

Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance)

*Article 11*

**Amendments to Directive 2009/65/EC**

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

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

8. In order to ensure consistent harmonisation of this Article the European Supervisory Authority (European Securities and Markets Authority) (hereinafter “ESMA”), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>(1)</sup> may develop draft regulatory technical standards to specify the information to be provided to the competent authorities in the application for authorisation of a UCITS.

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

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

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

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

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

- a the information to be provided to the competent authorities in the application for the authorisation of the management company, including the programme of activity;
- b the requirements applicable to the management company under paragraph 2 and the information for the notification provided for in paragraph 3;
- c the requirements applicable to shareholders and members with qualifying holdings, as well as obstacles which may prevent effective exercise of the supervisory functions of the competent authority, as provided for in Article 8(1) of this Directive and in Article 10(1) and (2) of Directive 2004/39/EC, in accordance with Article 11 of this Directive.

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

In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine standard forms,

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templates and procedures for the notification or provision of information provided for in points (a) and (b) of the first subparagraph.

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

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

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

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

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

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

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

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

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

(6) Article 12 is amended as follows:

(a) paragraph 3 is amended as follows:

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

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

(ii) the second subparagraph is deleted.

(b) the following paragraph is added:

4. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the conditions of applications of the delegated acts adopted by

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the Commission regarding the procedures, arrangements, structures and organisational requirements referred to in paragraph 3.

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

(7) Article 14 is amended as follows:

(a) paragraph 2 is amended as follows:

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

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

(ii) the second subparagraph is deleted.

(b) the following paragraph is added:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) Article 21 is amended as follows:

(a) paragraph 5 is replaced by the following:

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

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

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UCITS, the management company's host Member State may require the management company to cease managing that UCITS; or

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

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

7. Before following the procedure laid down in paragraphs 3, 4 or 5, the competent authorities of the management company's host Member State may, in emergencies, take any precautionary measures necessary to protect the interests of investors and others for whom services are provided. The Commission, ESMA, and the competent authorities of the other Member States concerned shall be informed of such measures at the earliest opportunity.

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

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

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

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

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

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

- (b) the second subparagraph is deleted.

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

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

- a the information to be provided to the competent authorities in the application for the authorisation of the investment company, including the programme of operations; and
- b the obstacles which may prevent effective exercise of the supervisory functions of the competent authority under paragraph 1(c).

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

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

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

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

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

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

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

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

- (b) the second subparagraph is deleted.

- (16) Article 43 is amended as follows:

- (a) in paragraph 5:

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

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

- (ii) the second subparagraph is deleted.

- (b) the following paragraph is added:

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

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

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

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

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

(18) Article 51 is amended as follows:

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

Competent authorities shall ensure that all information received under the third paragraph aggregated in respect of all the management or investment companies they supervise is accessible to ESMA in accordance with Article 35 of the Regulation (EU) No 1095/2010, and the European Systemic Risk Board (the “ESRB”) established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board<sup>(2)</sup> in accordance with Article 15 of that Regulation for the purpose of monitoring systemic risks at Union level.;

(b) paragraph 4 is replaced by the following:

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

- a criteria for assessing the adequacy of the risk management process employed by the management company in accordance with the first subparagraph of paragraph 1;
- b detailed rules regarding the accurate and independent assessment of the value of OTC derivatives; and
- c detailed rules regarding the content of and procedure to be followed for communicating the information referred to in the third subparagraph of paragraph 1 to the competent authorities of the management company's home Member State.;

(c) the following paragraph is added:

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

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

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

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

- (20) Article 60 is amended as follows:

- (a) in paragraph 6:

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

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

- (ii) the second subparagraph is deleted;

- (b) the following paragraph is added:

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

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

- (21) Article 61 is amended as follows:

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

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

- a the particulars that need to be included in the agreement referred to in paragraph 1; and
- b the types of irregularities referred to in paragraph 2 which are deemed to have a negative impact on the feeder UCITS..

- (b) the following paragraph is added:



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

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

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

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

(23) Article 64 is amended as follows:

(a) paragraph 4 is replaced by the following:

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

- a the format and the manner in which to provide the information referred to in paragraph 1; or
- b in the event that the feeder UCITS transfers all or parts of its assets to the master UCITS in exchange for units, the procedure for valuing and auditing such a contribution in kind and the role of the depositary of the feeder UCITS in that process..

(b) the following paragraph is added:

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

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

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

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

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

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

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

(26) Article 78 is amended as follows:

(a) paragraph 7 is replaced by the following:

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

- a the detailed and exhaustive content of the key investor information to be provided to investors as referred to in paragraphs 2, 3 and 4;
- b the detailed and exhaustive content of the key investor information to be provided to investors in the following specific cases:
  - (i) for UCITS having different investment compartments, the key investor information to be provided to investors subscribing to a specific investment compartment, including how to pass from one investment compartment into another and the costs related thereto,
  - (ii) for UCITS offering different share classes, the key investor information to be provided to investors subscribing to a specific share class,
  - (iii) for fund of funds structures, the key investor information to be provided to investors subscribing to a UCITS, which invests itself in other UCITS or other collective investment undertakings referred to in Article 50(1)(e),
  - (iv) for master-feeder structures, the key investor information to be provided to investors subscribing to a feeder UCITS,
  - (v) for structured, capital protected and other comparable UCITS, the key investor information to be provided to investors in relation to the special characteristics of such UCITS; and
- c the specific details of the format and presentation of the key investor information to be provided to investors as referred to in paragraph 5.;

(b) the following paragraph is added:

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

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

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

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

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

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

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

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

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

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

(30) Article 95 is replaced by the following:

*Article 95*

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

- a the scope of the information referred to in Article 91(3);
- b the facilitation of access for the competent authorities of the UCITS host Member States to the information or documents referred to in Article 93(1), (2) and (3) in accordance with Article 93(7).

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

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

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

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

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

(32) Article 101 is amended as follows:

(a) the following paragraph is inserted:

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

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

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

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

- a to exchange information as provided for in Article 109 has been rejected or has not been acted upon within a reasonable time;
- b to carry out an investigation or on-the-spot verification as provided for in Article 110 has been rejected or has not been acted upon within a reasonable time; or
- c for authorisation for its officials to accompany those of the competent authority of the other Member State has been rejected or has not been acted upon within a reasonable time.

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

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

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

(33) Article 102 is amended as follows:

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

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

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information shall be subject to the conditions of professional secrecy laid down in paragraph 1.;

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

(d) ESMA, the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>(3)</sup>, the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council<sup>(4)</sup> and the ESRB..

(34) Article 103 is amended as follows:

(a) paragraph 3 is replaced by the following:

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

(b) paragraph 7 is replaced by the following:

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

(35) Article 105 is replaced by the following:

*Article 105*

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

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

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

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

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

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

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

(37) The title of chapter XIII is replaced by the following:  
DELEGATED ACTS AND POWERS OF EXECUTION

(38) Article 111 is replaced by the following:

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### *Article 111*

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

- (a) clarification of the definitions in order to ensure consistent harmonisation and uniform application of this Directive throughout the Union; or
- (b) alignment of terminology and the framing of definitions in accordance with subsequent acts on UCITS and related matters.

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

- (39) Article 112 is replaced by the following:

#### *Article 112*

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

2 The power to adopt the delegated acts referred to in Articles 12, 14, 23, 33, 43, 51, 60, 61, 62, 64, 75, 78, 81, 95 and 111 shall be conferred on the Commission for a period of 4 years from 4 January 2011. The Commission shall draw up a report in respect of delegated powers at the latest 6 months before the end of the four-year period. The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes them in accordance with Article 112a.

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

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

- (40) The following Articles are inserted:

#### *Article 112a*

#### **Revocation of the delegation**

1 The delegation of power referred to in Articles 12, 14, 23, 33, 43, 51, 60, 61, 62, 64, 75, 78, 81, 95 and 111 may be revoked at any time by the European Parliament or by the Council.

2 The institution which has commenced an internal procedure for deciding whether to revoke a delegation of power shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated power which could be subject to revocation.

3 The decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the *Official Journal of the European Union*.

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### *Article 112b*

#### **Objections to delegated acts**

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

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

The delegated act may be published in the *Official Journal of the European Union* and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3           If either the European Parliament or the Council objects to a delegated act within the period referred to in paragraph 1, it shall not enter into force. In accordance with Article 296 TFEU, the institution which objects shall state the reasons for objecting to the delegated act..

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- (1) OJ L 331, 15.12.2010, p. 84.’.
- (2) OJ L 331, 15.12.2010, p. 1.’;
- (3) OJ L 331, 15.12.2010, p. 12.
- (4) OJ L 331, 15.12.2010, p. 48.’.