

Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC

CHAPTER VII

**GENERAL PROVISIONS**

*Article 67*

**Privileges and immunities**

The Protocol (No 7) on the privileges and immunities of the European Union annexed to the Treaty on European Union and to the TFEU shall apply to the Authority and its staff.

*Article 68*

**Staff**

1 The Staff Regulations, the Conditions of Employment of Other Servants and the rules adopted jointly by the Union institutions for the purpose of applying them shall apply to the staff of the Authority, including its Executive Director and its Chairperson.

2 The Management Board, in agreement with the Commission, shall adopt the necessary implementing measures, in accordance with the arrangements provided for in Article 110 of the Staff Regulations.

3 In respect of its staff, the Authority shall exercise the powers conferred on the appointing authority by the Staff Regulations and on the authority entitled to conclude contracts by the Conditions of Employment of Other Servants.

4 The Management Board shall adopt provisions to allow national experts from Member States to be seconded to the Authority.

*Article 69*

**Liability of the Authority**

1 In the case of non-contractual liability, the Authority shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its staff in the performance of their duties. The Court of Justice of the European Union shall have jurisdiction in any dispute over the remedying of such damage.

2 The personal financial liability and disciplinary liability of Authority staff towards the Authority shall be governed by the relevant provisions applying to the staff of the Authority.

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**Changes to legislation:** There are outstanding changes not yet made to Regulation (EU) No 1093/2010 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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## Article 70

### Obligation of professional secrecy

[<sup>F1</sup> Members of the Board of Supervisors, and all members of the staff of the Authority, including officials seconded by Member States on a temporary basis, and all other persons carrying out tasks for the Authority on a contractual basis, shall be subject to the requirements of professional secrecy pursuant to Article 339 TFEU and the relevant provisions in Union legislation, even after their duties have ceased.]

2 Without prejudice to cases covered by criminal law, any confidential information received by persons referred to in paragraph 1 whilst performing their duties may not be divulged to any person or authority whatsoever, except in summary or aggregate form, such that individual financial institutions cannot be identified.

[<sup>F1</sup> The obligation under paragraph 1 of this Article and the first subparagraph of this paragraph shall not prevent the Authority and the competent authorities from using the information for the enforcement of the legislative acts referred to in Article 1(2), and in particular for legal procedures for the adoption of decisions.]

[<sup>F2a</sup> The Management Board and the Board of Supervisors shall ensure that individuals who provide any service, directly or indirectly, permanently or occasionally, relating to the tasks of the Authority, including officials and other persons authorised by the Management Board and the Board of Supervisors or appointed by the competent authorities for that purpose, are subject to the requirements of professional secrecy equivalent to those in paragraphs 1 and 2.

The same requirements for professional secrecy shall also apply to observers who attend the meetings of the Management Board and the Board of Supervisors and who take part in the activities of the Authority.]

[<sup>F13</sup> Paragraphs 1 and 2 shall not prevent the Authority from exchanging information with competent authorities in accordance with this Regulation and with other Union legislation applicable to financial institutions.

That information shall be subject to the conditions of professional secrecy referred to in paragraphs 1 and 2. The Authority shall lay down in its internal rules of procedure the practical arrangements for implementing the confidentiality rules referred to in paragraphs 1 and 2.

4 The Authority shall apply Commission Decision (EU, Euratom) 2015/444<sup>(1)</sup>.]

#### Textual Amendments

- F1** Substituted by [Regulation \(EU\) 2019/2175 of the European Parliament and of the Council of 18 December 2019 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 600/2014 on markets in financial instruments, 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 \(EU\) 2015/847 on information accompanying transfers of funds \(Text with EEA relevance\).](#)

**Changes to legislation:** There are outstanding changes not yet made to Regulation (EU) No 1093/2010 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

**F2** Inserted by Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 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 600/2014 on markets in financial instruments, 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) 2015/847 on information accompanying transfers of funds (Text with EEA relevance).

## *[<sup>F1</sup>Article 71*

### **Data protection**

This Regulation shall be without prejudice to the obligations of Member States relating to their processing of personal data under Regulation (EU) 2016/679 or the obligations of the Authority relating to its processing of personal data under Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>(2)</sup> when fulfilling its responsibilities.]

#### **Textual Amendments**

**F1** Substituted by Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 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 600/2014 on markets in financial instruments, 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) 2015/847 on information accompanying transfers of funds (Text with EEA relevance).

## *Article 72*

### **Access to documents**

1 Regulation (EC) No 1049/2001 shall apply to documents held by the Authority.

[<sup>F12</sup> The Management Board shall adopt practical measures for applying Regulation (EC) No 1049/2001.]

3 Decisions taken by the Authority pursuant to Article 8 of Regulation (EC) No 1049/2001 may be the subject of a complaint to the Ombudsman or of proceedings before the Court of Justice of the European Union, following an appeal to the Board of Appeal, as appropriate, in accordance with the conditions laid down in Articles 228 and 263 TFEU respectively.

#### **Textual Amendments**

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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 600/2014 on markets in financial instruments, 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) 2015/847 on information accompanying transfers of funds (Text with EEA relevance).

### Article 73

#### Language arrangements

- 1 Council Regulation No 1 determining the languages to be used by the European Economic Community<sup>(3)</sup> shall apply to the Authority.
- 2 The Management Board shall decide on the internal language arrangements for the Authority.
- 3 The translation services required for the functioning of the Authority shall be provided by the Translation Centre for the Bodies of the European Union.

### Article 74

#### Headquarters Agreement

[<sup>F1</sup>The necessary arrangements concerning the accommodation to be provided for the Authority in the Member State where its seat is located and the facilities to be made available by that Member State, as well as the specific rules applicable in that Member State to the staff of the Authority and members of their families, shall be laid down in a Headquarters Agreement between the Authority and that Member State which they concluded after obtaining the approval of the Management Board.]

That Member State shall provide the best possible conditions to ensure the proper functioning of the Authority, including multilingual, European-oriented schooling and appropriate transport connections.

#### Textual Amendments

- F1** Substituted by Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 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 600/2014 on markets in financial instruments, 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) 2015/847 on information accompanying transfers of funds (Text with EEA relevance).

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## Article 75

### Participation of third countries

1 Participation in the work of the Authority shall be open to third countries which have concluded agreements with the Union whereby they have adopted and are applying Union law in the areas of competence of the Authority as referred to in Article 1(2).

2 The Authority may cooperate with the countries referred to in paragraph 1, applying legislation which has been recognised as equivalent in the areas of competence of the Authority referred to in Article 1(2), as provided for in international agreements concluded by the Union in accordance with Article 216 TFEU.

3 Under the relevant provisions of the agreements referred to in paragraphs 1 and 2, arrangements shall be made specifying, in particular, the nature, scope and procedural aspects of the involvement of the countries referred to in paragraph 1 in the work of the Authority, including provisions relating to financial contributions and to staff. They may provide for representation, as an observer, on the Board of Supervisors, but shall ensure that those countries do not attend any discussions relating to individual financial institutions, except where there is a direct interest.

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- (1) [<sup>F1</sup>Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information ([OJ L 72, 17.3.2015, p. 53](#)).]
- (2) [<sup>F1</sup>Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC ([OJ L 295, 21.11.2018, p. 39](#)).]
- (3) [OJ 17, 6.10.1958, p. 385](#).

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**Changes and effects yet to be applied to :**

- Regulation revoked by [S.I. 2019/541](#) reg. 8(b)