourcing into Guidelines;Ensure regular (e.g. every 2 years) peer reviews on the supervision and enforcement of material delegation/outsourcing arrangements.This formalization of the rules already applicable to outsourcing and delegation arrangements and their supervision and enforcement does not question the ability of EU entities to continue to have recourse to those arrangements. These have proven useful and should continue to be allowed. The aim is not to modify existing business models, it is about preserving a sound environment for market players and investors, by formalising the existing rules and procedures. |
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| Article 32 is amended as follows: | FR: (Comments):We broadly support the initial drafting of this article.  |
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| (i) paragraph (2a):  |  |
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| “2a. At least annually, the Authority shall consider whether it is appropriate to carry out Union-wide assessments referred to in paragraph 2 and shall inform the European Parliament, the Council and the Commission of its reasoning. ~~Where such Union- wide assessments are carried out and the Authority considers it appropriate to do so, it shall disclose the results for each participating financial institution.~~ | BE: (Comments):We support the deletion on the disclosure.NL: (Comments):The amendment of Article 32, paragraph 2a, that results in the deletion of the proposal to disclose the individual results of EU stress tests, is not clear to us. In the first place, we question the need of the proposal of the Presidency to delete this part of the proposal (only) in the EBA regulation. It is unclear how the deletion of this reference to the disclosure of stress tests results corresponds with Article 53, paragraph 3, of CRD IV and the second subparagraph, included below. Both provisions state that the requirement of professional secrecy does not prevent competent authorities from publishing the outcome of stress tests, or from transmitting the outcome of stress tests to EBA for the purpose of publication by EBA of the results of Union-wide stress tests. As we’ve mentioned before, the Netherlands strongly opposes the publication of individual results for IORP’s. This proposal is part of the proposals to amend Regulation 1094/2010, with regard to EIOPA. As the requirements for IORP’s differ significantly throughout the Union, it is difficult to compare the results of stress tests. We therefore question the relevance of publishing these results. For this reason, we suggest an amendment of the corresponding proposal in the EIOPA regulation instead (Article 32, paragraph 2a). At this moment, such a proposal is missing from the Presidency’s compromise proposals. Please also note that, at the same time, we could support the publication by EIOPA of individual results for insurance undertakings, in accordance with the Solvency II requirements. DE: (Drafting):“2a. At least annually, the Authority shall consider whether it is appropriate to carry out Union-wide assessments referred to in paragraph 2 and shall inform the European Parliament, the Council and the Commission of its reasoning. **Where such Union- wide assessments are carried out and the Authority considers it appropriate to do so, it shall disclose the results for each participating financial institution.**DE: (Comments):DE: We do not consider it appropriate to fall below the status quo. As EBA today discloses the results of Union-wide assessments, we do not see the need for a change here. If different sectoral approaches are deemed necessary across the ESAs, we are open to discussing these arguments.DK: (Drafting):Only for the EBA Regulation:“2a. At least annually, the Authority shall consider whether it is appropriate to carry out Union-wide assessments referred to in paragraph 2 and shall inform the European Parliament, the Council and the Commission of its reasoning. **Where such Union- wide assessments are carried out and the Authority considers it appropriate to do so, it shall disclose the results for each participating financial institution.**DK: (Comments):The publication requirement should be kept for the EBA regulation as such practice is already customary. Therefore, the deleted sentence should be maintained for the EBA Regulation but not for the ESMA and EIOPA Regulations. FI: (Comments):In the last CWG the PCY pointed out that the deletion of disclosure of individual stress test results would not cover EBA Regulation. We would like to see this also in the text because we find it very important that the possibility to publish individual bank stress test results is maintained for the EBA. We would also like to see other stress test results published, as proposed by the COM.FR: (Drafting):2a. At least annually, the Authority shall consider whether it is appropriate to carry out Union-wide assessments referred to in paragraph 2 and shall inform the European Parliament, the Council and the Commission of its reasoning. Where such Union- wide assessments are carried out and the Authority considers it appropriate to do so, it shall disclose the results for each participating financial institution. |
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| Professional secrecy obligations of competent authorities shall not prevent the competent authorities from publishing the outcome of Union-wide assessments referred to in paragraph 2 or from transmitting the outcome of such assessments to the Authority for the purpose of the publication by the Authority of the results of Union-wide assessments of the resilience of financial institutions.” | NL: (Comments):Please note our comment above. IE: (Comments):We welcome the clarification here regarding the ability of competent authorities to publish the outcomes.  |
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| (ii) paragraph (3a)  |  |
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| “3a. The Authority may require competent authorities to conduct specific reviews. It may request competent authorities to carry out on-site inspections~~, and may participate in such on-site inspections in accordance with Article 21 and subject to the conditions set out therein, in order to ensure comparability and reliability of methods, practices and results.”~~ | EL: (Comments):Please, specify if this provision is EBA related only or not.ES: (Drafting):“3a. In the context of union wide assessments, the Authority may require competent authorities to conduct specific reviews. It may also request competent authorities to carry out on-site inspections.ES: (Comments):A reference should be introduced so that specific reviews and on-site inspections are done in the context of union wide assessments. Otherwise, the paragraph is too vague.HR: (Drafting):„“3a.   The Authority may ~~require~~ **recommend to the** competent authorities to conduct specific reviews. It may ~~request~~ **recommend to the** competent authorities to carry out on-site inspections.HR: (Comments):We do not agree with Article 32 paragraph 3a and would ask for the following revisions.DK: (Drafting):3a. The Authority may require competent authorities to conduct specific reviews. It may request competent authorities to carry out on-site inspections, **and may participate in such on-site inspections in accordance with Article 21 and subject to the conditions set out therein, in order to ensure comparability and reliability of methods, practices and results.**”DK: (Comments):As far as we can assess, this provision is already included in the EBA regulation. Therefore, we find it should be retained for the EBA Regulation but not in the ESMA og EIOPA Regulation. FR: (Drafting):3a. The Authority may require competent authorities to conduct specific reviews. It may request competent authorities to carry out on-site inspections, and may participate in such on-site inspections in accordance with Article 21 and subject to the conditions set out therein, in order to ensure comparability and reliability of methods, practices and results. |
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| Article 33 is amended as follows: | UK: (Comments):We are supportive of a clearly defined role for the ESAs in equivalence determinations. This can give confidence to EU institutions, Member States, NCAs, third countries and markets on the quality of those determinations.Given that the on-going monitoring and reporting process are new empowerments it is important that expectations for the ESAs, EU institutions and third countries are well defined in the Regulation.Further, given the number of different jurisdictions and equivalence determinations in place today, what has been proposed by the Commission would be a resource intensive process (past examples of calls for volunteers suggests that the ESAs do not currently have sufficient resources to meet the process proposed).LU: (Comments):We are of the view that amendments to Article 33 should be discussed in more detail with experts in the WP. The potential consequences of the provision should be carefully assessed. Please also refer to our initial comments on this article.IE: (Comments):We believe it is important to increase the role of the ESAs in our Equivalence frameworks. These are the organisations with the required expertise to monitor the regulatory, supervisory and enforcement practices of relevant 3rd country jurisdictions. It is important that we ensure the equivalence process remains primarily a technical process. We are supportive of the changes proposed by the Presidency, and believe some further amendments could be made to strengthen the framework further. DK: (Comments):We propose that this article be subject for discussion at the next Council Working Pary meeting. We are supportive of a defined role for the ESAs in the area of equivalence assessments and support putting consistent monitoring features in places. However, the tasks and the role must be precise and clearly set out in level 1 to ensure consistency and reliability in the work. Considering the amount of equivalence assessments already undertaken today, we find that the current wording of the Commission proposal sets out a very resource intensive process requiring extensive staff allocation both at the ESA but also at the NCA level. Similarly, it would does not seem feasible nor necessary to conduct full assessments on an annual basis of all relevant jurisdictions. We include some initial proposals for changes but would wish to revert after a discussion at the next meeting. FI: (Drafting):“2. The Authority shall assist the Commission in preparing equivalence decisions pertaining to regulatory and supervisory regimes in third countries **following a specific request for advice from the Commission or** where required to do so by the acts referred to in Article 1(2)."FI: (Comments):We have strongly supported the COM proposal in enhancing the third country equivalence process. We can support the amendments the PCY has made in para 2a and 2c. However, we would still like to support the amendments in para 2 as suggested by the COM proposal as they confirm that ESAs shall assist the COM in preparing equivalence decision also when requested by the COM.  |
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| (j) para (2a) |  |
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| “2a. The Authority shall periodically monitor regulatory and supervisory developments and enforcement practices and relevant market developments in third countries for which equivalence decisions have been adopted by the Commission pursuant to the acts referred to in Article 1(2) in order to verify whether the criteria, on the basis of which those decisions have been taken and any conditions set out therein, are still fulfilled. It shall take into account the market relevance of the third countries concerned. The Authority shall submit a confidential report on its findings to the Commission on an annual basis. | UK: (Drafting):"2a. The Authority shall ***periodically*** monitor ***relevant*** regulatory and supervisory developments and enforcement practices ~~and relevant market developments~~ in third countries for which equivalence decisions have been adopted by the Commission pursuant to the acts referred to in Article 1(2) in order to verify whether the criteria, on the basis of which those decisions have been taken and any conditions set out therein, are still fulfilled. ***The Authority ~~should~~ shall liaise with relevant authorities in the third country in its monitoring role, in line with an associated administrative arrangement. The Authority may consult with third country authorities when drafting its reports in order to avoid mistakes of fact.***  The Authority shall submit a ~~confidential~~ report on its findings to the Commission ~~on an annual basis.~~ ***every 4 years, or at the request of the Board of Supervisors.***  ***Within 5 working days the report must be shared with the Board of Supervisors, the Joint Committee of the ESAs, the European Parliament and the European Council. The report shall be shared with the third country‘s authorities at the same time.”***UK: (Comments):We support the Presidency‘s revisions and reflect them, e.g. the inclusion of “periodically“. For clarity, it should be clear that the “relevant“ regulatory and supervisory developments are in scope, i.e. those that relate to the equivalence determination. For transparency and quality, the ESAs should be empowered to liaise with the relevant third country as needed. This will create conditions for information sharing, ensure comprehensive understanding of the third coutries approach and ensure the overall findings of the report are accurate. A report produced on a 4-yearly basis is more achievable in terms of ESA funding and resource than an annual report. However, an important safeguard is introduced allowing the Board of Supervisors to direct the Authority to undertake a review if needed.It is appropriate that the report is shared in confidence with the relevant EU institutions for them to review, as well as the third country to whom it pertains. Doing so will enhance the transparency of the EU process.DE: (Comments):DE: Annual reports might be burdensome to the ESA resources and not necessary in every case. A more flexible solution might be worth considering (f.i. if deemed necessary but at least every [2-3] years).IE: (Comments):The annual basis of a report is questionable in our view. It is highly unlikely that a jurisdiction will be making significant changes to its framework on an annual basis. There should be consideration of a longer time frame for this report, or for the ability for a report to be done if a 3rd country announces it is undertaking a significant reform of the relevant supervisory, regulatory and/or enforcement practises. Consideration should also be given for a wider circulation of this report within the Union and to the relevant 3rd country authorities. DK: (Drafting):“2a. The Authority shall ~~periodically~~monitor regulatory and supervisory developments and enforcement practices ~~and relevant market developments~~ in third countries for which equivalence decisions have been adopted by the Commission pursuant to the acts referred to in Article 1(2) in order to verify whether the criteria, on the basis of which those decisions have been taken and any conditions set out therein, are still fulfilled**. Monitoring activity shall be based on a risk based approach including reference to the on-going exchange between authorities and the market relevance of a third country concerned.** ~~It shall take into account the market relevance of the third countries concerned.~~ The Authority shall submit a confidential report on its findings to the Commission on an annual basis.DK: (Comments):We would agree with views expressed at the last Council Working Party that the addition of „periodically“ may not provide much by way of clarification of the task or the frequency of the work to be undertaken. Monitoring market developments in the third country jurisdictions would require vast resources and but also does not constitute a criterion in an equivalence assessment. Therefore, we believe the reference should be deleted. We understand the proposals by the PSY to reflect the possibility for the ESAs to perform their monitoring on a risk based approach according to the market relevance of a third country. A possible alternative wording proposed to reach that effect. |
|  | UK: (Drafting):***2aa. The report referred to in paragraph 2a should include reference to:******- developments or changes in the third countries‘ rules relevant to the equivalence decision******- developments or changes in the third countries‘ supervisory practices relevant to the equivalence decision******- a summary of completed enforcement action undertaken as a result of cross-border activity******- an assessment of whether the third country continues to fulfil the relevant equivalence criteria and any associated conditions.***UK: (Comments):We believe it would be of value to set out clearly the minimum expected content of any report.This was attempted in Article 2b (below) but the original drafting is accidentally repetitive and actually creates a second annual report process. The purpose of this addition here is to put all drafting about the relevant criteria for assessments in one place. |
| Without prejudice to specific requirements set out in the acts referred to in Article 1(2) and subject to the conditions set out in the second sentence of paragraph 1, the Authority shall where possible cooperate with the relevant competent authorities, and where appropriate, also with resolution authorities, of third countries whose legal and supervisory regimes have been recognised as equivalent. That cooperation shall be pursued on the basis of administrative arrangements concluded with the relevant authorities of those third countries. When negotiating such administrative arrangements, the Authority shall seek to include provisions on the following: | UK: (Drafting):the Authority shall where possible cooperate with the relevant competent authorities~~, and where appropriate, also with resolution authorities,~~ of third countries whose legal and supervisory regimes have been recognised as equivalent.UK: (Comments):We supoprt the Presdiency addition of „seek to“. In addition we suggest deleting the explicit reference to resolution authorities, since the BRRD does not have an equivalence regime for third countries and the draft CCP R&R dossier does not introduce an equivalence regime either. However, should Resolution Authorities need to be involved they could be, through the relationship the ESA has with the third country CA.  |
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| (a) the mechanisms which allow the Authority to obtain relevant information, including information on the regulatory regime, the supervisory approach, relevant market developments and any changes that may affect the decision on equivalence; |  |
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| (b) to the extent necessary for the follow up of such decisions on equivalence ~~where relevant to the extent necessary for the follow-up of such decisions on equivalence~~, the procedures concerning the coordination of supervisory activities including, where necessary, on-site inspections. | UK: (Drafting):„where relevant to the extent necessary for the follow-up of such decisions on equivalence, the procedures concerning the coordination of supervisory activities including, where necessary, **participation in** on-site inspections.”UK: (Comments):On-site supervision requests are a standard feature of supervisory cooperation MoUs. They ordinarily involve a request to the third country authority to participate in an inspection. |
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| The Authority shall inform the Commission where a third-country competent authority refuses to conclude such administrative arrangements or when it refuses to effectively cooperate. The Commission shall take this information into account when reviewing the relevant equivalence decisions.” | LU: (Drafting):The Authority shall inform the Commission where a third-country competent authority refuses to conclude such administrative arrangements or when it refuses to effectively cooperate. ~~The Commission shall take this information into account when reviewing the relevant equivalence decisions.”~~LU: (Comments):Please refer to our initial comments. Equivalence decisions should be technical decisions based on elements relevant to determine equivalence. |
|  | UK: (Drafting):2b. Where the Authority identifies developments in relation to the ***relevant financial services*** regulation, supervision or the enforcement practices in the third countries referred to in paragraph 2a that may impact the financial stability of the Union or of one or more of its Member States, market integrity or investor protection or the functioning of the internal market, it shall inform the Commission on a confidential basis and without delay.  ***The Authority, in collaboration with relevant NCAs shall cooperate with the third country authorities to mitigate risks identified.*** ~~The Authority shall on an annual basis submit a confidential report to the Commission on the regulatory, supervisory, enforcement and market developments in the third countries referred to in paragraph 2a with a particular focus on their implications for financial stability, market integrity, investor protection or the functioning of the internal market.~~UK: (Comments):This provision does not strictly relate to an equivalence decision. We would suggest that in the interest of cooperation and financial stability such reports are shared with third country authorities.The second sub-paragraph repeats the reporting obligation in Article 2a and would accidentally create a second annual reporting obligation. We believe this is an error.  |
| (ii) para (2c):  |  |
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| “2c. The competent authorities shall inform the Authority in advance of their intentions to conclude any administrative arrangements with third-country supervisory authorities in any of the areas governed by the acts referred to in Article 1(2), including in relation to branches of third country entities. They shall provide simultaneously to the Authority a draft of such planned arrangements. | UK: (Drafting):DeleteOr“2c. The competent authorities shall inform the Authority ~~in advance of their intentions to~~ **of** conclude**d** ~~any~~ administrative arrangements with third-country supervisory authorities in any of the areas governed by the acts referred to in Article 1(2), including in relation to branches of third country entities. They shall provide ~~simultaneously to~~ the Authority ~~a draft of such planned arrangements.~~ **with a copy of the agreed arrangement**.UK: (Comments):The intention of this paragraph is unclear. This goes beyond the criteria for equivalence decisions and interferes with branch supervision and cooperation arrangements, which are a national competency.If this provision were kept, we suggest amending the obligation: changing it from informing the Authority in advance, to instead notifying the Authority once this has been concluded. A register of administrative arrangements could potentially also be published on the ESA website – for greater transparency, to promote best practice, and to encourage supervisory convergence.LU: (Drafting):~~The competent authorities shall inform the Authority in advance of their intentions to conclude any administrative arrangements with third-country supervisory authorities in any of the areas governed by the acts referred to in Article 1(2), including in relation to branches of third country entities. They shall provide simultaneously to the Authority a draft of such planned arrangements.~~LU: (Comments):It should be avoided that equivalence decisions become a political tool. NCAs should remain free to conclude such arrangements with third countries where relevant, in particular for the sake of efficient supervision or resolution as well as to preserve financial stability in their respective MS. Please refer to our initial comments.DE: (Drafting):**~~2c. The competent authorities shall inform the Authority in advance of their intentions to conclude any administrative arrangements with third-country supervisory authorities in any of the areas governed by the acts referred to in Article 1(2), including in relation to branches of third country entities. They shall provide simultaneously to the Authority a draft of such planned arrangements.~~**DE: (Comments):DE: Delete.IE: (Drafting):~~“2c. The competent authorities shall inform the Authority in advance of their intentions to conclude any administrative arrangements with third-country supervisory authorities in any of the areas governed by the acts referred to in Article 1(2), including in relation to branches of third country entities. They shall provide simultaneously to the Authority a draft of such planned arrangements.~~IE: (Comments):We remain unclear as to what the intention of this provision is and its links with 3rd country equivalence frameworks or international relations of the ESAs. We believe this should be deleted.  |
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| The Authority may develop model administrative arrangements, with a view to establishing consistent, efficient and effective supervisory practices within the Union and to strengthening international supervisory coordination. In accordance with Article 16(3), the competent authorities shall endeavour ~~make every effort~~ to follow such model arrangements. | UK: (Comments):We support the Presidency’s changes.LU: (Drafting):~~The Authority may develop model administrative arrangements, with a view to establishing consistent, efficient and effective supervisory practices within the Union and to strengthening international supervisory coordination. In accordance with Article 16(3), the competent authorities shall endeavour make every effort to follow such model arrangements.~~LU: (Comments):Please see above. |
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| In the report referred to in Article 43(5), the Authority shall include information on the administrative arrangements agreed upon with supervisory authorities, international organisations or administrations in third countries, the assistance provided by the Authority to the Commission in preparing equivalence decisions and the monitoring activity pursued by the Authority in accordance with paragraph 2a.” | IE: (Comments):How does the report interact with the annual report in 2a? If it is a duplication then this text should be amended.  |
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| Article 35 is amended as follows: | DK: (Comments):We support the proposals for art. 35. |
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| (a) paragraphs 1, 2 and 3 are replaced by the following: |  |
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| "1. At the request of the Authority, the competent authorities shall provide the Authority with all the necessary information to carry out the tasks conferred on it by this Regulation, provided that they have legal access to the relevant information.  | LV: (Comments):A regular review should be made to see if the availability of information to the Authority is sufficient and if there are legal impediments to the access to information that need to be addressed at the EU level. |
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| The information provided shall be accurate, complete and submitted within the time limit prescribed by the Authority. | LU: (Drafting):The information provided shall be accurate, complete and submitted ~~within the time limit prescribed by~~ **without undue delay to** the Authority. |
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| 2. The Authority may also request information to be provided at recurring intervals and in specified formats or by way of comparable templates approved by the Authority. Such requests shall, where possible, be made using common reporting formats. |  |
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| 3. Upon a duly justified request from a competent authority, the Authority shall provide any information that is necessary to enable the competent authority to carry out its tasks in accordance with the professional secrecy obligations laid down in sectoral legislation and in Article 70."; |  |
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| (b) paragraph 5 is replaced by the following: |  |
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| "5. Where information requested in accordance with paragraph 1 is not available or is not made available by the competent authorities within the time limit set by the Authority, the Authority may address a duly justified and reasoned request to any of the following: | LU: (Drafting):"5. Where information requested in accordance with paragraph 1 is not available or is not made available by the competent authorities ~~within the time limit set by~~ **without undue delay to** the Authority, the Authority may address a duly justified and reasoned request to any of the following: |
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| (a) other authorities with supervisory functions;  |  |
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| (b) to the ministry responsible for finance in the Member State concerned where it has at its disposal prudential information; |  |
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| (c) to the national central bank of the Member State concerned; |  |
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| (d) to the statistical office of the Member State concerned. |  |
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| At the request of the Authority, the competent authorities shall assist the Authority in collecting the information."; |  |
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| ~~(c) paragraphs 6 and 7a are deleted :~~ |  |
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| 6.  Where complete or accurate information is not available or is not made available in a timely fashion under paragraph 1 or 5, the Authority may request information, by way of a duly justified and reasoned request, directly from: | HR: (Comments):We still have concerns on paragraphs 6. and 7.a of Article 35 (direct provision of information to the Authority by firms in MS), especially for non-regulated operational entities within a financial group, and would prefer if these provisions were deleted.  |
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| (a) relevant financial institutions; |  |
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| (b) holding companies or branches of a relevant financial institution; |  |
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| (c) non-regulated operational entities within a financial group or conglomerate that are significant to the financial activities of the relevant financial institutions. |  |
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| The addressees of such a request shall provide the Authority promptly and without undue delay with clear, accurate and complete information. |  |
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| The Authority shall inform the relevant competent authorities of requests in accordance with this paragraph and with paragraph 5. |  |
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| At the request of the Authority, the competent authorities shall assist the Authority in collecting the information. |  |
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| 7.  The Authority may use confidential information received pursuant to this Article only for the purposes of carrying out the duties assigned to it by this Regulation. |  |
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| 7a.  Where the addressees of a request under paragraph 6 do not provide clear, accurate and complete information promptly, the Authority shall inform the European Central Bank where applicable and the relevant authorities in the Member States concerned which, subject to national law, shall cooperate with the Authority with a view of ensuring full access to the information and to any originating documents, books or records to which the addressees have legal access in order to verify the information. | HR: (Comments):We still have concerns on paragraphs 6. and 7.a of Article 35 (direct provision of information to the Authority by firms in MS), especially for non-regulated operational entities within a financial group, and would prefer if these provisions were deleted.  |
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| Art. 35a, 35b, 35c, 35d, 35e, 35f, 35g and 35h and the references to these Articles are deleted.  | DE: (Comments):DE: We agree, information gathering powers to be deleted.DK: (Comments):We support the proposal to delete the references.  |
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| Article 40 parapgraph 1 is amended as follows: | DE: (Comments):DE: General comments with regard to the governance: We agree with Presidency not to introduce an Executive Board. The last changes proposed by the Presidency progress in the right direction. Further work is needed especially with regard to the following issues:- The composition of the Management Board should reflect member driven character of the ESAs- appointment procedure for ESA-staff- The written procedure proposed in Art. 44 (4). |
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| "(aa) the full time members of the ~~Executive~~ Management Board referred to Article 45(1), who shall be non-voting;"; | LU: (Comments):Please refer to our comments on the management board below.DE: (Comments):DE: See below.IE: (Comments):We are supportive of full time Management Board members being non-voting. |
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| Article 41 is replaced by the following: |  |
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| "Article 41 | FI: (Comments):We have provided our drafting suggestions regarding the internal committees (ResCo) separately and would like to see them included in the compromise text. |
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| Internal committees |  |
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| "The Board of Supervisors may establish internal committees for specific tasks attributed to it. The Board of Supervisors may provide for the delegation of certain clearly defined tasks and decisions to internal committees~~, to the Executive Board or to the Chairperson.";~~ or to the Management Board. Where internal committees have been established in relation to Art 16 and Art. 19, they shall be chaired by the Vice-Chair of the Management Board.” | EL: (Comments):Our understanding is that it should be a reference to article 17, instead of 16.ES: (Drafting):"The Board of Supervisors may establish internal committees for specific tasks attributed to it. The Board of Supervisors may provide for the delegation of certain clearly defined tasks and decisions to internal committees~~, to the Executive Board or to the Chairperson."~~; or to the Management Board. Where internal committees have been established in relation to Art **17** and Art. 19, they shall be chaired by the Vice-Chair of the Management Board.”ES: (Comments):The current drafting of art. 41, when referring to internal committees, singularizes only two committees of a special relevance and nature: committees related to art. 17 (breach of Union Law) and 19 (binding mediation). We think therefore that the reference here should be made to arts. 17 and 19 instead of 16 and 19.DE: (Drafting):“[…] Art **~~16~~** **17**[…]”.DE: (Comments):DE: Reference should be checked. CZ: (Drafting):"The Board of Supervisors may establish internal committees for specific tasks attributed to it. The Board of Supervisors may provide for the delegation of certain clearly defined tasks and decisions to internal committees~~, or to the Management Board. Where internal committees have been established in relation to Art 16 and Art. 19, they shall be chaired by the Vice-Chair of the Management Board~~.”CZ: (Comments):We support maintaining the current governance model as we consider the current governance model as appropriate, and we are not aware of any significant shortcomings.DK: (Drafting):"The Board of Supervisors may establish internal committees for specific tasks attributed to it. The Board of Supervisors may provide for the delegation of certain clearly defined tasks and decisions to internal committees~~, to the Executive Board or to the Chairperson.";,~~ ~~or~~ to the Management Board **or to the Chairperson**. ~~Where internal committees have been established in relation to Art 16 and Art. 19, they shall be chaired by the Vice-Chair of the Management Board.~~”DK: (Comments):We would propose to maintain the same access to delegation as today, i.e. also to the Chairperson.We continue to be sceptical with regard to mandatory ESA staff chairmanship of internal committees and would wish to see this in an overall governance package prior to expressing a final view.  |
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| Article 43 is amended as follows: |  |
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| (a) paragraph 1 is replaced by the following: |  |
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| "1. The Board of Supervisors shall give guidance to the work of the Authority and shall be in charge of taking the decisions referred to in chapter II. The  ~~Save as otherwise provided in this Regulation the~~ Board of Supervisors shall adopt ~~the~~ opinions, recommendations, guidelines and decisions of the Authority, and issue the advice referred to in Chapter II, based on preparations by the relevant internal committees or ~~a proposal from~~ the ~~Executive~~ Management Board."; | FR: (Comments):What does this cover exactly? |
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| (b) paragraphs 2 and 3 are deleted; | DE: (Comments):DE: With regard to appointment procedure of the Chair, please see our comments below. |
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| (c) in paragraph 4, the first subparagraph is replaced by the following: |  |
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| "The Board of Supervisors shall adopt, before 30 September of each year, on the basis of a proposal by the ~~Executive~~ Management Board, the work programme of the Authority for the coming year, and shall transmit it for information to the European Parliament, the Council and the Commission."; |  |
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| (d) paragraph 5 is replaced by the following: |  |
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| "5. The Board of Supervisors shall adopt, on the basis of a proposal by the ~~Executive~~ Management Board, the annual report on the activities of the Authority, including on the performance of the Chairperson’s duties, on the basis of the draft report referred to in Article 53(7) and shall transmit that report to the European Parliament, the Council, the Commission, the Court of Auditors and the European Economic and Social Committee by 15 June each year. The report shall be made public.";  |  |
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| (e) paragraph 8 is deleted; | LU: (Drafting):~~(e) paragraph 8 is deleted;~~LU: (Comments):We do not see a reason to delete paragraph 8. |
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| Article 44 is amended as follows: |  |
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| (a) the second subparagraph of paragraph 1 is replaced by the following: |  |
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| "With regard to the acts specified in Articles 10 to 16 and measures and decisions adopted under the third subparagraph of Article 9(5) and Chapter VI and by way of derogation from the first subparagraph of this paragraph, the Board of Supervisors shall take decisions on the basis of a qualified majority of its members, as defined in Article 16(4) of the Treaty on European Union, which shall include at least a simple majority of the members, present at the vote, from competent authorities of Member States that are participating Member States as defined in point 1 of Article 2 of Regulation (EU) No 1024/2013 (participating Member States) and a simple majority of the members, present at the vote, from competent authorities of Member States that are not participating Member States as defined in point 1 of Article 2 of Regulation (EU) No 1024/2013 (non-participating Member States).  | DE: (Drafting):"With regard to the **adoption of** acts**, drafts and instruments** specified in Articles 10 to 16**, 16a, Article 29 (1) point a, and Article 34 (1)** and measures and decisions adopted under the third subparagraph of Article 9(5) and Chapter VI and by way of derogation from the first subparagraph of this paragraph, the Board of Supervisors shall take decisions on the basis of a qualified majority of its members, as defined in Article 16(4) of the Treaty on European Union, which shall include at least a simple majority of the members, present at the vote, from competent authorities of Member States that are participating Member States as defined in point 1 of Article 2 of Regulation (EU) No 1024/2013 (participating Member States) and a simple majority of the members, present at the vote, from competent authorities of Member States that are not participating Member States as defined in point 1 of Article 2 of Regulation (EU) No 1024/2013 (non-participating Member States). **With regard to decisions on the development of acts and instruments under Article 16, 16a, Article 29 (1) point a and Article 34 (1), decisions shall be taken on the basis of a qualified majority of its members, as defined in Article 16(4) of the Treaty on European Union.**”DE: (Comments):DE: Proposed changes to strengthen the procedures around Level 3-measures.  |
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| ~~The full time members of the Executive Board and the Chairperson shall not vote on these decisions.";~~ |  |
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| (b) in paragraph 1, the third, fourth, fifth and sixth subparagraphs are deleted; | PL: (Comments):Since the deletion of para three and four was a consequence of the COM proposal to give the decision making power of art. 17 and 19 decisions to the Executive Board we are of the opinion that in case the written procedure is objected to, the double majorities in art. 17 and 19-decisions are maintained in the EBA-regulation.Below is our proposition of a new drafting.SE: (Comments):**SE**: The deletion of para three and four was a consequence of the COM proposal to give the decision making power of art. 17 and 19 decisions to the Executive board. We urge, in line with the discussions in the working party, that in case the written procedure is objected to, the double majorities in art. 17 and 19-decisions are maintained in the EBA-regulation. In order to fit the new drafting, an adjusted text of the current para. three and four should be included below. LU: (Comments):We do not agree to this deletion, current voting modalities should be maintained on articles 17, 19 and 30.DK: (Comments):We believe it is important to ensure an adequate balance of Union representation in voting rules of the EBA. However, the final manner to ensure such will depend on the final governance structure yet to be found.  |
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| (c) paragraph 4 is replaced by the following: |  |
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| "4. With regard to the decisions in accordance with Article 17, Article 19 and Article 30  ~~a quorum of two thirds of the voting member of the Board of Supervisors is needed to amend the decision proposed by the Management Board or the peer review committee.";~~ the Board of Supervisors shall vote on the proposed decisions in a written procedure.  The voting members of the Board of Supervisors shall have ten (10) working days to vote.  The proposed decision will be considered  adopted unless a simple majority of voting members of the Board of Supervisors objects.  Abstentions will not be counted as approvals or as objections, and will not be considered when calculating the number of votes cast. If [three] /[five] voting members of the Board of Supervisors object to the written procedure, the draft decision will be discussed and decided on by the Board of Supervisors in accordance with the procedure set out in paragraph 1 [of this Article].   | LV: (Drafting):"4. With regard to the decisions in accordance with Article 17, Article 19 and Article 30 ~~a quorum of two thirds of the voting member of the Board of Supervisors is needed to amend the decision proposed by the Management Board or the peer review committee.";~~ the Board of Supervisors shall vote on the proposed decisions in a written procedure. The voting members of the Board of Supervisors shall have ten (10) working days to vote. The proposed decision will be considered adopted **if** a simple majority of voting members of the Board of Supervisors **accept**. Abstentions will not be counted as approvals or as objections, and will not be considered when calculating the number of votes cast. If [three] voting members of the Board of Supervisors object to the written procedure, the draft decision will be discussed and decided on by the Board of Supervisors in accordance with the procedure set out in paragraph 1 [of this Article].LV: (Comments):As expressed already in our previous comments, we support maintaining the principle that decisions have to be taken by the BoS.We would rather prefer “The proposed decision will be considered adopted if a simple majority of the voting members of the BoS accept”. In addition, the voting mechanism should not been made too complicated.BE: (Comments):We prefer this wording compared to the previous one. However, we are still concerned with the fact that the BoS will vote in a written procedure. We believe that issues related to art.17, 19 and 30 are very important and that the BoS should be properly informed. Therefore a discussion in the BoS seems more appropriate than a written procedure.PL: (Drafting):"4. With regard to the decisions in accordance with Article 17, Article 19 and Article 30  ~~a quorum of two thirds of the voting member of the Board of Supervisors is needed to amend the decision proposed by the Management Board or the peer review committee.";~~ the Board of Supervisors shall vote on the proposed decisions in a written procedure.  The voting members of the Board of Supervisors shall have ten (10) working days to vote.  The proposed decision will be considered  adopted unless a simple majority of voting members of the Board of Supervisors objects.  Abstentions will not be counted as approvals or as objections, and will not be considered when calculating the number of votes cast. If ~~[~~**three**~~] /[five]~~ voting members of the Board of Supervisors object to the written procedure, the draft decision will be discussed and decided on by the Board of Supervisors in accordance with the procedure set out in paragraph ~~1 [~~new number referring to subparagraph below~~]~~ [of this Article]. PL: (Comments):The rationale behind this drafting suggestion is that 3 members of BoS should be able to object the written procedure.SE: (Drafting):"4. With regard to the decisions in accordance with Article 17, Article 19 and Article 30  ~~a quorum of two thirds of the voting member of the Board of Supervisors is needed to amend the decision proposed by the Management Board or the peer review committee.";~~ the Board of Supervisors shall vote on the proposed decisions in a written procedure.  The voting members of the Board of Supervisors shall have ten (10) working days to vote.  The proposed decision will be considered  adopted unless a simple majority of voting members of the Board of Supervisors objects.  Abstentions will not be counted as approvals or as objections, and will not be considered when calculating the number of votes cast. If ~~[~~**three**~~] /[five]~~ voting members of the Board of Supervisors object to the written procedure, the draft decision will be discussed and decided on by the Board of Supervisors in accordance with the procedure set out in paragraph ~~1 [~~new number referring to subparagraph below~~]~~ [of this Article]. SE: (Comments):**SE**: Our preference is that three BoS-members could object to the written procedure. Regarding the proposed changed reference in the last sentence, please find drafting and comments below. ES: (Drafting):With regard to the decisions in accordance with Article 17, Article 19 and Article 30  ~~a quorum of two thirds of the v oting member of the Board of Supervisors is needed to amend the decision proposed by the Management Board or the peer review committee.";~~ the Board of Supervisors shall vote on the proposed decisions in a written procedure.  The voting members of the Board of Supervisors shall have ten (10) working days to vote.  The proposed decision will be considered  adopted unless a simple majority of voting members of the Board of Supervisors objects.  Abstentions will not be counted as approvals or as objections, and will not be considered when calculating the number of votes cast. If three ~~/[five]~~ voting members of the Board of Supervisors object to the written procedure, the draft decision will be discussed and decided on by the Board of Supervisors in accordance with the procedure set out in paragraph 1 [of this Article]. ES: (Comments):Preference for discussion in BoS only if 3 voting members object to the written procedure.HR: (Comments):We do not agree with the proposed paragraph 4. of Article 44. (voting procedures related to breach of Union law (Article 17.), binding mediation (Article 19) and peer reviews (Article 30)). We do not see the need to have a default 10 day written procedure (basically a non-objection procedure) for these decisions, as these are not day-to-day i.e. supervisory decisions where operational deadlines and efficiency may be negatively affected by longer deadlines. Here, we also see the link with the possibility of an NCA objecting to a publication of a peer review finding. Will the BoS decide on both matters simultaneously, within the same deadline? A 10 day written procedure for cases where there has been a breach of Union law would in our view be inappropriate. However, we do appreciate the safeguard placed in the provision that the members of the BoS may object to the written procedure, and if this is a direction that the text will go in, then our preference would be to set the threshold of BoS members needed for the objection to be valid to three. Please note that this does not mean that we support the proposed paragraph 4.LU: (Comments):The proposed voting mechanism lacks clarity in particular with regard to its practical implementation. We do not support a written procedure to reject draft decisions of the MB in key areas of supervisory convergence. The mere fact that the MB would prepare draft decisions for the BoS would already constitute a significant increase of power and influence of the MB.We do not consider that there is a need to change the current BoS decision making procedures in any specific area. The simple majority voting should be the baseline procedure for adopting draft decisions proposed by the MB. We also consider the safeguard for triggering an open discussion at the BoS level too restrictive.DE: (Comments):DE: The member driven approach of the ESAs is important, therefor we agree, the proposed quorum of two thirds needs to be deleted. With regard to the new proposal, while preferable compared to the former proposal, we are not fully convinced a special written procedure is necessary here. If such a procedure were to be considered:It does not seem clear, what majority is needed for an objection (majority of voting members or votes cast?). It should be clear that abstentions or silence is not being considered at all.SI: (Comments):We have some reservations towards the rules of written procedure.CZ: (Comments):Any written procedure should only be done in exceptional cases where there is a risk of failure to meet the deadline for the decision, with the vote in this written procedure being in accordance with Article 44 (1), ie BoS would have to agree to the adoption of the proposal (not on the basis of objection as proposed by PRES). In order to approve the proposal, the result of the vote should require an explicit voting for the proposal by a simple majority of all BoS members that are eligible to vote. A vote of three BoS members should suffice to reject the written procedure. The text should be adjusted accordingly.IE: (Comments):We welcome the removal of the reverse majority from the text and the return to simple majority voting.We have a preference for three members of the BoS to call for the issues to be discussed and voted upon at a BoS meeting. DK: (Comments):We do not support introducing a rule of written procedure on any matters for the BoS nor changing the rules of voting in such a procedure. Written procedures should be the exemption and only be used for uncontroversial issues. This would not be the case for decisions under articles 17, 19 and 30. A final model would also depend on the composition of the MB for us. FI: (Comments):In processes in accordance with Articles 17, 19 and 30 we see a need for more independent and efficient decision-making in the ESAs. We are concerned that the written procedure would not bring the independence that is needed. Therefore, we strongly support the previous PCY proposal of the need for a higher decision quorum of 2/3 for making amendments to draft decisions based on Articles 17, 19 and 30. The downgrades from the previous proposal are unacceptable to us.**FR:** **(Drafting):****With regard to the decisions in accordance with Article 17, Article 19 and Article 30 a quorum of two thirds of the voting member of the Board of Supervisors is needed to amend the decision proposed by the Management Board or the peer review committee.**FR: (Comments):In order to keep an appropriate balance in the governance of the ESA, it is necessary ***a minima*** to establish **either** a fully independent executive body (exclusively composed of independent members), that can be contradicted by the Board of Supervisors with a simple majority; **or** a mixed body, composed of Board members and independent members, that can only be contradicted by a 2/3 BoS voting rule. But establishing combination of a mixed membership of the Management Board and an objection power for the BoS by simple majority is too weak a balance to ensure sufficient independence in the decisions on convergence issues.**Considering that the presidency establishes a Management Board with a mixed composition (NCAs + independent members), it is of paramount importance to maintain at least the 2/3 BoS voting rule for the right of objection of the Board of Supervisors. Otherwise the whole balance initially found by the presidency, that was a minimum acceptable.**So, to preserve a relative balance in ESMA‘s governance, *a minima*, **the initial proposal of the Presidency is to be kept.** **The amended proposal** does not ensure sufficient independence tot he Management Board and **renders the decision making process even worse and less efficient than it is today**.Finally, we remain convinced that the idea of a mixed composition fort he Management Board will raise intricate issues of national representativeness; it will also result in an uneven involvement of the full-time members and NCA representatives, that will impair the coherence of the whole Management Board’s work and its ability to make decisions. |
|  | PL: (Drafting):A new subpara is included: With regard to decisions in accordance with Articles 17 and 19, in case a written procedure as described in subparagraph [new number] is objected to, the decision proposed by the ~~panel~~ Management board shall be adopted by a simple majority of the voting members of the Board of Supervisors, which shall include a simple majority of its members from competent authorities of participating Member States and a simple majority of its members from competent authorities of non-participating Member States. By way of derogation from the [new number] subparagraph, from the date when four or fewer voting members are from competent authorities of non- participating Member States, the decision proposed by the panel shall be adopted by a simple majority of the voting members of the Board of Supervisors, which shall include at least one vote from members from competent authorities of non-participating Member States.PL: (Comments):Following the discussions in the working party, we suggest that in case the written procedure is objected to, the double majorities in art. 17 and 19-decisions is maintained in the EBA-regulation.The proposed text is an adjusted version of the current wording of Art. 44.2.3-4.SE: (Drafting):A new subpara is included: With regard to decisions in accordance with Articles 17 and 19, in case a written procedure as described in subparagraph [number] is objected to, the decision proposed by the ~~panel~~ Management board shall be adopted by a simple majority of the voting members of the Board of Supervisors, which shall include a simple majority of its members from competent authorities of participating Member States and a simple majority of its members from competent authorities of non-participating Member States. By way of derogation from the [number] subparagraph, from the date when four or fewer voting members are from competent authorities of non- participating Member States, the decision proposed by the panel shall be adopted by a simple majority of the voting members of the Board of Supervisors, which shall include at least one vote from members from competent authorities of non-participating Member States.SE: (Comments):**SE**: We urge, in line with the discussions in the working party, that in case the written is objected to, the double majorities in art. 17 and 19-decisions is maintained in the EBA-regulation.The proposed text is an adjusted version of the current wording of Art. 44.2.3-4 in the EBA-regulation.  |
| The first subparagraph shall not apply to the Chairperson, the members that are also members of the ~~Executive~~Management Board and the European Central Bank representative nominated by its Supervisory Board."; | DE: (Comments):DE: Subparagraph is part of the original proposal by COM and does not seem to be relevant here. In addition, the existing paragraph 4 is overwritten and should be kept.  |
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| in Chapter III, the title of Section 2 is replaced by the following: |  |
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| "Section 2 |  |
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| ~~Executive~~ Management Board" | HR: (Comments):We can agree with some of the changes to the structure of the Management Board in Article 45, as a compromise solution, but we generally do not see the need to appoint the proposed independent members, and we are of the position that NCAs should still have the majority in the MB. The modalities of appointing the independent members and the Chairperson require further discussion.DE: (Comments):DE: We agree with the Presidency, an Executive Board is not to be introduced. While we are open to discussing targeted improvements to the existing Management Board, the changes should be in line with the underlying principle that the ESAs are member driven organizations and changes are made on the basis of the status quo. There is no need for a complete overhaul of the governance. Accordingly, there are still several aspects that need further work. Please see our comments below, that reflect on this issue. |
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| Article 45 is replaced by the following: |  |
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| "Article 45 |  |
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| Composition | LV: (Comments):We would rather support to leave the current regulation unchanged. However, we are ready for further discussions and seeking for better solutions regarding the composition of the MB to address the concerns indicated by the COM or some MS. |
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| 1. The ~~Executive~~Management Board shall be composed of the Chairperson, three ~~two~~ members of the Board of Supervisors, elected by and from the voting members of the Board of Supervisors, and three ~~two~~ full -time members.~~. The Chairperson shall assign clearly defined policy and managerial tasks to each of the full time members. One of the full time members shall be assigned responsibilities for budgetary matters and for matters relating to the work programme of the Authority ("Member in charge "). One of the full time members shall act as a Vice Chairperson and carry out the tasks of the Chairperson in his or her absence or reasonable impediment, in accordance with this Regulation.~~  | LV: (Drafting):1. The ~~Executive~~Management Board shall be composed of the Chairperson, [?] members of the Board of Supervisors, elected by and from the voting members of the Board of Supervisors, and [?] full -time members. ~~The Chairperson shall assign clearly defined policy and managerial tasks to each of the full time members. One of the full time members shall be assigned responsibilities for budgetary matters and for matters relating to the work programme of the Authority ("Member in charge "). One of the full time members shall act as a Vice Chairperson and carry out the tasks of the Chairperson in his or her absence or reasonable impediment, in accordance with this Regulation.~~LV: (Comments):Regarding the composition of the MB we share the MS concerns expressed during the CWP meeting. Although the compromise proposal is a step in the right direction, we believe there still is a room for further improvements. Whether three representatives from the BoS will be enough to ensure adequate representation of MS views.The rotation mechanism of the Members of MB is unclear, how will be the right balance of home/host and euro/non-euro area representation ensured? Therefore, we are ready to continue the discussion on the governance issue and to seek the best solution in this regard.BE: (Comments):We do not support the proposal on the composition of the Management Board. We are convinced that more involvement of NCAs is absolutely needed as the ESAs are a members-driven organisation. We do not support the addition of full-time members as there are almost no extra powers given to the Management Board compared to the current ESA powers. We thus believe that adding 3 full-time members will be inefficient.PL: (Drafting):1. The ~~Executive~~Management Board shall be composed of the Chairperson, four ~~three two~~ members of the Board of Supervisors, elected by and from the voting members of the Board of Supervisors, and two ~~three~~ ~~two~~ full -time members.~~. The Chairperson shall assign clearly defined policy and managerial tasks to each of the full time members. One of the full time members shall be assigned responsibilities for budgetary matters and for matters relating to the work programme of the Authority ("Member in charge "). One of the full time members shall act as a Vice Chairperson and carry out the tasks of the Chairperson in his or her absence or reasonable impediment, in accordance with this Regulation.~~ PL: (Comments):With regard to the composition of the Management Board, while acknowledging that PCY has drawn attention to the existence of relevant provisions in the ESAs regulations regarding the appropriate composition of the entire MB, which should reflect the EU as a whole, we would like to point out that in the proposed 3 plus 3 composition it may be extremely difficult to meet the objectives described above. We propose a 4 plus 2 composition, where 4 members would be chosen from the BoS, because the NCA representatives in the BoS have a lot of experience and knowledge needed to perform the above mentioned functions.SE: (Drafting):1. The ~~Executive~~Management Board shall be composed of the Chairperson, three ~~two~~ members of the Board of Supervisors, elected by and from the voting members of the Board of Supervisors, and ~~three~~ two full -time members.~~. The Chairperson shall assign clearly defined policy and managerial tasks to each of the full time members. One of the full time members shall be assigned responsibilities for budgetary matters and for matters relating to the work programme of the Authority ("Member in charge "). One of the full time members shall act as a Vice Chairperson and carry out the tasks of the Chairperson in his or her absence or reasonable impediment, in accordance with this Regulation.~~ SE: (Comments):**SE** prefers three MB-members from BoS and two external MB-members. The composition of the MB should reflect that the ESAs are member driven organisations. ES: (Drafting):The ~~Executive~~Management Board shall be composed of the Chairperson, four ~~three two~~ members of the Board of Supervisors, elected by and from the voting members of the Board of Supervisors, and three ~~two~~ full -time membersES: (Comments):Our concrete proposal for the composition of the management board is 4 full time members (including the Chair) + 4 members of the BoS. The Chair would have a casting vote but would vote on all matters. The Vice-Chair would be a member of the BoS.The proposal strikes a better balance in terms of composition of the management board as it ensures a fair representation between NCA representatives, who have the relevant expertise, and newly appointed independent members. HR: (Drafting):1. The ~~Executive~~Management Board shall be composed of the Chairperson, three ~~two~~ members of the Board of Supervisors, elected by and from the voting members of the Board of Supervisors, and ~~three~~ two full -time members.~~.~~HR: (Comments):In our view, this would be a more appropriate balance. LU: (Comments):We refer to the comments we have already submitted on this issue. The composition of the MB needs to clearly reflect the fact that the ESAs are MS-driven organizations. Focus should be more on expertise in the MB through NCAs who should remain the driving force, also within the MB. This also means that the NCAs need to have a clear majority of the seats in the MB. The enlargement of the MB without a recalibration of its composition does not address the concerns we expressed. Furthermore, the design of the MB shall guarantee an appropriate balance between smaller and larger Member States, banking Union and non-banking Union Member States, home and host Member States etc. More discussion on this topic is needed in order to strike the right balance. We remain fully available to continue constructive discussions on the governance part in order to find a reasonable outcome in line with the views expressed by the large majority of MS.DE: (Comments):DE: We do not think the member driven approach of the ESAs is sufficiently respected in the proposal. There is no need to change the balance of the representation of BoS-members in the Management Board. Furthermore, for us, as the member driven approach is the guiding principle of the ESAs, this must also guide the final proportions in the Management Board.SI: (Comments):We welcome proposal for larger role and impact of the Board of Supervisors in the Management Board, but we have some doubts weather proposed balance of members ensures the right representation and expertise.CZ: (Comments):We insist on maintaining the current status quo as regards the composition of the Management Board. We believe that BoS members should continue to play a decisive role in the decision-making process. It is also necessary to ensure that the composition of the MB respects the balanced representation of the Member States of the banking union and of the non-participating Member States. Therefore all references to full time members in the MB should be deleted below and throughout this proposal.IE: (Comments):We continue to be of the view that the ESAs should remain Member Organisations. We do support the inclusion of some permanent ESA Members on the Management Board, however these should be in the minority. This in turn would also deal with the issue of giving the Chair a vote as by having a majority of NCAs on the MB the issue of a tie should not arise. DK: (Comments):We do not see a need for enlarging the number of MB members as such. We are more concerned about the balance between BoS members and external full time members, where we generally believe that there should be a majority of members from the NCAs. FI: (Comments):We are supportive towards the enlargement of the MB composition to 3+3. We find it important to keep the balance between expertise and independence. Therefore, we encourage the PCY to preserve the proposed balance between independent members and BoS members. FR: (Drafting):The Management Board shall be composed of the Chairperson, **two** members of the Board of Supervisors, elected by and from the voting members of the Board of Supervisors, and **two** full -time members.FR: (Comments):In order to be truly effective in reality, the executive body should remain sufficiently limited in (meaning a maximum of five persons). Adding 1 BoS member and 1 independent member will not solve the national representativeness issue in any case. |
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| 2. The Chairperson shall assign clearly defined policy and managerial tasks to each of the full-time members. One of the full-time members shall be assigned responsibilities for budgetary matters and for matters relating to the work programme of the Authority ("Member in charge"). One of the full-time members shall act as a Vice-Chairperson and carry out the tasks of the Chairperson in his or her absence or reasonable impediment, in accordance with this Regulation.  | LV: (Comments):The scope of responsibilities to be assigned to the full-time member ("Member in charge") should be in line with the responsibilities of the Executive Director in the existing regulation. It should be ensured that involvement of the NCAs/BoS in the process of the development and adoption of budget is not decreased.ES: (Drafting):The Chairperson shall assign clearly defined policy and managerial tasks to each of the full-time members. One of the full-time members shall be assigned responsibilities for budgetary matters and for matters relating to the work programme of the Authority ("Member in charge"). One of the members of the BoS ~~full-time members~~ shall act as a Vice-Chairperson and carry out the tasks of the Chairperson in his or her absence or reasonable impediment, in accordance with this Regulation.ES: (Comments):See aboveOur concrete proposal for the composition of the management board is 4 full time members (including the Chair) + 4 members of the BoS. The Chair would have a casting vote but would vote on all matters. The Vice-Chair would be a member of the BoS.The proposal strikes a better balance in terms of composition of the management board as it ensures a fair representation between NCA representatives, who have the relevant expertise, and newly appointed independent members. |
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| ~~2~~3. The full time members shall be appointed by the Board of Supervisors selected on the basis of merit, skills, knowledge of financial institutions and markets, and experience relevant to financial supervision and regulation. The full time members shall have extensive management experience. The selection shall be based on an open call for candidates, to be published in the Official Journal of the European Union, following which the Commission shall draw up~~, in cooperation with the Board of Supervisors~~, a shortlist of qualified candidates.  | LV: (Drafting):~~2~~3. The full time members shall be selected by the Commission on the basis of merit, skills, knowledge of financial institutions and markets, and experience relevant to financial supervision and regulation. The full time members shall have extensive management experience. The selection shall be based on an open call for candidates, to be published in the Official Journal of the European Union, following which the Commission shall draw up~~, in cooperation with the Board of Supervisors~~ a shortlist of qualified candidates.LV: (Comments):It is about the selection procedure.HR: (Comments):We have a scrutiny reservation for this paragraph. LU: (Comments):The BoS should play a key function also when it comes to appointing the full time members of the MB. We can hence agree with these changes.DE: (Comments):DE: The appointment procedure for ESA-staff should be in line with the member driven approach of the ESAs. Therefore, if full time members to the Management Board are being introduced, the shortlist for candidates should be drawn up by the Board of Supervisors, while the candidate is being appointed by the Council. FR: (Comments):Isn’t there a redundancy between this § 3. and the following § 4.? Our comment below is worth for both paragraphs. |
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| 4. The Board of Supervisors shall apoint the full-time member. Before taking up his duties, and up to 1 month after the selection by the Board of Supervisors, the European Parliament and the Council may, after having heard the candidate selected by the Board of Supervisors, object to the designation of the selected person. ~~Commission shall submit the shortlist to the European Parliament for approval. Following the approval of that shortlist, the Council shall adopt a decision to appoint the full time members of the ExecutiveManagement Board including the Member in charge. The Executive Board shall be balanced and proportionate and shall reflect the Union as a whole.3~~5. Where a full time member of the ~~Executive~~Management Board no longer fulfils the conditions set out in Article 46 or has been found guilty of serious misconduct, the Council may, on a proposal from the Commission which has been approved by the European Parliament, adopt a decision to remove him or her from office.  | LV: (Drafting):4. The Board of Supervisors shall apoint the full-time member. Before taking up his duties, and up to 1 month after the selection by the Board of Supervisors, the European Parliament and the Council may, after having heard the candidate apointed by the Board of Supervisors, object to the designation of the selected person. ~~Commission shall submit the shortlist to the European Parliament for approval. Following the approval of that shortlist, the Council shall adopt a decision to appoint the full time members of the ExecutiveManagement Board including the Member in charge. The Executive Board shall be balanced and proportionate and shall reflect the Union as a whole.3~~5. Where a full time member of the ~~Executive~~Management Board no longer fulfils the conditions set out in Article 46 or has been found guilty of serious misconduct, the Council may, on a proposal from the Commission[?] which has been approved by the European Parliament, adopt a decision to remove him or her from office. LV: (Comments):We support the Presidency proposal of appointment of independent members of the MB by BoS procedure.Also that the right of objection is given to the Council.There may be an interest conflict if full time members will be selected by Commission that also Commission will need to make a proposal when necessary to remove him or her from office.ES: (Drafting):4. The Board of Supervisors shall apoint the full-time members. Before taking up his/her duties, and up to 1 month after the selection by the Board of Supervisors, the European Parliament and the Council may, after having heard the candidate selected by the Board of Supervisors, object to the designation of the selected person. ES: (Comments):Drafting and gender balanceLU: (Comments):The BoS should play a key function also when it comes to appointing the full time members of the MB. We can hence agree with these changes.DE: (Comments):DE: See above. Consequently, the decision to remove staff from office should be proposed by the Board of Supervisors and adopted by the Council.IE: (Comments):The text is not clear as to what the next step is in the event of the EP or Council objecting to the appointment of the full time member. We would suggest a clarification in the text to clarify that the Board must not restart the selection process. ~~FR:~~ ~~(Drafting):~~~~The Board of Supervisors shall apoint the full-time member. Before taking up his duties, and up to 1 month after the selection by the Board of Supervisors, the European Parliament and the Council may, after having heard the candidate selected by the Board of Supervisors, object to the designation of the selected person.~~ Commission shall submit the shortlist to the European Parliament for approval. Following the approval of that shortlist, the Council shall adopt a decision to appoint the full time members of the Management Board including the Member in charge. The Executive Board shall be balanced and proportionate and shall reflect the Union as a whole.FR: (Comments):The appointment of the Management Board‘s full-time members & its Chair by the BoS would call into question the independence of the Management Board vis-à-vis the BoS. We recommend to involve the Commission in the shortlisting of candidates. The consultation of the European Parliament makes sense here as well.  |
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| ~~4.~~ 5. The term of office of the full time members shall be 5 years and shall be renewable once. In the course of the 9 months preceding the end of the 5-year term of office of the full time member, the Board of Supervisors shall evaluate: | LV: (Comments):Numeration!!! |
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| (a) the results achieved in the first term of office and the way in which they were achieved; |  |
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| (b) the Authority’s duties and requirements in the coming years. |  |
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| Taking into account the evaluation, the Commission shall submit the list of the full time members to be renewed to the Council. Based on this list and taking into account the evaluation, the Council may extend the term of office of the full time members. | LU: (Comments):This has to be aligned to the appointment procedure.DE: (Comments):DE: See above, consequential amendments needed. |
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| 6  ~~7.~~ Other than the Chairperson and the full-time members, each member of the Management Board elected by the Board of Supervisors shall have an alternate, who may replace him if he is prevented from attending. In a specific situation where a conflict of interest may arise in relation to Article 16, Article 19 and Article 30, the Board of Supervisors shall nominate a replacement without any delay.  | EL: (Comments):Our understanding is that it should be a reference to article 17, instead of 16.ES: (Drafting):Other than the Chairperson and the full-time members, each member of the Management Board elected by the Board of Supervisors shall have an alternate, who may replace him/her if he/she is prevented from attending. In a specific situation where a conflict of interest may arise in relation to Article 16, Article 19 and Article 30, the Board of Supervisors shall nominate a replacement without any delay.ES: (Comments):Gender balanceDE: (Drafting):“[…]Article **~~16~~ 17** ~~[…]~~.”DE: (Comments):DE: See above. |
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| ~~8~~. 7. The term of office of the members elected by the Board of Supervisors shall be two~~-and-a-half~~ years. The composition of the Management Board shall be gender balanced and proportionate and shall reflect the Union as a whole. Mandates shall be overlapping and an appropriate rotating arrangement shall apply.” | ES: (Drafting):. 7. The term of office of the members elected by the Board of Supervisors shall be two~~-and-a-half~~ years. The term may be extended once. The composition of the Management Board shall be gender balanced and proportionate and shall reflect the Union as a whole. Mandates shall be overlapping and an appropriate rotating arrangement shall apply.”ES: (Comments):The term of the BoS members should be extendable, as in the current regulation and in line with the term of the independent members.LU: (Comments):We have in principle no major issues as regards the proposal to reduce the term of office of the members elected by the BoS. Adequate rotation provisions might be in particular useful to ensure a an appropriate representation in the MB of smaller and larger Member States, banking Union and non-banking Union Member States, home and host Member States etc.FI: (Comments):We find it important to have appropriate rotating arrangements so that also smaller MS are represented in the MB composition. FR: (Comments):We are not sure to understand to what extent this is an improvement (2 years)? Will it not be even more difficult to coordinate with BoS members mandate which is of 5 years? |
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| the following Article 45a is inserted: |  |
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| "Article 45a |  |
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| Decision-making |  |
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| 1. Decisions by the ~~Executive~~Management Board shall be adopted by simple majority of ~~it’s~~ the members. Each member shall have one vote. In the event of a tie the Chairperson shall have a casting vote. | SE: (Drafting):1. Decisions by the ~~Executive~~ Management Board shall be adopted by simple majority of ~~it’s~~ the members. Each member shall have one vote. ~~In the event of a tie the Chairperson shall have a casting vote.~~SE: (Comments):**SE**: Following our proposal that the MB should be composed of three BoS-members and two external members, the casting vote of the Chairperson can be deleted. ES: (Drafting):1. Decisions by the ~~Executive~~Management Board shall be adopted by simple majority of ~~it’s~~ the members. Each member shall have one vote. The Chairperson shall also have one vote, which in the event of a tie will be the casting vote.ES: (Comments):See aboveOur concrete proposal for the composition of the management board is 4 full time members (including the Chair) + 4 members of the BoS. The Chair would have a casting vote but would vote on all matters. The Vice-Chair would be a member of the BoS.The proposal strikes a better balance in terms of composition of the management board as it ensures a fair representation between NCA representatives, who have the relevant expertise, and newly appointed independent members.IE: (Comments):We believe by having a majority of NCAs on the Management Board, will negate the need for providing the Chair with a vote in any circumstance. It is important that the Chair remains an interlocutor between the NCAs and the ESAs. The provision of a vote damages this objective.  |
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| 2. The representative of the Commission shall participate in meetings of the ~~Executive~~Management Board without the right to vote save in respect of matters referred to in Article 63.  | LU: (Drafting):~~2. The representative of the Commission shall participate in meetings of the ExecutiveManagement Board without the right to vote save in respect of matters referred to in Article 63.~~LU: (Comments):We do not see a need for the Commission to participate in the MB. The ESAs should be independent from political institutions. |
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| 3. The ~~Executive~~Management Board shall adopt and make public its rules of procedure. |  |
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| 4. Meetings of the ~~Executive~~Management Board shall be convened by the Chairperson at his own initiative or at the request of one of its members, and shall be chaired by the Chairperson. |  |
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| The ~~Executive~~Management Board shall meet prior to every meeting of the Board of Supervisors and as often as the ~~Executive~~Management Board deems necessary. It shall meet at least five times a year. |  |
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| 5. The members of the ~~Executive~~Management Board may, subject to the rules of procedure, be assisted by advisers or experts. The non-voting participants shall not ~~attend~~ participate in any discussions within the ~~Executive~~Management Board relating to individual financial institutions."; |  |
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| the following Article 45b is inserted: | CZ: (Drafting):~~the following Article 45b is inserted:~~ |
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| "Article 45b | CZ: (Drafting):~~"Article 45b~~ |
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| Internal committees | CZ: (Drafting):~~Internal committees~~ |
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| The ~~Executive Board~~ Management Board may establish internal committees for specific tasks attributed to it~~.~~ and may provide for the delegation of certain clearly defined tasks and decisions to internal committees. Where internal committees have been established in relation to Article 16 and Article 19, they shall be chaired by the Vice-Chair of the Management Board."; | EL: (Comments):We could accept the provision provided that their tasks are different from those of the internal committees of the article 41 and more details are given on their role.ES: (Drafting):The ~~Executive Board~~ Management Board may establish internal committees for specific tasks attributed to it~~.~~ and may provide for the delegation of certain clearly defined tasks and decisions to internal committees. Where internal committees have been established in relation to Article 17~~16~~ and Article 19, they shall be chaired by the Vice-Chair of the Management Board.";ES: (Comments):We understand there is a mistake in the text. It should be Art 17, not 16. As said above in relation with article 41, we understand that it makes more sense that reference is made to breach of union law (art.17) than to guidelines and recommendations (art.16), in line what is currently in art. 41.HR: (Comments):For the new Article 45.b (internal committees of the Management Board), and Article 47. paragraph 3a., we still have concerns that the added layers of consulting and decision making will reduce the effectiveness of the Authorities. I.e. according to paragraph 3.a. of Article 47 “The Management Board shall examine, give an opinion and make proposals on all matters to be decided by the Board of Supervisors after discussion at the relevant internal committee, save for peer reviews according to Article 30.” So once a draft decision is agreed at a (BoS) committee level, if will need to be submitted to the MB, which will review it (in what time frame?), give an opinion (that will be discussed with the BoS committee?) and its proposal with regard to that draft decision (amendments? Recommend to adopt? Recommend to accept?). At the same time, the issues that will be covered by the draft decision (save for Articles 17, 19, and 30) would be outside the scope of competences of the MB. To clarify, we would be open to have the MB give its input on draft decisions given to the BoS, but are unclear on the timeframes and the number of staff (experts in the relevant areas) that this would require. We are concerned that we are duplicating tasks and are considering the implications on the ESAs budget.LU: (Drafting):~~The Executive Board Management Board may establish internal committees for specific tasks attributed to it. and may provide for the delegation of certain clearly defined tasks and decisions to internal committees. Where internal committees have been established in relation to Article 16 and Article 19, they shall be chaired by the Vice-Chair of the Management Board.";~~LU: (Comments):We do not consider this necessary nor appropriate, if there is a need for internal committees, they shall be set up under article 41.DE: (Drafting):[…]Article **~~16~~ 17**[…]~~”~~.DE: (Comments):DE: See above.CZ: (Drafting):~~The Management Board may establish internal committees for specific tasks attributed to it. and may provide for the delegation of certain clearly defined tasks and decisions to internal committees. Where internal committees have been established in relation to Article 16 and Article 19, they shall be chaired by the Vice-Chair of the Management Board.";~~CZ: (Comments):This proposal should be deleted (see Art. 41) DK: (Drafting):DeletionDK: (Comments):We have so far understood this to constitute access to setting up a similar system of committees as the internal committees under the BoS, see e.g. also the proposal for coordination groups on top of this provision. We do not see the merit in the MB being able to do so as it could lead to unnecessarily duplicating aim, role, work and structure of the BoS internal committees thus leading to depletion of resources. If this is specific to e.g. an audit committee this should be specified further. Also work in relation to art. 16 constitutes supervisory convergence work within the remit of BoS internal committees. It seems article has been introduced incorrectly as Standing or Steering committees usually will not be established for the sole purpose of developing guidelines or recommendations in accordance with art. 16. Such would be down in a working group or task force as a specific work stream reporting to a Standing or Steering Committee.  |
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| the following Article 45c is inserted: |  |
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| *“Art 45c* | LV: (Drafting):IE: (Comments):We see the collaboration groups as a good way to enhance co-operation, sharing of best practise and ensuring supervisory convergence which will in turn result in a level playing field between Member States in the area of financial regulation. It is important that we ensure that NCAs remain the sole authority for decisions regarding authorisation and supervision of entities under their remit. It is important that regulated entities are clear on who is the ultimate decision maker when it comes to their authorisation and on-going supervision. If there is a lack of clarity on these points, it will damage our regulatory frameworks and add unnecessary complexity into the authorisation/supervision of entities with no added benefit.  |
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| *Coordination Groups ~~platforms~~* | LV: (Drafting): |
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| The Management Board may set up coordination platforms on its own initiative or on the request by a competent authority. All competent authorities shall be participants of the coordination groups ~~platform if not stated otherwise~~. The meetings shall be based on submissions from the competent authorities and any issues identified by the Authority. In relation to Article 29(1)aa, the platform shall be chaired by the Vice-Chair of the Management Board. Each year the respective member of the Management Board in charge of the coordination group ~~platform~~ shall report to the Board of Supervisors on the main elements of the discussions and findings and - if deemed relevant- make a suggestion for a regulatory follow up or a peer review in the respective area.” | LV: (Drafting):LV: (Comments):We are rather sceptical are “coordination groups” necessary, because the regulation already foresees the possibility for the ESAs to create the subcommittees; there is not necessity to set two different structures in the regulation with the same task (as was mentioned in previous CWP meeting). Therefore, we prefer to delete article 45c.EL: (Comments):Although we would welcome the introduction of the coordination groups, it seems that their role and their areas of relevance are not clearly defined. We need more clarifications. ES: (Drafting):The Management Board may set up coordination groups ~~platforms~~ on its own initiative or on the request by a competent authority. All competent authorities shall be participants of the coordination groups ~~platform if not stated otherwise~~. The meetings shall be based on submissions from the competent authorities and any issues identified by the Authority. In relation to Article 29(1)aa, the group ~~platform~~ shall be chaired by the Vice-Chair of the Management Board. Each year the respective member of the Management Board in charge of the coordination group ~~platform~~ shall report to the Board of Supervisors on the main elements of the discussions and findings and - if deemed relevant- make a suggestion for a regulatory follow up or a peer review in the respective area.”ES: (Comments):Drafting to ensure consistency.HR: (Comments):Article 45.c (cooperation groups) – while we are supportive of the idea of cooperation groups, we would prefer more clarity in Level 1 text on what these cooperation platforms do, what is expected from the competent authorities and how operationally burdensome this may be (i.e. what is the expected scope, areas and number of such groups).LU: (Comments):We refer to our comments made at the last WP meetings as well as to the comprehensive written comments we provided in addition on the concept of coordination platforms. If the provision was to be retained, it is of crucial importance that the instrument, like all other tools, is laid down in the ESA regulations in an activity neutral manner. It would then be up to the ESAs to decide on the areas and circumstances in which it can be most usefully and efficiently used. The draft Article 45c seems to be heading this way. We are against pinpointing in the ESA Regulations specific issue to be addressed by the ESAs (via the platforms or any other tools) as this would give the impression that activities highlighted are per se more risky and would need to be assessed in more detailDE: (Drafting):The Management Board may set up**, after confirmation by the Board of Supervisors,** coordination platforms on its own initiative or on the request by a competent authority. All competent authorities shall be participants of the coordination groups. The meetings shall be based on submissions from the competent authorities and any issues identified by the Authority. In relation to Article 29(1)aa, the platform shall be chaired by the Vice-Chair of the Management Board. Each year the respective member of the Management Board in charge of the coordination group shall report to the Board of Supervisors on the main elements of the discussions and findings and - if deemed relevant- make a suggestion for a regulatory follow up or a peer review in the respective area.”DE: (Comments):DE: Proposed addition in order to strengthen member driven approach of the ESAs.IE: (Comments):We do not support the Group being chaired by the Vice-Chair of the Management Board. It is important the person chairing this group has the experience of day-to-day supervision of regulated entities. This experience will enable them to be more effective in the chairing of this group. We do not believe a full time ESA Staff Member would be able to bring to bear this on-going experience to the role. DK: (Comments):We note that the aim of these groups as presented by the PSY would seem to facilitate exchange other than that related to day-to-day supervision and is originally inspired by tasks regarding coordination of e.g. practices concerning outsourcing, delegation and risk transfers, as we recall. While recognising the need for fora with representation of all NCAs we continue to have doubts as to the necessity of another set of such fora merely established under the MB. - Firstly, establishment of internal committees or groups with representation of all NCAs is already foreseen under the BoS. Convergence and coordination matters are included therein. Secondly, another setup under the MB would seem to be duplication and lead to unnecessary stretching of resources among NCAs and the ESAs. If the aim is to establish a firmer legal basis for coordination activities such could be supplemented to the legal basis of art. 41 as a possible particular scope of activity. In that case it should be removed from this provision. We would therefore welcome further clarification to the use of these platforms at the next Council Working Party.FI: (Comments):It is still somewhat unclear to us what the added value of these groups are. Whereas we do not object to them, we would prefer keeping the COM proposal on delegation at least in the form it was presented by the BG PCY. |
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| Article 47 is amended: |  |
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| "Article 47 |  |
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| Tasks | DK: (Comments):We find that the issue of tasks of the MB is closely linked to the issue of composition and voting modalities. We could consider further tasks than the MB of today has depending on an acceptable compromise on the MB composition and voting rules.  |
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| 1. The ~~Executive~~Management Board shall ensure that the Authority carries out its mission and performs the tasks assigned to it in accordance with this Regulation. It shall take all necessary measures, notably the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Authority, in accordance with this Regulation. | HR: (Comments):For the new Article 45.b (internal committees of the Management Board), and Article 47. paragraph 3a., we still have concerns that the added layers of consulting and decision making will reduce the effectiveness of the Authorities. I.e. according to paragraph 3.a. of Article 47 “The Management Board shall examine, give an opinion and make proposals on all matters to be decided by the Board of Supervisors after discussion at the relevant internal committee, save for peer reviews according to Article 30.” So once a draft decision is agreed at a (BoS) committee level, if will need to be submitted to the MB, which will review it (in what time frame?), give an opinion (that will be discussed with the BoS committee?) and its proposal with regard to that draft decision (amendments? Recommend to adopt? Recommend not to adopt?). At the same time, the issues that will be covered by the draft decision (save for Articles 17, 19, and 30) would be outside the scope of competences of the MB. To clarify, we would be open to have the MB give its input on draft decisions given to the BoS, but are unclear on the timeframes and the number of staff (experts in the relevant areas) that this would require. We are concerned that we are duplicating tasks and are considering the implications on the ESAs budget.LU: (Comments):It is not clear what is meant by “the publication of notices”. This should be deleted or further clarification should be provided. |
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| 2. The ~~Executive~~Management Board shall propose, for adoption by the Board of Supervisors, an annual and multi-annual work programme. |  |
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| 3. The ~~Executive~~Management Board shall exercise its budgetary powers in accordance with Articles 63 and 64. |  |
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| ~~For the purposes of Articles 17, 19, 22, 29a, 30, 31a, 32 and 35b to 35h, the Executive Board shall be competent to act and to take decisions. The Executive Board shall keep the Board of Supervisors informed of the decisions it takes.~~ | DE: (Comments):DE: We agree, to be deleted.FI: (Comments):See above. We find it very important that the independence of the decision-making under Articles 17, 19 and 30 is enhanced. |
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| 3a. The ~~Executive~~Management Board shall examine, give an opinion and make proposals on ~~all~~ matters to be decided by the Board of Supervisors after discussion at the relevant internal committee, save for peer reviews according to Article 30. | BE: (Drafting):Management Board ~~shall~~ may examine, give an opinion ~~and~~ or make proposals on matters to be decided by the Board of Supervisors after discussion at the relevant internal committee, save for peer reviews according to Article 30.BE: (Comments):We do not support the fact that the Management Board must give an opinion and make proposals on matters to be decided in the BoS. Some issues do not need an opinion or may have been fully prepared by an internal committee. Therefore we suggest to either delete this paragraph 3a or to replace ‘shall‘ by ‘may‘. DE: (Drafting):**~~3a. The Management Board shall examine, give an opinion and make proposals on all matters to be decided by the Board of Supervisors after discussion at the relevant internal committee, save for peer reviews according to Article 30.~~**DE: (Comments):DE: The idea to have the Management Board examine, give an opinion and make proposals on (all) matters to be decided by the BoS could question the BoS being the main governing body and should be deleted.IE: (Drafting):~~3a. The ExecutiveManagement Board shall examine, give an opinion and make proposals on all matters to be decided by the Board of Supervisors after discussion at the relevant internal committee, save for peer reviews according to Article 30~~.IE: (Comments):We would call for the deletion of this text as it follows on from the original Cion text regarding the EB, which has now been changed to the MB structure. We do not see the need for the MB to provide an opinion on all matters going to the Board. This would only be a duplication of work. DK: (Comments):We support the deletion of the MB to prepare and make proposals on all matters to go to the BoS. This would constitute an extra layer of bureaucracy within the current layers of sign off both within the ESA and through the internal committee structure.  |
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| 4. The ~~Executive~~Management Board shall adopt the Authority's staff policy plan and, pursuant to Article 68(2), the necessary implementing measures of the Staff Regulations of Officials of the European Communities ('the Staff Regulations’). |  |
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| 5. The ~~Executive~~Management Board shall adopt the special provisions on right of access to the documents of the Authority, in accordance with Article 72. |  |
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| 6. The ~~Executive~~Management Board shall propose an annual report on the activities of the Authority, including on the Chairperson’s duties, ~~on the basis of the draft report referred to in Article 53(7)~~ to the Board of Supervisors for approval. |  |
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| 7. The ~~Executive~~Management Board shall appoint and remove the members of the Board of Appeal in accordance with Article 58(3) and (5). |  |
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| 8. The members of the ~~Executive~~Management Board shall make public all meetings held and any hospitality received. Expenses shall be recorded publicly in accordance with the Staff Regulations |  |
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| 9. The Member in charge assigned according to Art 45(2) shall have the following specific tasks: |  |
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| (a) to implement the annual work programme of the Authority under the guidance of the Board of Supervisors and under the control of the ~~Executive~~Management Board; |  |
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| (b) to take all necessary measures, notably the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Authority, in accordance with this Regulation; | LU: (Comments):It is not clear what is meant by “the publication of notices”. This should be deleted or further clarification should be provided. |
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| (c) to prepare a multi-annual work programme, as referred to in Article 47(2); |  |
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| (d) to prepare a work programme by 30 June of each year for the following year, as referred to in Article 47(2); |  |
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| (e) to draw up a preliminary draft budget of the Authority pursuant to Article 63 and to implement the budget of the Authority pursuant to Article 64; |  |
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| (f) to prepare an annual draft report to include a section on the regulatory and supervisory activities of the Authority and a section on financial and administrative matters; |  |
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| (g) to exercise in respect to the Authority’s staff, the powers laid down in Article 68 and to manage staff matters." |  |
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| Article 48 is amended as follows: |  |
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| in paragraph 1, the second subparagraph is replaced by the following: |  |
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| "The Chairperson shall be responsible for preparing the work of the Board of Supervisors and shall chair the meetings of the Board of Supervisors and the ~~Executive~~Management Board."; |  |
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| paragraph 2 is replaced by the following: |  |
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| "2. The Chairperson shall be ~~selected~~ appointed by the Board of Supervisors on the basis of merit, skills, knowledge of financial institutions and markets, and of experience relevant to financial supervision and regulation, following an open call for candidates to be published in the Official Journal of the European Union. The Management Board ~~Commission~~ shall submit ~~in cooperation with the Board of Supervisors~~ a shortlist of candidates for the position of the Chairperson to the Board of Supervisors ~~European Parliament~~ for selection ~~approval.~~ Before taking up his duties, and up to 1 month after the selection by the Board of Supervisors, the European Parliament and the Council may, after having heard the candidate selected by the Board of Supervisors, object to the designation of the selected person ~~Following the approval of that shortlist, the Council shall adopt a decision to appoint the Chairperson~~.  | LV: (Drafting):"2. The Chairperson shall be ~~selected~~ selected on the basis of merit, skills, knowledge of financial institutions and markets, and of experience relevant to financial supervision and regulation, following an open call for candidates to be published in the Official Journal of the European Union. The Management Board ~~Commission~~ shall submit ~~in cooperation with the Board of Supervisors~~a shortlist of candidates for the position of the Chairperson to the Board of Supervisors ~~European Parliament~~ for approval~~approval.~~ Before taking up his duties, and up to 1 month after the approval by the Board of Supervisors, the European Parliament and the Council may, after having heard the candidate approved by the Board of Supervisors, object to the designated person ~~Following the approval of that shortlist, the Council shall adopt a decision to appoint the Chairperson~~.LV: (Comments):We support the Presidency proposal of appointment of the chair by BoS procedure.Also that the right of objection is given to the Council.ES: (Drafting):The Chairperson shall be selected ~~appointed by the Board of Supervisors~~ on the basis of merit, skills, knowledge of financial institutions and markets, and of experience relevant to financial supervision and regulation.The Chairperson shall be chosen following an open call for candidates to be published in the Official Journal of the European Union, on a selection procedure which shall respect the principles of gender balance, experience and qualification. The Chairperson shall be appointed by the Board of Supervisors in accordance with article 44. Before taking up his duties, and up to 1 month after the selection by the Board of Supervisors, the European Parliament and the Council may, after having heard the candidate selected by the Board of Supervisors, object to the designation of the selected person ~~Following the approval of that shortlist, the Council shall adopt a decision to appoint the Chairperson~~. ES: (Comments):If the Management Board shortlists the candidates for the Chairperson position, there could be a problem of circularity and conflict of interest once the Chair has been appointed. We suggest having the the BoS decide directly on the basis of all candidacies received.This is, for instance, the approach taken in CCP Supervision for the appointment of the independent Chair of the CCP Supervisory Committee.HR: (Comments):We have a scrutiny reservation on this paragraph. LU: (Comments):We agree that the BoS should, in order to reflect the MS driven character of the ESAs, play a key function also when it comes to the appointment of the chairperson. DE: (Comments):DE: The appointment procedure for ESA-staff should be in line with the member driven approach of the ESAs. See comments above with regard to the Management Board in Art 45 (1).IE: (Comments):As with the appointment of the permanent board members, what is the next step if the EP and Council object to the appointment? FR: (Drafting):The Chairperson shall be appointed **~~by the Board of Supervisors~~** on the basis of merit, skills, knowledge of financial institutions and markets, and of experience relevant to financial supervision and regulation, following an open call for candidates to be published in the Official Journal of the European Union. The **~~Management Board~~ Commission**shall **submit in cooperation with the Board of Supervisors** a shortlist of candidates for the position of the Chairperson to the **~~Board of Supervisors~~** **European Parliament** for selection ~~approval.~~ Before taking up his duties, and up to 1 month after the selection by the Board of Supervisors, the European Parliament and the Council may, after having heard the candidate selected by the Board of Supervisors, object to the designation of the selected personFR: (Comments):As previously stated, the involvement of the Commission will grant legitimacy and independence to the Chair person.  |
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| Where the Chairperson no longer fulfils the conditions referred to in Article 49 or has been found guilty of serious misconduct, the Council may, on a proposal from the Commission which has been approved by the European Parliament, adopt a decision to remove him or her from office."; | DE: (Comments):DE: See above. Consequently, the proposal to remove staff from office should come from within the ESAs.DK: (Comments):We would tend to agree with the Commission it seems inconsistent that there are different bodies deciding on appointment versus removal from office. |
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| ~~in paragraph 4, the second subparagraph is replaced by the following:~~ |  |
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| ~~"The Council, on a proposal from the Commission and taking into account the evaluation, may extend the term of office of the Chairperson once.";~~ |  |
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| **Article 2** |  |
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| **(additional amendments Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority);)** | EL: (Comments):We believe that art. 30(c.1a) and art. 32(3a) of the above Article 1 contain provisions that are EBA only related and that if they remain in the final text they should be excluded from the EIOPA Regulation (the one refers to the AML by EBA and the other is related to an EBA only related proposal of the Commission). |
|  | SE: (Drafting):paragraph 2 of Article 1 is amended as follows:"2. The Authority shall act within the powers conferred by this Regulation and within the scope of Directive 2009/138/EC with the exception of Title IV thereof, of Directives 2002/92/EC, 2003/41/EC, 2002/87/EC, ~~Directive 2009/103/EC\*~~ and, to the extent that those acts apply to insurance undertakings, reinsurance undertakings, institutions for occupational retirement provision and insurance intermediaries, within the relevant parts of Directives (EU) 2015/849 and 2002/65/EC, including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority.\* ~~Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement~~SE: (Comments):**SE** proposes to delete the reference to Directive 2009/103. Directive 2009/103 is currently being negotiated (COM(2018) 336). One important and complex issue that is being discussed in this overview is the scope of application of the directive. No reference or reasoning about the need or suitability to include the directive in the scope of EIOPA is mentioned in the proposed review of the directive. Neither is EIOPA proposed to draft any technical standards under the directive. Moreover, there is no reference to directive 2009/103 in the impact assessment of the ESA-review which motivates the addition in art. 2.1 of the Eiopa regulation. For these reasons, and considering that the directive is closely connected to national civil law, SE finds it inappropriate to include directive 2009/103 within the scope of the EIOPA-regulation. DE: (Drafting):(1) paragraph 2 of Article 1 is replaced by the following:“2. The Authority shall act within the powers conferred by this Regulation and within the scope of […] **~~Directive 2009/103/EC~~** […]” DE: (Comments):DE: Directive 2009/103/EC relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability, should not be introduced to the scope of EIOPA.  |
| Article 8 is amended as follows: |  |
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| (a) paragraph 1 is amended as follows: |  |
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| (i) the following point (aa) is inserted: |  |
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| "(aa) to develop and maintain an up to date Union supervisory handbook on the supervision of financial institutions in the Union;"; |  |
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| ii) points (e) and (f) are replaced by the following: |  |
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| "(e) to organise and conduct reviews of competent authorities and, in that context, to issue guidelines and recommendations and to identify best practices, with a view to strengthening consistency in supervisory outcomes; | NL: (Drafting):"(e) to organise and conduct **peer** reviews of competent authorities and, in that context, to issue guidelines and recommendations and to identify best practices, with a view to strengthening consistency in supervisory outcomes;NL: (Comments):It seems reasonable to bring this proposal in conformity with the corresponding proposal in the EBA Regulation (1093/2010). There seems to be no reason for a different approach in the EIOPA Regulation (1094/2010). |
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| (f) to monitor and assess market developments in the area of its competences including, where relevant, developments relating to trends in innovative financial services;"; |  |
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| (iii) point (h) is replaced by the following: |  |
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| "(h) to foster the protection of policyholders, pensions scheme members and beneficiaries, consumers and investors"; |  |
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| (iv) point (l) is deleted; |  |
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| ~~(v) the following point (m) is inserted:~~ |  |
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| ~~"(m) to issue opinions in respect of the applications of internal models, to facilitate decision making and to provide assistance as foreseen in Article 21a;";~~ | DE: (Comments):DE: We agree, to be deleted. |
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| Amendments to Article 21 are deleted. | DE: (Comments):DE: We agree, to be deleted. |
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| Article 21a is deleted.  | DE: (Comments):DE: We agree, to be deleted. |
|  | FR: (Drafting):Article 22 is amended as follows :4. Upon a request from one or more competent authorities, the European Parliament, the Council, including on the request of one or several Member States, or the Commission, or on its own initiative, the Authority may conduct an inquiry into a particular type of financial institution or type of product or type of conduct in order to assess potential threats to the stability of the financial system, or to the protection of policyholders, pension scheme members and beneficiaries, and make appropriate recommendations for action to the competent authorities concerned.For those purposes, the Authority may use the powers conferred on it under this Regulation, including Article 35.(…)FR: (Comments):We would like article 22 of Regulation No 1094/2010 to be amended in order to (i) extend the power of EIOPA to conduct inquiries to the case of the protection of policyholders, and (ii) give Member States and local supervisors the right to request EIOPA to conduct such inquiries. |
| Article 31 is amended as follows:  |  |
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| “(1) The Authority shall fulfil a general coordination role between competent authorities, in particular in situations where adverse developments could potentially jeopardise the orderly functioning and integrity of financial markets or the stability of the financial system in the Union or the protection of policyholders, pension scheme members and beneficiaries in the Union.  | NL: (Comments):In our view, the added reference to the protection of policy holders, pension scheme members and beneficiaries in the Union is unnecessary, since this is already included in the tasks of EIOPA referred to in Article 8, paragraph 1, under h, of this Regulation (‘to foster …’). At the same time, including a reference to pension scheme members and beneficiaries in this Article could create confusion, having regard to the limited role of EIOPA in the field of IORP’s. For that reason, we would suggest to delete this part. Please also note our previous written comments. FR: (Comments):We fully support this amendment to the EIOPA Regulation |
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| The Authority shall promote a coordinated Union response, inter alia, by:  |  |
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| (a) facilitating the exchange of information between the competent authorities;  |  |
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| (b) determining the scope and, where possible and appropriate, verifying the reliability of information that should be made available to all the competent authorities concerned;  |  |
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| (c) without prejudice to Article 19, carrying out non-binding mediation upon a request from the competent authorities or on its own initiative;  |  |
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| (d) notifying the ESRB of any potential emergency situations without delay;  |  |
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| (e) taking all appropriate measures in case of developments which may jeopardise the functioning of the financial markets with a view to facilitating the coordination of actions undertaken by relevant competent authorities;  |  |
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| (f) centralising information received from competent authorities in accordance with Articles 21 and 35 as the result of the regulatory reporting obligations for institutions active in more than one Member State. The Authority shall share that information with the other competent authorities concerned; |  |
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| (g) setting up and coordinating collaboration platforms set out in Article 152b of Directive 2009/138/EC [31a~~]~~ between relevant competent authorities.”  | LV: (Drafting):(g) setting up and coordinating collaboration platforms set out in Article 152b of Directive 2009/138/EC [31a~~]~~ between relevant competent authorities.”LV: (Comments):We support that more focused use of collaboration platforms should be, where there is some significant impact on the market of the host Member State. Only the question remain how will EIOPA determine the “significant impact” or “systemic risk to this market”. Nevertheless, we support that NCAs have a right to install a collaboration platform in case there is a need, NCAs also now well the local market.NL: (Drafting):(g) setting up and coordinating collaboration platforms **in conformity with** ~~set out in~~ Article 152b of Directive 2009/138/EC [31a~~]~~ between relevant competent authorities.”NL: (Comments):Please note our drafting suggestion, to clarify the scope of the proposed collaboration platforms (limited to insurance and re-insurance undertakings that fall within the scope of Solvency II). LU: (Comments):Please refer to our comments on the new Article 152b of Directive 2009/138/EC. DK: (Comments):We are open to moving this provision to the Solvency II directive. However, the placement within articles concerning the motor insurance provisions may be revisited.FR: (Comments):We want these provisions to be part of the ESAs package, and we fear that the modification of Solvency 2 would be delayed until the level 1 review in 2020, which would be too late. Thus, we would prefer the provisions to be maintained in the EIOPA Regulation. |
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| in Article 31, a paragraph is added: |  |
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| “(2) Regarding activity of competent authorities intended to facilitate entry into the market of operators or products relying on technological innovation, the Authority shall promote supervisory convergence, in particular through the exchange of information and best practices. Where appropriate, the Authority may adopt guidelines or recommendations in accordance with Article 16.” | LV: (Comments):We agree with the Presidency that EIOPA already has instrument to issue recommendations that is why there is no need for another instrument. |
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| ~~the following Article [31a] is inserted:~~ | LU: (Comments):Please refer to our comments on the new Article 152b of Directive 2009/138/EC. DK: (Comments):We are open to moving this provision to the Solvency II directive. |
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| ~~“Article [31a]~~ | IE: (Comments):We welcome the deletion of this provision in the EIOPA Regulation EU 1094/2010. We believe if such a provision needs to be included it is better placed in Solvency II Directive. This is because of the particular specificities of the insurance sector and also in light of the forthcoming 2020 review of that Directive where the wider Recovery and Resolution agenda is likely to be discussed.  |
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| ~~Collaboration platforms~~ |  |
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| ~~(1) Where a financial institution carries out or intends to carry out activities which are based on the freedom to provide services or the freedom of establishment and which are significant with respect to the financial institution’s overall activities or the relevant market of a host Member State, the Authority may, on its own initiative or at the request of one or more of the relevant competent authorities, set up and coordinate a collaboration platform to strengthen the exchange of information and an enhanced collaboration between the relevant competent authorities.~~  | NL: (Comments):We welcome the proposal of the Presidency to move the previous proposal for a new Article 31a of the EIOPA Regulation to the Solvency II Directive, in order to limit the scope of this proposal to insurance and reinsurance undertakings. As we’ve mentioned before, we do not recognize the need to expand the scope of the collaboration platforms to pension funds.  |
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| ~~(2) Without prejudice to Article 35, at the request of the Authority the relevant competent authorities shall provide all the necessary information in a timely manner to allow for a proper functioning of the collaboration platform.”~~ |  |
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| **Article 3** |  |
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| **(additional amendments Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority))** |  |
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| Article 2 paragraph 1 is amended as follows: |  |
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| 2. The Authority shall act within the powers conferred by this Regulation and within the scope of Directive 97/9/EC, Directive 98/26/EC, Directive 2001/34/EC, Directive 2002/47/EC, Directive 2003/71/EC, Directive 2004/39/EC, Directive 2004/109/EC, Directive 2009/65/EC, Directive 2011/61/EU of the European Parliament and of the Council \* ~~Regulation 1606/2002 of the European Parliament and of the Council\*\*, Directive 2013/34/EU of the European Parliament and of the Council\*\*\*~~, and Regulation (EC) No 1060/2009, and, to the extent that these acts apply to firms providing investment services or to collective investment undertakings marketing their units or shares and the competent authorities that supervise them, within the relevant parts of, Directive 2002/87/EC, Directive (EU) 2015/849, Directive 2002/65/EC, including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority. | ES: (Drafting):2. The Authority shall act within the powers conferred by this Regulation and within the scope of Directive 97/9/EC, Directive 98/26/EC, Directive 2001/34/EC, Directive 2002/47/EC, Directive 2003/71/EC, Directive 2004/39/EC, Directive 2004/109/EC, Directive 2009/65/EC, Directive 2011/61/EU of the European Parliament and of the Council \* Regulation 1606/2002 of the European Parliament and of the Council\*\*, Directive 2013/34/EU of the European Parliament and of the Council\*\*\*, and Regulation (EC) No 1060/2009, and, to the extent that these acts apply to firms providing investment services or to collective investment undertakings marketing their units or shares and the competent authorities that supervise them, within the relevant parts of, Directive 2002/87/EC, Directive (EU) 2015/849, Directive 2002/65/EC, including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority.ES: (Comments):Reference to Regulation 1606/2002 on the application of international accounting standards and Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings is important for Spain, as our national securities supervisor publishes extensive documentation on the basis of these texts. The reference should be reinstated. DE: (Comments):DE: We agree, to be deleted.DK: (Comments):We support the deletion of these two acts. It is unclear to us what the exact nature of ESMA’s tasks would be as it would be a vast enlargement of their remit outside of securities and markets regulation per se. FI: (Comments):We can support the deletion, because we are concerned that the addition would have brought unintended consequences and unintended bodies under the remit of the ESAs. At least, in our view, we would have needed to add the accounting directive to the remit of all ESAs, not only ESMA and specify that only competent authorities are in the scope where they would apply the said directive. |
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| Article 31b paragraph 3 is replaced by the following:  | DE: (Drafting):**Addition of Article 31b is deleted.**DE: (Comments):DE: Article 31b Needs to be deleted. ESMA’s power to coordinate and propose market abuse investigation conflicts with responsibilities pursuant to MAR. There is the danger of inefficiencies due to losing time in cases that require immediate supervisory action/investigations (e.g. scalping and insider trading). |
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| The Authority shall facilitate the electronic exchange of information between the Authority and the competent authorities.” | DE: (Comments):DE: See above, Article 31b should be deleted as a whole.DK: (Comments):We would be open to discussing this change.  |
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| **Article 4** |  |
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| **(Amendments to Regulation (EU) No 345/2013 on European venture capital funds)** |  |
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| Deleted  | DE: (Comments):DE: We agree, to be deleted. |
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| **Article 5** |  |
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| **(Amendments to Regulation (EU) No 346/2013 on European social entrepreneurship funds)** |  |
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| Deleted  | DE: (Comments):DE: We agree, to be deleted. |
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| **Article 6** | LV: (Comments):We welcome that Article 6 of the Commission's proposal is deleted in the Presidency's compromise proposal. |
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| **(Amendments to Regulation (EU) No 600/2014 on markets in financial instruments)** | HR: (Comments):In general we could agree for CTPs to be subject to ESMA supervision and licencing. However, we still have concerns on Article 38.c paragraph 6. and its curtailing of the authority of national courts. We recognise that such provisions already exist in EMIR for trade repositories, but we generally do not support widening the range of such provisions and would support amending them in EMIR as well. The same applies to Article 38d paragraph 10. In Article 38 d. paragraph 7., we do not support mandatory delegation of ESMA’s tasks to NCAs. (“ESMA may also require competent authorities to carry out specific investigatory tasks and on-site inspections as provided for in this Article and in Article 38b(1) on its behalf.”). The NCAs should have the option to refuse ESMA, as this is a task within ESMA’s mandate and is its sole responsibility. This also applies to Article 38.o. In the context, if these provisions would not be changes, we would not support direct ESMA supervision of CTPs. DE: (Comments):DE: We agree with Presidency that several deletions are needed here, f.i. when it comes to the proposed data gathering powers of ESMA. |
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| Amendments to Article 1 are deleted. |  |
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| Article 1 is amended as follows: | LU: (Comments):LU’s position on a centralization of powers at the level of ESMA is clear and remains unchanged. We refer to our previous comments and arguments justifying our strong opposition. We do also strongly disagree with the transfer of competences to ESMA regarding CTPs. It is premature to foresee changes to the Mifid2 framework without a detailed impact study. This will also set an undesirable precedent for other issues. |
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| (a) in paragraph 1, the following point (g) is added: | LU: (Comments):Please see above. |
| '(g) the authorisation and supervision of CTPs'; | LV: (Comments):Nevertheless, we support for transferring supervision of consolidated tape providers to ESMA.FR: (Drafting):'(g) the authorisation and supervision of **data reporting service providers**FR: (Comments):All data reporting service providers should be submitted to the supervision of ESMA, as these are pan-European activities, which were initiated by MiFiD 2.Besides, there is today no CTP in Europe. |
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| Amendments to Article 2 are deleted. |  |
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| Article 2(1) is amended as follows: |  |
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| (a) point (35) is replaced by the following: |  |
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| (35) ‘consolidated tape provider’ or ‘CTP’ means a person authorised under this Regulation to provide the service of collecting trade reports for financial instruments listed in Articles 6, 7, 10, 12 and 13, 20 and 21 from regulated markets, MTFs, OTFs and APAs and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument; |  |
|  | **FR:** **(Drafting):****(36a) ‘data reporting service providers’ means the persons referred to in points (34) to (36) and persons referred to in Article 38a27a(2);** |
| Replacement of Article 22 is deleted. |  |
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| Replacement of Article 26 is deleted. |  |
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| Replacement of Article 27 is deleted. |  |
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| Article 27a is replaced by the following:  |  |
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| Article 27a | LU: (Comments):Please see above. We do not agree with the inclusion of Article 27a. |
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| Requirement for authorisation |  |
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| 1. The operation of a CTP as a regular occupation or business shall be subject to prior authorisation by ESMA in accordance with this Title. | PL: (Comments):PL can support this proposition.**FR:** **(Drafting):****1. The operation of an APA, a CTP or an ARM as a regular occupation or business shall be subject to prior authorisation by ESMA in accordance with this Title.**FR: (Comments):As stated above, all data reporting service providers should be submitted to the direct supervision of ESMA. |
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| 2. An investment firm or a market operator operating a trading venue may also provide the services of a CTP, subject to the prior verification by ESMA that the investment firm or the market operator comply with this Title. The provision of those services shall be included in their authorisation. | **FR:** **(Drafting):****2. An investment firm or a market operator operating a trading venue may also provide the services of an APA, a CTP or an ARM, subject to the prior verification by ESMA that the investment firm or the market operator comply with this Title. The provision of those services shall be included in their authorisation.** |
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| 3. ESMA shall establish a register of all CTPs in the Union. The register shall be publicly available and shall contain information on the services for which the CTP is authorised and it shall be updated on a regular basis. | **FR:** **(Drafting):****3. ESMA shall establish a register of all data reporting services providers in the Union. The register shall be publicly available and shall contain information on the services for which the data reporting services provider is authorised and it shall be updated on a regular basis.**  |
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| Where ESMA has withdrawn an authorisation in accordance with Article 27d, that withdrawal shall be published in the register for a period of 5 years. | **FR:** **(Drafting):****Where ESMA has withdrawn an authorisation in accordance with Article 27d, that withdrawal shall be published in the register for a period of 5 years..** |
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| 4. CTPs shall provide their services under the supervision of ESMA. ESMA shall regularly review the compliance of CTP providers with this Title. ESMA shall monitor that CTPs comply at all times with the conditions for initial authorisation established under this Title. | **FR:** **(Drafting):****4. Data reporting services providers shall provide their services under the supervision of ESMA. ESMA shall regularly review the compliance of data reporting services providers with this Title. ESMA shall monitor that data reporting services providers comply at all times with the conditions for initial authorisation established under this Title.** |
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| Article 27b is replaced by the following:  |  |
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| Article 27b | LU: (Comments):Please see above. We do not agree with the inclusion of Article 27b. |
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| Authorisation of CTPs | FR: (Drafting):Authorisation of data reporting service providersFR: (Comments):Same comment as above |
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| 1. CTPs shall be authorised by ESMA for the purposes of Title IVa where: | FI: (Comments):We welcome that the supervision of CTPs is transferred to ESMA. However, we think that more should be done and the same should be applied to ARMs and APAs, in accordance with the COM proposal. In our view, there has not been that much opposition to these proposals.FR: (Drafting):1. Data reporting service providers shall be authorised by ESMA for the purposes of Title IVa where: |
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| (a) the CTP is a legal person established in the Union; and | FR: (Drafting):(a) the data service provider is a legal person established in the Union; and |
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| (b) the CTP meets the requirements laid down in Title IVa. | FR: (Drafting):(b) the data service provider meets the requirements laid down in Title IVa. |
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| 2. The authorisation referred to in paragraph 1 shall specify the services which the CTP is authorised to provide.  | FR: (Drafting):2. The authorisation referred to in paragraph 1 shall specify the data reporting service which the data reporting services provider is authorised to provide. Where an authorised data reporting services provider seeks to extend its business to additional data reporting services, it shall submit a request to ESMA for extension of that authorisation. |
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| 3. An authorised CTP shall comply at all times with the conditions for authorisation referred to in Title IVa. An authorised CTP shall, without undue delay, notify ESMA of any material changes to the conditions for authorisation. | FR: (Drafting):3. An authorised data reporting service provider shall comply at all times with the conditions for authorisation referred to in Title IVa. An authorised data reporting service provider shall, without undue delay, notify ESMA of any material changes to the conditions for authorisation. |
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| 4. The authorisation referred to in paragraph 1 shall be effective and valid for the entire territory of the Union and shall allow the CTP to provide the services for which it has been authorised, throughout the Union.” | FR: (Drafting):4. The authorisation referred to in paragraph 1 shall be effective and valid for the entire territory of the Union and shall allow the data reporting service provider to provide the services for which it has been authorised, throughout the Union. |
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| Articles 27c, 27d and 27e remain unchanged as per Commission’s proposal, with “data reporting service provider” being replaced with “consolidated tape provider” (CTP). | FR: (Drafting):The drafting here should remain “data reporting service providers” and get back to the COM ptoposal on this subject.FR: (Comments):Same comment as above |
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| Deletion of Article 27f  |  |
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| Deletion of Article 27h |  |
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| Title VIa remains unchanged, with references to “data reporting service provider” (including references to APAs and ARMs) replaced with “consolidated tape provider” (CTP). |  |
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| Articles 54a and 54b remain unchanged, with references to “data reporting service providers” being mutatis mutandis replaced with “consolidated tape provider” (CTP). |  |
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| **Article 7** | LV: (Comments):We welcome that Article 7 of the Commission's proposal is deleted in the Presidency's compromise proposal. |
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| **(Amendments to Regulation (EU) No 760/2015 on European long-term investment funds)** |  |
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| Deleted  | DE: (Comments):DE: We agree, to be deleted. |
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| **Article 8** |  |
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| **(Amendments to Regulation (EU) No 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds)** | HR: (Comments):We are generally not in favor of giving ESMA direct supervisory powers, however, as a compromise, we can agree for administrators of critical benchmarks to be under ESMA supervision (Article 20. paragraph 1. points (a) and (c) of the Benchmark regulation). Please note that our comments for CTPs may be applicable here as well. DK: (Comments):Generally, we still believe that the envisaged change in this area is premature due to the recent negotiations of the act itself. This also applies to third country benchmarks.  |
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| Amendments to Article 4 are deleted. |  |
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| Amendments to Article 12 are deleted. |  |
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| Amendments to Article 14 are deleted. |  |
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| Replacement of Article 20 is deleted. |  |
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| Replacement of Article 21 paragraph 2 is deleted. |  |
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| Article 21, last subparagraph of paragraph (3) is amended as follows: |  |
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| By the end of that period, the competent authority shall review its decision to compel the administrator to continue to publish the benchmark and may, where necessary, extend the time period by an appropriate period not exceeding a further 12 months. The maximum period of mandatory administration shall not exceed 5 years in total. | DE: (Comments):  |
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| Deletion of Article 21 paragraph 5 is deleted. |  |
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| Article 23, paragraphs 3 and 4 are amended as follows: | LU: (Comments):With respect to benchmarks, we are also not convinced of the need to confer supervisory tasks to ESMA. We are of the opinion that this would be premature, also given that the BMR has only recently been negotiated and implemented. We would thus prefer to delete the related Article also from the proposal. |
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| 3. A supervised contributor to a critical benchmark that intends to cease contributing input data shall promptly notify the administrator thereof in writing. The administrator shall thereupon inform without delay ~~ESMA.~~ its competent authority which ~~ESMA~~ shall inform without delay the competent authority of that supervised contributor and, where applicable, ESMA. The administrator shall submit to ~~ESMA~~ its competent authority an assessment of the implications on the capability of the critical benchmark to measure the underlying market or economic reality, as soon as possible but no later than 14 days after the notification made by the supervised contributor. | LU: (Comments):Please see above. |
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| 4. Upon receipt of the assessment referred to in paragraphs 2 and 3, ~~ESMA~~ the competent authority of the administrator shall, where applicable, promptly inform ESMA or the college established under article 46 and shall, on the basis of that assessment, make its own assessment on the capability of the benchmark to measure the underlying market and economic reality, taking into account the administrator's procedure for cessation of the benchmark established in accordance with Article 28(1)*.* |  |
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| Article 23, last subparagraph of paragraph (6) is amended as follows: |  |
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| The maximum period of mandatory contribution under points (a) and (b) of the first subparagraph shall not exceed 5 years in total. | UK: (Drafting):(d) require the administrator to change the methodology, the code of conduct referred to in Article 15 or other rules of the critical benchmark, **or to calculate the benchmark from one or more alternative benchmarks that continue to meet the requirement of this Regulation and an adjustment based on previously observed differences between these alternative benchmarks and the critical benchmark.**The maximum period of mandatory contribution under points (a) and (b) of the first subparagraph shall not exceed 5 years in total.UK: (Comments):We consider that there is some merit in being able to substitute a rate with a proxy, using a rate we would support (in line replacing EONIA with ESTER plus a spread). We believe it may be beneficial to cater for this more overtly in level one. At present article 23 (6)(d) does allow for a change in methodology but we see some merit in going a step further. |
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| Amendments to Article 26 are deleted. |  |
|  | UK: (Drafting):1. A supervised entity may use a benchmark or a combination of benchmarks in the Union if the benchmark is provided by an administrator located in the Union and included in the register referred to in Article 36 or is a benchmark which is included in the register referred to in Article 36. **Where a benchmark or combination of benchmarks is found no longer to meet the requirements of this Regulation, but ceasing or changing that benchmark to fulfil the requirements of this Regulation would result in a force majeure event, frustrate or otherwise breach the terms of any financial contract or financial instrument or the rules of any investment fund which references that benchmark, the use of the benchmark may be permitted by the competent authority of the Member State where the index provider is located. No financial instruments, financial contracts, or measurements of the performance of an investment fund shall add a reference to such an existing benchmark after the assessment that the benchmark or combination of benchmarks is found no longer to meet the requirements of the regulation.**UK: (Comments):The BMR currently authorises administrators rather than benchmarks. This creates a tension with regard to critical benchmarks where an authorised benchmark becomes fragile, especially where the administrator may also produce some untroubled benchmarks.Article 51.4 which allows one to limit the use of a fragile benchmark to legacy is a very important tool, particularly in the critical benchmark space but will cease to apply once the transitionals expire, and in any event does not apply to authorised administrators and their benchmarks. One could argue that it is a power that is needed in general in the BMR as this issue will arise in the future with authorised benchmarks after the transitional has expired.This proposed amendment will begin to build capacity to wind a fragile ciritical benchmark down, but without the risks of increasing stock of legacy contracts.  |
| Amendments to Article 30 are deleted. |  |
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| Amendments to Article 32 are deleted. | FI: (Comments):We do not support the deletion. Please see our comments in Article 40.FR: (Drafting):Article 32 Recognition of an administrator located in a third country1. Until such time as an equivalence decision is adopted in accordance with paragraphs 2 and 3 of Article 30, a benchmark provided by an administrator located in a third country may be used by supervised entities in the Union, provided that that administrator acquires prior recognition by ESMA in accordance with this Article2. An administrator located in a third country intending to obtain prior recognition as referred to in paragraph 1 of this Article shall comply with the requirements established in this Regulation, excluding Article 11(4) and Articles 16, 20, 21 and 23. The administrator may fulfil that condition by applying the IOSCO principles for financial benchmarks or the IOSCO principles for PRAs, as applicable, provided that such application is equivalent to compliance with the requirements established in this Regulation, excluding Article 11(4), and Articles 16, 20, 21 and 23.To determine whether the condition referred to in the first subparagraph is fulfilled and to assess compliance with the IOSCO principles for financial benchmarks or the IOSCO principles for PRAs, as applicable, ESMA may take into account an assessment by an independent external auditor or, a certification provided by the competent authority of the administrator in the third country where the administrator is located.If, and to the extent that, an administrator is able to demonstrate that a benchmark it provides is a regulated-data benchmark or a commodity benchmark that is not based on submissions by contributors the majority of which are supervised entities, there shall be no obligation on the administrator to comply with requirements not applicable to the provision of regulated-data benchmarks and of commodity benchmarks as provided for in Article 17 and Article 19(1) respectively.3. An administrator located in a third country intending to obtain prior recognition as referred to in paragraph 1 shall have a legal representative. The legal representative shall be a natural or legal person located in the Union and expressly appointed by that administrator to act on behalf of that administrator with regard to the administrator’s obligations under this Regulation. The legal representative shall, together with the administrator, perform the oversight function relating to the provision of benchmarks performed by the administrator under this Regulation and, in that respect, be accountable to ESMA.(4) 5. An administrator located in a third country intending to obtain prior recognition as referred to in paragraph 1 shall apply for recognition with ESMA. The applicant administrator shall provide all information necessary to satisfy ESMA that it has established, at the time of recognition, all the necessary arrangements to meet the requirements referred to in paragraph 2 and shall provide the list of its actual or prospective benchmarks which are intended for use in the Union and shall, where applicable, indicate the competent authority in the third country responsible for its supervision. Within 90 working days of receipt of the application referred to in the first subparagraph of this paragraph, ESMA shall verify that the conditions laid down in paragraphs 2 and 3 are fulfilled.Where ESMA considers that the conditions laid down in paragraphs 2 and 3 are not fulfilled, it shall refuse the recognition request and set out the reasons for that refusal. In addition, no recognition shall be granted unless the following additional conditions are fulfilled:(a) where an administrator located in a third country is subject to supervision, an appropriate cooperation arrangement is in place between ESMA and the competent authority of the third country where the administrator is located, in compliance with the regulatory technical standards adopted pursuant to Article 30(5), to ensure an efficient exchange of information that enables the competent authority of that third country to carry out its duties in accordance with this Regulation;(b) the effective exercise by ESMA of its supervisory functions under this Regulation is neither prevented by the laws, regulations or administrative provisions of the third country where the administrator is located, nor, where applicable, by limitations in the supervisory and investigatory powers of that third country’s competent authority.**FR:** **(Comments):****Third country** **critical benchmarks should be supervised by ESMA, otherwise noEU NCA would be entitled to supervised them.**  |
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| Replacement of Article 33 is deleted. | FI: (Comments):We do not support the deletion. Please see our comments in Article 40.FR: (Drafting):Article 33 Endorsement of benchmarks provided in a third country1. An administrator located in the Union and authorised or registered in accordance with Article 34, or any other supervised entity located in the Union with a clear and well-defined role within the control or accountability framework of a third country administrator, which is able to monitor effectively the provision of a benchmark, may apply to ESMA to endorse a benchmark or a family of benchmarks provided in a third country for their use in the Union, provided that all of the following conditions are fulfilled: (a) the endorsing administrator or other supervised entity has verified and is able to demonstrate on an on-going basis to ESMA that the provision of the benchmark or family of benchmarks to be endorsed fulfils, on a mandatory or on a voluntary basis, requirements which are at least as stringent as the requirements of this Regulation;(b) the endorsing administrator or other supervised entity has the necessary expertise to monitor effectively the activity of the provision of a benchmark in a third country and to manage the associated risks; (c) there is an objective reason to provide the benchmark or family of benchmarks in a third country and for said benchmark or family of benchmarks to be endorsed for their use in the Union.For the purpose of point (a), when assessing whether the provision of the benchmark or family of benchmarks to be endorsed fulfils requirements which are at least as stringent as the requirements of this Regulation, ESMA may take into account whether the compliance of the provision of the benchmark or family of benchmarks with the IOSCO principles for financial benchmarks or the IOSCO principles for PRAs, as applicable, would be equivalent to compliance with the requirements of this Regulation.2. An administrator or other supervised entity that makes an application for endorsement as referred to in paragraph 1 shall provide all information necessary to satisfy ESMA that, at the time of application, all the conditions referred to in that paragraph are fulfilled.3. Within 90 working days of receipt of the application for endorsement referred to in paragraph 1, ESMA shall examine the application and adopt a decision either to authorise the endorsement or to refuse it and inform the applicant accordingly.4. An endorsed benchmark or an endorsed family of benchmarks shall be considered to be a benchmark or family of benchmarks provided by the endorsing administrator or other supervised entity. The endorsing administrator or other supervised entity shall not use the endorsement with the intention of avoiding the requirements of this Regulation.5. An administrator or other supervised entity that has endorsed a benchmark or a family of benchmarks provided in a third country shall remain fully responsible for such a benchmark or family of benchmarks and for compliance with the obligations under this Regulation.6. Where ESMA has well-founded reasons to consider that the conditions laid down under paragraph 1 are no longer fulfilled, it shall have the power to require the endorsing administrator or other supervised entity to cease the endorsement. Article 28 shall apply in case of cessation of the endorsement.7. The Commission shall be empowered to adopt delegated acts in accordance with Article 49 concerning measures to determine the conditions under which ESMA may assess whether there is an objective reason for the provision of a benchmark or family of benchmarks in a third country and their endorsement for their use in the Union. The Commission shall take into account elements such as the specificities of the underlying market or economic reality the benchmark intends to measure, the need for proximity of the provision of the benchmark to such market or economic reality, the need for proximity of the provision of the benchmark to contributors, the material availability of input data due to different time zones, and specific skills required in the provision of the benchmark. |
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| The deletion of amendments to Article 34 is deleted. |  |
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| Article 40 is replaced by the following: |  |
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| 1. For the purposes of this Regulation, ESMA shall be the competent authority for administrators of ~~and supervised contributors to~~ critical benchmarks as referred to in Article 20, paragraph 1(a) and (c) . | LV: (Comments):We support Presidency’s proposal – giving ESMA direct powers in the field of critical benchmarks that is limited to the supervision of administrators.LU: (Comments):Please see above.DK: (Comments):While we do not support the inclusion of benchmarks per se, we do fully support the deletion of the supervised contributors.FI: (Comments):We still think that ESMA should also be the competent authority for the recognition and the approval of endorsements of third country administrators and benchmarks. |
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| 2. Each Member State shall designate the relevant competent authority responsible for carrying out the duties under this Regulation ~~concerning administrators~~ ~~and supervised entities~~ and shall inform the Commission and ESMA thereof. | LU: (Comments):Please see above. |
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| 3. A Member State that designates more than one competent authority in accordance with paragraph 2 shall clearly determine the respective roles of those competent authorities and shall designate a single authority to be responsible for coordinating the cooperation and the exchange of information with the Commission, ESMA and other Member States’ competent authorities. |  |
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| 4. ESMA shall publish on its website a list of the competent authorities designated in accordance with paragraphs 1 to 3 |  |
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| Amendments to Article 41 are deleted.  |  |
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| Amendments to Article 43 are deleted. |  |
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| Replachment of Article 44 is deleted. |  |
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| Amendments to Article 45 are deleted. |  |
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| Deletion of Article 46 is deleted. |  |
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| Amendments to Article 47 are deleted.  |  |
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| Article 48o, paragraph 2 is replaced by the following: |  |
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| “2. Any files and working documents related to the supervisory and enforcement activity regarding administrators referred to in Article 40(1), including any ongoing examinations and enforcement actions, or certified copies thereof, shall be taken over by ESMA on the date referred to in paragraph 1. |  |
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| ~~However, applications for authorisation by administrators of a critical benchmark, applications for recognition in accordance with Article 32 and applications for approval of endorsement in accordance with Article 33 that have been received by competent authorities before [PO: Please insert date 34 months after entry into force] shall not be transferred to ESMA, and the decision to authorise or refuse authorisation, recognition or approval of endorsement shall be taken by the relevant competent authority.”~~ |  |
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| In Art 51, a new paragraph 4a is inserted:  |  |
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| “4a. An existing benchmark designated as critical by an implementing act adopted by the Commission in accordance with Article 20 that does not meet the requirements to obtain an authorisation in accordance with Article 34 of this Regulation by 1 January 2020 may, if the competent authority considers that its discontinuation would affect financial stability, be used until 31 December 2021.” | LV: (Comments):We support insertion of the transition period if its discontinuation would affect financial stability.PL: (Comments):PL can support this article.DK: (Comments):While we do not support the inclusion of benchmarks per se, we support this proposal.  |
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| Replacment of Article 53 is deleted.  |  |
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| **Article 9** | LV: (Comments):We welcome that Article 9 of the Commission's proposal is deleted in the Presidency's compromise proposal.IE: (Comments):The drafting of Article 9 in our view would also add uncertainty into the authorisation and supervision of insurance entities, which will impact the ability to effectively supervise an entity. We also believe that the issue of intermediaries in facilitating the sale of insurance products cross border should not be ignored.We are also of the view that the existing communication of information provisions for both freedom of establishment and freedom of services business in Solvency II (Articles 146 and 148 respectively) are more than adequate to convey the necessary information to host supervisors, whilst still respecting the authorisation powers of the home supervisor. While we do not support a number of the proposed amendments to the EIOPA Regulation, we do acknowledge that one of the key aims of the proposals is to provide for a more formalised framework for cooperation between Home and Host in the event of cross-border failures. Thus, on the latter point we see merit in the principle underlying Article 152(a)(1)(b) that there should be a requirement for home supervisory authorities to notify host authorities and EIOPA of deteriorating financial conditions or other emerging risks posed by an insurer conducting cross-border activities.However, we remain of the view that further analysis of the issue is necessary in order to ensure that we can achieve a framework which is operationally effective. We are of the view that further clarity is required with respect to this proposal, and that it needs to be examined in greater detail as part of the wider discussions taking place in relation to Insurance Recovery and Resolution, which are likely to form part of the Solvency II review. We would also note that the Commission and EIOPA work in this area will inform such a discussion, including EIOPA’s discussion paper on Recovery and Resolution, as well as the work on group supervision.We are willing to work with other Member States on this important issue in order to determine what could be done beyond the Solvency II framework, whilst also taking into account the importance of maintaining the Home-Host balance.  |
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| **(Amendments to Regulation (EU) No 1129/2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market)** |  |
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| Deleted.  | DE: (Comments):We agree, to be deleted. |
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| DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL | DE: (Comments):DE: We agree, EIOPA powers with regard to internal models to be deleted. |
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| amending Directive 2014/65/EU on markets in financial instruments and Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) |  |
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| In Article 112(4), the following sub-paragraphs are deleted: | DK: (Comments):We support the proposal to delete the provisions.  |
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| **~~'Once the application is deemed complete by the supervisory authorities, they shall inform EIOPA of the application.~~**  |  |
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| **~~Upon request by EIOPA, the supervisory authorities shall provide EIOPA with all the documentation~~****~~submitted by the undertaking in its application.~~** |  |
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| **~~EIOPA may issue~~****~~an Opinion to the supervisory authorities concerned in accordance with Article 21a(1)(a) and 29(1)(a) of Regulation (EU) No 1094/2010~~****~~within 4 months of receipt by the supervisory authority of the complete application.~~** |  |
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| **~~Where such an Opinion is issued, the supervisory authority shall take its decision as referred to in the first subparagraph in conformity with that Opinion, or provide reasons in writing to EIOPA and to the applicant where the decision was not taken in conformity with that Opinion.';~~** |  |
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| the following Article 152a is inserted: | IE: (Comments):We have concerns about the proposed Article 152a as it implies a dilution of the authorisation powers of a national supervisor in circumstances where an insurer is planning to do cross-border business. We believe that it runs contrary to the philosophy of the single market as it will, if implemented, create an un-level playing field between larger and smaller countries. |
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| **“Article 152a** | LU: (Comments):Please also refer to our previous comments we provided on article 152a.DK: (Comments):Generally, we are supportive of increased cooperation and overview of cross border activity in areas under the remit of EIOPA. A notification that an entity is entering into a host NCA’s jurisdiction can be of value in that regard. However, we believe that notification of such activity should still respect and not change competencies of the home/host NCAs as set out in the sectoral legislation. This refers particularly to the wording of notification in the event of intentions to authorise undertakings as it may provide an opening for host MS to interact with the home MS.  |
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| **Notification** |  |
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| **(1) The supervisory authority of the home Member State shall notify both EIOPA and the supervisory authorities of the host Member States in the following cases:** |  |
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| **a) the supervisory authority of the home Member State intends to authorise an insurance or reinsurance undertaking whose scheme of operations indicates that a significant part of its activities will be based on the freedom to provide services or the freedom of establishment;** | LU: (Drafting):To be deleted.LU: (Comments):We do have concerns with this Article as it is not in line with Articles 14 and 15 of Solvency II and the home MS principle. We do not see the added-value of an additional notification of the supervisory authority of the home Member State when it intends to authorize an insurance or reinsurance undertaking whose scheme of operations indicates that a significant part of its activities will be based on the freedom to provide services or the freedom of establishment. If the provision was to be retained, it could be aligned with Article 152b.DK: (Comments):The wording included “intends to authorise” seems to provide for an opening for host MS to interact with the home MS about the authorisation process. We would welcome clarity that this is not the case. Alternatively, one might wait with the notification until authorisation has been granted.  |
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| **b) the supervisory authority of the home Member State identifies deteriorating financial conditions or other emerging risks posed by an insurance or reinsurance undertaking carrying out activities based on the freedom to provide services or the freedom of establishment that may have a cross-border effect.** | IE: (Comments):This sub-section is welcome, however in our view it just "hangs there“ with no effect.  |
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| The following Article 152b is inserted: | LU: (Comments):We expressed concerns regarding the idea to set up an additional collaboration platform (i.e. in addition to Article 45c) pinpointing cross-border activities in insurance. We are of the view that the new Article 45c would provide a sufficient legal basis for EIOPA to act without pinpointing cross-border insurance in the EIOPA regulation. Based on that Article EIOPA could establish, on a case by case basis, platforms where there is a documented need, and where no other tools (e.g. supervisory colleges) are available to handle the specific case at hand.This said, we acknowledge however the progress in the wording of Article 152a and welcome the additional framing aimed at ensuring that the platform (if retained in the proposal) would be used in more focused and proportionate way (and in order to avoid the automaticity and discrimination regarding certain MS we pointed out before). We are also more positive as regards the proposal to move the provision to the Solvency II Directive. Further work is however necessary to avoid interference with the existing home-host framework in solvency II.  |
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| “Article 152b | LU: (Comments):Please see above.IE: (Comments):DK: (Comments):As stated earlier we are open to this move to sectoral legislation in the spirit of compromise. |
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| Collaboration platforms | LU: (Comments):Please see above. |
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| (1) Where an insurance or reinsurance undertaking carries out or intends to carry out activities which are based on the freedom to provide services or the freedom of establishment and which are significant with respect to the relevant market of a host Member State or could pose a systemic risk to this market, the Authority may, in case of justified concerns about negative effects on policyholders, on its own initiative or at the request of one or more of the relevant supervisory authorities, set up and coordinate a collaboration platform to strengthen the exchange of information and an enhanced collaboration between the relevant supervisory authorities.  | LV: (Comments):We support that more focused use of collaboration platforms should be, where there is some significant impact on the market of the host Member State. Only the question remain how will EIOPA determine the “significant impact” or “systemic risk to this market”.HR: (Comments):We can agree with the proposal to set up collaboration platforms.NL: (Comments):We support the proposal of the presidency to specify the scope of the provision with regard to the set-up of collaboration platforms, by referring to situations of significant impact. LU: (Comments):Please see above.IE: (Comments):In line with our comments on Article 152a above, the proposed text implies a dilution of the authorisation powers of a national supervisor in circumstances where an insurer is planning to do cross-border business. DK: (Comments):As we have understood the proposal this is very much an effort to underpin ex ante cooperation which we fully support. FR: (Drafting):(1) Where an insurance or reinsurance undertaking carries out or intends to carry out activities which are based on the freedom to provide services or the freedom of establishment and which are significant with respect to the relevant market of a host Member State,  ~~or~~ could pose a systemic risk to this market or have negative effects on policyholders, the Authority may, ~~in case of justified concerns about negative effects on policyholders~~, on its own initiative or at the request of one or more of the relevant supervisory authorities, set up and coordinate a collaboration platform to strengthen the exchange of information and an enhanced collaboration between the relevant supervisory authorities.FR: (Comments):We welcome that national authorities now have the right to request EIOPA to set up collaboration platforms.However, the obligation for EIOPA to justify the setting up of collaboration platforms by the need to protect policyholders can be limiting in practice, even if we share the Presidency objectives. It is of paramount importance for us that these platforms are easy to set up and we would recommend to dismiss this obligation. |
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| (2) This does not prejudice the right of the relevant supervisory authorities to set up a collaboration platform where they all agree on its establishment.   | LV: (Drafting):(2) This does not prejudice the right of the relevant supervisory authorities to set up a collaboration platform where they all agree on its establishment.LV: (Comments):We support that NCAs have a right to create a collaboration platform in a case there is a need, NCAs also better know the local market.NL: (Comments):In our opinion, this clarification of the Presidency, resulting in both EIOPA and the national competent authorities having the right to install a collaboration platform, is important and should be maintained. LU: (Comments):Please see above.DK: (Comments):In light of the wish for increased ex ante cooperation we wish to ask whether there is also an obligation for all the relevant supervisory authorities to actively participate in a voluntary platform under this specific provision. For example would it be possible that 10 jurisdictions where relevant, all agreed to the establishment of the platform but only eight participated actively as the two remaining NCAs felt activity in their jurisdiction’s involvement was minimal? |
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| (3) Without prejudice to Article 35 of Regulation (EU) No. 1094/2010, at the request of the Authority the relevant supervisory authorities shall provide all the necessary information in a timely manner to allow for a proper functioning of the collaboration platform.” | LU: (Comments):Please see above. |
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| Article 231 is amended as follows: |  |
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| **~~(a) paragraph 1 is amended as follows:~~** |  |
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| **~~(i) the first sub-paragraph is replaced by the following:~~** |  |
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| **~~'1. In the case of an application for permission to calculate the consolidated group Solvency Capital Requirement, as well as the Solvency Capital Requirement of insurance and reinsurance undertakings in the group, on the basis of an internal model, submitted by an insurance or reinsurance undertaking and its related undertakings, or jointly by the related undertakings of an insurance holding company, the supervisory authorities concerned shall cooperate with each other and with EIOPA, to decide whether or not to grant that permission and~~** **~~to determine the terms and conditions, if any, to which such permission is subject.';~~** |  |
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| **~~(ii) the third sub-paragraph is replaced by the following:~~** |  |
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| **~~'The group supervisor shall inform the other members of the college of supervisors of the receipt of the application and forward the complete application, including the documentation submitted by the undertaking, to college members, including EIOPA, without delay.';~~** |  |
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| **~~'2b. Where EIOPA considers that an application as referred to in the first paragraph presents particular issues with respect to consistency in internal model application approvals across the Union, EIOPA may issue an Opinion to the supervisory authorities concerned in accordance with Article 21a(1)(a) and 29(1)(a) of Regulation (EU) No 1094/2010 within 4 months of receipt by the group supervisor of the complete application.~~**  |  |
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| **~~Where such an Opinion is issued, the supervisory authorities shall take their joint decision as referred to in the second paragraph in conformity with that Opinion, or provide reasons in writing to EIOPA and the applicant where the joint decision was not taken in conformity with that Opinion.';~~** |  |
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| (c) paragraph 3 is amended as follows: |  |
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| **~~(i) the first subparagraph is replaced by the following:~~** |  |
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| **~~'If, within the six-month period referred to in paragraph 2, any of the supervisory authorities concerned has referred the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010 or EIOPA is assisting the supervisory authorities on its own initiative in accordance with Article 19(1)(b) of that Regulation, the group supervisor shall defer its decision until EIOPA adopts a decision in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with EIOPA's adopted decision.~~** ~~The group supervisor's~~ **~~decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.~~** |  |
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| 'Where EIOPA does not adopt a decision as referred to in the second subparagraph in accordance with Article 19(3) of Regulation (EU) No 1094/2010, the group supervisor shall take a final decision.'; |  |
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| **~~(d) In paragraph 6, the second sub-paragraph is replaced by the following:~~** |  |
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| **~~'The group supervisor shall duly take into account any views and reservations of the other supervisory authorities concerned and of EIOPA expressed during that six-month period.';~~** |  |
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| **~~(e) In paragraph 6, the third sub-paragraph is replaced by the following:~~** |  |
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| **~~'The group supervisor shall provide the applicant, the other supervisory authorities concerned and EIOPA with a document setting out its fully reasoned decision.';~~** |  |
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| **~~(f) A new paragraph 6a is added:~~** |  |
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| **~~'6a. After the six month period referred to in paragraph 2 and before the group supervisor takes a decision as referred to in paragraph 6, the undertaking which submitted the application in accordance with paragraph 1 may request that EIOPA assist the supervisory authorities in reaching an agreement, in accordance with Article 19 of Regulation (EU) No 1094/2010.~~** |  |
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| **~~The group supervisor shall defer its decision until EIOPA adopts a decision in accordance with Article 19(3) of Regulation (EU) No 1094/2010 and shall take its decision in conformity with EIOPA's adopted decision. The group supervisor's decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.~~** |  |
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| **~~EIOPA shall adopt its decision within 1 month from the end of the conciliation period referred to in Article 19(2) of Regulation (EU) No 1094/2010.~~**  |  |
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| **~~Where EIOPA does not adopt a decision as referred to in the third subparagraph in accordance with Article 19(3) of Regulation (EU) 1094/2010 of that Regulation, the group supervisor shall take a final decision. The group supervisor's decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.';~~** |  |
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| Article 231a and 231b are deleted. |  |
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| END | END |