



The Consumer Voice in Europe



About the Alliance

- BEUC, The European Consumer Organisation, represents 43 well respected, independent national consumer organisations from 31 European countries and defends the interests of all Europe's consumers.
- Better Finance, The European Federation of investors and Financial Services Users, acts as an independent expertise centre and federates about 30 independent investor and financial services user organisations throughout Europe, which in turn gather more than 4 million European financial users as members.
- Finance Watch is the independent non-profit Members' association that defends the public interest in financial reform, with more than 70 Members including experts and civil society organisations that together represent millions of European citizens.
- COFACE Families Europe is a pluralistic network of 57 civil society organisations in 23 Member States representing the interests of all families.
- EFIN, The European Financial Inclusion Network, a network of 30 organisations, including 6 EU Networks and 13 researchers dealing with financial inclusion issues.
- AGE Platform Europe, European network of 120 non-profit organisations of and for people aged 50+ representing some 40 million citizens aged 50+ in the EU.

Review of the European Supervisory Authorities (EBA, ESMA, EIOPA)

Proposals for amendments

ESMA Regulation 2010	EC proposal for the ESAs review	Amendment proposals by the Alliance
<p style="text-align: center;"><i>Article 1</i> Establishment and scope of action</p> <p>1. This Regulation establishes a European Supervisory Authority (European Securities and Markets Authority) (hereinafter the Authority’).</p> <p>2. The Authority shall also act in the field of activities of market participants in relation to issues not directly covered in the acts referred to in paragraph 2, including matters of corporate governance, auditing and financial reporting, provided that such actions by the Authority are necessary to ensure the effective and consistent application of those acts. The Authority shall also take appropriate action in the context of take-over bids, clearing and settlement and derivative issues.</p> <p>3. The provisions of this Regulation are without prejudice to the powers of the Commission, in particular under Article 258 TFEU, to ensure compliance with Union law.</p>	<p>(1) Article 1 is amended as follows:</p> <p>(a) paragraph 2 is replaced by the following:</p> <p>"2. The Authority shall act within the powers conferred by this Regulation and within the scope of Directive 2002/87/EC, Directive 2008/48/EC of the European Parliament and of the Council*, Regulation (EU) No 575/2013 of the European Parliament and of the Council, Directive 2013/36/EU of the European Parliament and of the Council, Directive 2014/49/EU of the European Parliament and of the Council**, Directive 2014/92/EU of the European Parliament and of the Council***, Regulation (EU) 2015/847**** of the European Parliament and the Council*****, Directive (EU) 2015/2366 of the European Parliament and of the Council***** and, to the extent that those acts apply to credit and financial institutions and the competent</p>	

<p>4. The objective of the Authority shall be to protect the public interest by contributing to the short, medium and long-term stability and effectiveness of the financial system, for the Union economy, its citizens and businesses. The Authority shall contribute to:</p> <ul style="list-style-type: none"> (a) improving the functioning of the internal market, including in particular a sound, effective and consistent level of regulation and supervision, (b) ensuring the integrity, transparency, efficiency and orderly functioning of financial markets, (c) strengthening international supervisory coordination, (d) preventing regulatory arbitrage and promoting equal conditions of competition, (e) ensuring the taking of investment and other risks are appropriately regulated and supervised, and (f) enhancing customer protection. <p>For those purposes, the Authority shall contribute to ensuring the consistent, efficient and effective application of the acts referred to in paragraph 2,</p>	<p>authorities that supervise them, within the relevant parts of Directive 2002/65/EC and Directive (EU) 2015/849 of the European Parliament and of the Council*****, including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority. The Authority shall also act in accordance with Council Regulation (EU) No 1024/2013*****.</p> <p>* Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66).</p> <p>**Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes Text with EEA relevance (OJ L 173, 12.6.2014, p. 149).</p> <p>***Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features Text with EEA relevance (OJ L 257, 28.8.2014, p. 214).</p> <p>****Regulation (EU) 2015/847 of the European Parliament and of the Council</p>	<p>(f) enhancing customer protection of consumers and other users of financial services. (new) 4(g) Working towards supervisory convergence of conduct of business across the EU to ensure that all consumers and other users of</p>
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<p>foster supervisory convergence, provide opinions to the European Parliament, the Council, and the Commission and undertake economic analyses of the markets to promote the achievement of the Authority's objective.</p> <p>In the exercise of the tasks conferred upon it by this Regulation, the Authority shall pay particular attention to any systemic risk posed by financial market participants, the failure of which may impair the operation of the financial system or the real economy.</p> <p>When carrying out its tasks, the Authority shall act independently and objectively and in the interest of the Union alone.</p>	<p>of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (OJ L 141, 5.6.2015, p. 1). ****Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35). ****Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73). **** Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).";</p>	<p><i>financial services are treated fairly by financial institutions.</i></p> <p><i>(Note: The same amendment proposal for all three ESAs Regulations)</i></p> <p><i>(modified paragraph 1.4., indent 3)</i> In the exercise of the tasks conferred upon it by this Regulation, the Authority shall pay particular attention to any systemic risk posed by financial market participants <i>financial services providers</i>, the failure of which may impair the operation of the financial system or the real economy.</p>
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Justification

4(f): We propose to refer to ‘consumers and other users of financial services’ in the ESAs Regulations to ensure consistency of the terminology used, and to make sure that all beneficiaries of the supervision and intervention powers of the ESAs are covered: consumers, individual investors, financial services users.

4(g) (new): Despite the fact that the bulk of retail finance legislation across Europe originates at EU level, Member States have full discretion over how to enforce it at national level. Sectoral EU regulations and directives only require Member States to designate a competent authority responsible for implementation and oversight, and for it to apply dissuasive sanctions in case of law infringement. However, today’s reality is that in some Member States, no authority is really in charge of financial consumer protection. Many national supervisors lack a clear statutory objective to provide consumer protection. Many of them are under-staffed, have little on-site inspection capacity or have limited legal powers to make binding decisions and limited powers of sanction. Some of them do not have the capacity to deal with consumer complaints.

Effective enforcement and an equally high level of consumer protection and redress everywhere across Europe are preconditions for a successful single retail financial market and Capital Markets Union. Harmonisation of supervisory practices across Member States can only be coordinated at EU level (the subsidiarity principle would be complied with). Thus, the ESAs should have an explicit mandate to work on convergence of conduct of business supervision practices across the EU. The idea is to develop a ‘Single Rulebook for Conduct of Business’. The details of this mandate are set out in Art 9.

<p style="text-align: center;">Article 2</p> <p style="text-align: center;">European System of Financial Supervision</p> <p>The Authority shall form part of a European System of Financial Supervision (ESFS). The main objective of the ESFS shall be to ensure that the rules applicable to the financial sector are adequately implemented to preserve financial stability and to ensure confidence in the financial system as a whole and sufficient protection for the customers of financial services.</p>		<p style="text-align: center;">Article 2</p> <p style="text-align: center;">European System of Financial Supervision</p> <p>The Authority shall form part of a European System of Financial Supervision (ESFS). The main objective of the ESFS shall be to ensure that the rules applicable to the financial sector are adequately implemented to preserve financial stability and to ensure confidence in the financial system as a whole and sufficient effective protection for the customers consumers and other users of financial services.</p>
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<p>5. Those supervisory authorities that are party to the ESFS shall be obliged to supervise financial market participants operating in the Union in accordance with the acts referred to in Article 1(2).</p>		<p><i>(Note: The same amendment proposal for all three ESAs Regulations)</i></p> <p>(modified Article 2.5) Those supervisory authorities that are party to the ESFS shall be obliged to supervise <u>financial market participants</u> institutions <u>services providers</u> operating in the Union in accordance with the acts referred to in Article 1(2).</p>
<p style="text-align: center;"><u>Justification</u></p> <p><i>The task of the ESAs is to ensure that financial services consumers are well protected is paramount for the sound functioning of the internal market and in line with the core values of the EU enshrined in the primary law. However, the wording of Article 2 leaves room for interpretation and does not ensure a clear and strong competence for the ESAs to do so, in particular since the term ‘sufficient’ may be construed in several meanings, including that of a minimum necessary level, which comes in conflict with the requirements of the ‘high level of consumer protection’ laid down in Article 38 of the Charter of Fundamental Rights and Freedoms of the EU. For this reasons, we propose that the task of the ESAs in this respect be defined as ensuring ‘effective’ protection for the <u>consumers of financial services</u>’.</i></p>		
<p style="text-align: center;"><i>Article 8</i></p> <p style="text-align: center;">Tasks and powers of the Authority</p> <p>1. The Authority shall have the following tasks:</p> <p>(a) to contribute to the establishment of high-quality common regulatory and supervisory standards and practices, in particular by providing opinions to the Union institutions and by developing guidelines, recommendations, and draft regulatory and implementing technical standards which shall be based on the legislative acts referred to in Article 1(2);</p> <p>(b) to contribute to the consistent application of</p>	<p>(2) Article 8 is amended as follows:</p> <p>(a) paragraph 1 is amended as follows:</p> <p>(i) the following point (aa) is replaced: "(aa) to develop and maintain an up to date Union supervisory handbook on the supervision of financial institutions in the Union;"</p> <p>(ii) the following point (ab) is inserted:</p>	

<p>legally binding Union acts, in particular by contributing to a common supervisory culture, ensuring consistent, efficient and effective application of the acts referred to in Article 1(2), preventing regulatory arbitrage, mediating and settling disagreements between competent authorities, ensuring effective and consistent supervision of financial market participants, ensuring a coherent functioning of colleges of supervisors and taking actions, inter alia, in emergency situations;</p> <p>(c) to stimulate and facilitate the delegation of tasks and responsibilities among competent authorities;</p> <p>(d) to cooperate closely with the ESRB, in particular by providing the ESRB with the necessary information for the achievement of its tasks and by ensuring a proper follow up to the warnings and recommendations of the ESRB;</p> <p>(e) to organise and conduct peer review analyses of competent authorities, including issuing guidelines and recommendations and identifying best practices, in order to strengthen consistency in supervisory outcomes;</p> <p>(f) to monitor and assess market developments in the area of its competence;</p>	<p>"(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;"</p> <p>(iii) points (e) and (f) are replaced by the following: "(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; (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;"</p> <p>(iv) point (h) is replaced by the following:</p>	<p>(iii) points (e) and (f) are replaced by the following: "(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;</p> <p><i>(-iv) (new). The Authority shall be subject, every three years, to an independent review of its activities, powers and tasks;</i></p> <p><i>(Note: The same amendment proposal for EIOPA and EBA Regulation)</i></p>
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<p>(g) to undertake economic analyses of markets to inform the discharge of the Authority's functions;</p> <p>(h) to foster investor protection;</p> <p>(i) to contribute to the consistent and coherent functioning of colleges of supervisors, the monitoring, assessment and measurement of systemic risk, the development and coordination of recovery and resolution plans, providing a high level of protection to investors throughout the Union and developing methods for the resolution of failing financial market participants and an assessment of the need for appropriate financing instruments, in accordance with Articles 21 to 26;</p> <p>(j) to fulfil any other specific tasks set out in this Regulation or in other legislative acts;</p> <p>(k) to publish on its website, and to update regularly, information relating to its field of activities, in particular, within the area of its competence, on registered financial market participants, in order to ensure information is easily accessible by the public;</p> <p>(l) to take over, as appropriate, all existing and ongoing tasks from the Committee of European Securities Regulators (CESR).</p>	<p>"(h) to foster depositor, consumer and investor protection;"</p> <p>(b) in paragraph 1a, the following point (c) is inserted: "(c) take account of technological innovation, innovative and sustainable business models, and the integration of environmental, social and governance related factors.";</p> <p>(c) in paragraph 2, the following are amended (i) point (ca) is inserted: "(ca) issue recommendations as laid down in Articles 29a and 31a;"</p> <p>ii) point h) is replaced by the following: "(h) collect the necessary information concerning financial institutions as provided for in Article 35 and Article 35b";</p>	
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<p>2. To achieve the tasks set out in paragraph 1, the Authority shall have the powers set out in this Regulation, in particular to:</p> <ul style="list-style-type: none">(a) develop draft regulatory technical standards in the specific cases referred to in Article 10;(b) develop draft implementing technical standards in the specific cases referred to in Article 15;(c) issue guidelines and recommendations, as laid down in Article 16;(d) issue recommendations in specific cases, as referred to in Article 17(3);(e) take individual decisions addressed to competent authorities in the specific cases referred to in Articles 18(3) and 19(3);(f) in cases concerning directly applicable Union law, take individual decisions addressed to financial market participants, in the specific cases referred to in Article 17(6), in Article 18(4) and in Article 19(4);(g) issue opinions to the European Parliament, the Council, or the Commission as provided for in Article 34;(h) collect the necessary information concerning financial market participants as provided for in Article 35;(i) develop common methodologies for assessing the effect of product characteristics and distribution processes on the financial position of financial market participants and on consumer protection;		
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<p>(j) provide a centrally accessible database of registered financial market participants in the area of its competence where specified in the acts referred to in Article 1(2).</p>		
<p><u>Justification</u></p> <p><i>Point (iii): We support the Commission proposal empowering the ESAs to conduct periodic independent reviews of national competent authorities. However, those reviews should not replace the existing peer reviews – both tools are complementary, and not mutually exclusive.</i></p> <p><i>Point (-iv) (new): Similar to the proposed review of national competent authorities, the ESAs should also be subject to independent review every three years. The aim is to assess how the ESAs perform the tasks assigned to them in view of improving their performance. Such independent reviews would be a useful complement to the control of the ESAs budget being carried out by the Court of Auditors. In order to achieve the purpose of institutional and democratic oversight of EU institutions by the European Parliament, in our view the EP should be regularly informed of the activities of the ESAs and their output. The independent body assigned with the task of carrying out the review should be selected by way of a public tender and could be financed from the new source of revenue from the private sector (in line with the EC’s proposal in article 62.1 b).</i></p>		
<p style="text-align: center;"><i>Article 9</i></p> <p style="text-align: center;">Tasks related to consumer protection and financial activities</p> <p>1. The Authority shall take a leading role in promoting transparency, simplicity and fairness in the market for consumer financial products or services across the internal market, including by:</p> <p>(a) collecting, analysing and reporting on consumer trends;</p> <p>(b) reviewing and coordinating financial literacy and education initiatives by the competent authorities;</p>	<p>Article 9 is amended as follows:</p> <p>(d) in paragraph 1, the following points (aa) and (ab) are inserted: "(aa) undertaking in-depth thematic reviews of market conduct, building a common understanding of markets practices in order to identify potential problems and analyse their impact; (ab) developing retail risk indicators for the timely identification of potential causes of consumer and investor harm;"</p>	<p><i>(Note: For ESMA Regulation)</i></p> <p><i>(modified) The title is replaced by the following: “Tasks related to consumer and investor protection and financial activities”</i></p> <p><i>-1(new). In relation to the supervisory convergence of conduct of business, the Authority shall:</i></p> <p><i>(a) Develop binding standards on conduct of business supervision addressed to national competent authorities. The standards shall detail at least the minimum mandate, powers, tasks and resources that each relevant national</i></p>

<p>(c) developing training standards for the industry; and</p> <p>(d) contributing to the development of common disclosure rules.</p> <p>2. The Authority shall monitor new and existing financial activities and may adopt guidelines and recommendations with a view to promoting the safety and soundness of markets and convergence of regulatory practice.</p> <p>3. The Authority may also issue warnings in the event that a financial activity poses a serious threat to the objectives laid down in Article1(5).</p> <p>4. The Authority shall establish, as an integral part of the Authority, a Committee on financial innovation, which brings together all relevant competent national supervisory authorities with a view to achieving a coordinated approach to the regulatory and supervisory treatment of new or innovative financial activities and providing advice for the Authority to present to the European Parliament, the Council and the Commission.</p> <p>5. The Authority may temporarily prohibit or restrict certain financial activities that threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union in the cases</p>	<p>(e) paragraph 2 is replaced by the following: "2. The Authority shall monitor new and existing financial activities and may adopt guidelines and recommendations with a view to promoting the safety and soundness of markets, and convergence of regulatory and supervisory practices.";</p> <p>(f) paragraph 4 is replaced by the following: "4. The Authority shall establish, as an integral part of the Authority, a Committee on financial innovation, which brings together all relevant competent national supervisory authorities and authorities responsible for consumer protection, with a view to achieving a coordinated approach to the regulatory and supervisory treatment of new or innovative financial activities and providing advice for the Authority to present to the European Parliament, the Council and the Commission. The Authority may also include national data protection authorities as part of the Committee.";</p>	<p>competent authority shall be equipped with;</p> <p>(b) Coordinate enforcement activities, such as mystery shopping exercises, with national authorities based on those standards;</p> <p>(c) Make public the outcomes of coordinated activities, including the application of the above standards;</p> <p><i>(Note: The same amendment proposal for all three ESAs Regulations)</i></p> <p>5. The Authority may temporarily prohibit or restrict certain financial activities and products that threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the</p>
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<p>specified and under the conditions laid down in the legislative acts referred to in Article 1(2) or if so required in the case of an emergency situation in accordance with and under the conditions laid down in Article 18.</p> <p>The Authority shall review the decision referred to in the first sub-paragraph at appropriate intervals and at least every 3 months. If the decision is not renewed after a three-month period, it shall automatically expire.</p> <p>A Member State may request the Authority to reconsider its decision. In that case, the Authority shall decide in accordance with the procedure set out in the second subparagraph of Article 44(1), whether it maintains its decision.</p> <p>The Authority may also assess the need to prohibit or restrict certain types of financial activity and, where there is such a need, inform the Commission in order to facilitate the adoption of any such prohibition or restriction.</p>	<p style="text-align: center;"><i>CONFIDENTIAL</i></p>	<p>Union in the cases specified and under the conditions laid down in the legislative acts referred to in Article 1(2) or if so required in the case of an emergency situation in accordance with and under the conditions laid down in Article 18, <i>or potentially causing a significant concern regarding the protection of consumers or other users of financial services</i>".</p> <p>The Authority shall review the decision referred to in the first sub-paragraph at appropriate intervals and at least every 3 6 months. If the decision is not renewed after a three-months six-month period, it shall automatically expire.</p> <p><i>(Note: The same amendment proposal for all three ESAs Regulations)</i></p>
<p style="text-align: center;"><u>Justification</u></p> <p>Title of Art 9: <i>The modification of the title of Article 9 only aligns it with its substance.</i></p> <p>Para -1(new): <i>Despite the fact that the bulk of retail finance legislation across Europe originates at EU level, Member States have full discretion over how to enforce it at national level. Sectoral EU regulations and directives only require Member States to designate a competent authority responsible for implementation and oversight, and for it to apply dissuasive sanctions in case of law infringement. However, today's reality is that in some Member States, no authority is really in charge of financial consumer protection. Many national supervisors lack a clear statutory objective to provide consumer protection. Many</i></p>		

*of them are under-staffed, have little on-site inspection capacity or have limited legal powers to make binding decisions and limited powers of sanction. Some of them do not have the capacity to deal with consumer complaints.
Effective enforcement and an equally high level of consumer protection and redress everywhere across Europe are preconditions for a successful single retail financial market and Capital Markets Union. Harmonisation of supervisory practices across Member States can only be coordinated at EU level (the subsidiarity principle would be complied with). Thus, the ESAs should have an explicit mandate to work on convergence of conduct of business supervision practices across the EU. The idea is to develop a ‘Single Rulebook for Conduct of Business’.*

***Para 5:** ESAs are already empowered by MiFIR (applicable since 3/01/2018) and PRIIPs (1/01/2018) to ban certain financial products/activities when, inter alia, those products/activities cause or may potentially cause a significant concern regarding the protection of consumers or other users of financial services (articles 40(2) and 41(2) MiFIR and article 16 (2) PRIIPs KID ". This would ensure better prevention of consumer detriment caused by toxic, overly risky products and business models. In addition, this power should be straightforward, and not be conditional on a specific mandate granted by sectoral legislation e.g. MiFID, MID, IDD, which restricts the ESAs’ leeway to take action where needed.*

<p style="text-align: center;"><i>Article 16</i></p> <p style="text-align: center;">Guidelines and recommendations</p> <p>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, issue guidelines and recommendations addressed to competent authorities or financial market participants.</p> <p>2. The Authority shall, where appropriate, conduct open public consultations regarding the guidelines and recommendations and analyse the related potential costs and benefits. Such consultations and analyses shall be proportionate in relation to the scope, nature and impact of the guidelines or recommendations. The Authority shall, where appropriate, also request opinions or</p>	<p>(3)</p> <p>Article 16 is amended as follows:</p> <p>(a) in paragraph 1, the following subparagraph is added: "The Authority may also address guidelines and recommendations to the authorities of Member States that are not defined as competent authorities under this Regulation but that are empowered to ensure the application of the acts referred to in Article 1(2).";</p> <p>(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</p>	
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<p>advice from the Securities and Markets Stakeholder Group referred to in Article 37.</p> <p>3. The competent authorities and financial market participants shall make every effort to comply with those guidelines and recommendations.</p> <p>Within 2 months of the issuance of a guideline or recommendation, each competent authority shall confirm whether it complies or intends to comply with that guideline or recommendation. In the event that a competent authority does not comply or does not intend to comply, it shall inform the Authority, stating its reasons.</p> <p>The Authority shall publish the fact that a competent authority does not comply or does not intend to comply with that guideline or recommendation. The Authority may also decide, on a case by case basis, to publish the reasons provided by the competent authority for not complying with that guideline or recommendation. The competent authority shall receive advanced notice of such publication.</p> <p>If required by that guideline or recommendation, financial market participants shall report, in a clear and detailed way, whether they comply with that guideline or recommendation.</p> <p>In the report referred to in Article 43(5) the Authority shall inform the European Parliament, the Council and the Commission of the guidelines</p>	<p>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 Insurance and Reinsurance Stakeholder Group and of the Occupational Pensions Stakeholder Group.";</p> <p>(c) in paragraph 4 the following sentence is added at the end: "The report shall also explain how the Authority has justified the issue of its guidelines and recommendations and summarise the feedback from public consultations on those guidelines and recommendations.";</p> <p>(d) the following paragraph 5 is added: "5. Where two thirds of the members of the Insurance and Reinsurance Stakeholder Group or Occupational Pensions Stakeholder Group are of the opinion that the Authority has exceeded its competence by issuing certain guidelines or recommendations, they may send a reasoned opinion to the Commission. The Commission shall request an explanation justifying the issuance of the guidelines or recommendations concerned from the Authority. The Commission shall, on receipt of the</p>	<p>"5. Where two thirds of the members of the Insurance and Reinsurance Stakeholder Group or Occupational Pensions Stakeholder Group are of the opinion that the Authority has exceeded its competence by issuing certain guidelines or recommendations, they may send a reasoned opinion to the Commission. The Commission shall request an explanation justifying the issuance of the guidelines or recommendations concerned from the Authority. The Commission shall, on receipt of the explanation from the Authority, assess the scope of the guidelines or recommendations in view of the Authority's competence. Where the</p>
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<p>and recommendations that have been issued, stating which competent authority has not complied with them, and outlining how the Authority intends to ensure that the competent authority concerned follow its recommendations and guidelines in the future.</p>	<p>explanation from the Authority, assess the scope of the guidelines or recommendations in view of the Authority's competence. Where the Commission considers that the Authority has exceeded its competence, and after having given the Authority the opportunity to state its views, the Commission may adopt an implementing decision requiring the Authority to withdraw the guidelines or recommendations concerned. The decision of the Commission shall be made public.";</p>	<p>Commission considers that the Authority has exceeded its competence, and after having given the Authority the opportunity to state its views, the Commission may adopt an implementing decision requiring the Authority to withdraw the guidelines or recommendations concerned. The decision of the Commission shall be made public."; <i>(Note: The Same amendment proposal for all three ESAs Regulations)</i></p>
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Justification

Para 5: Stakeholder Groups (SGs) have mainly an advisory role and are established to facilitate consultation with stakeholders in areas relevant to the tasks of the ESAs and not to challenge the ESAs' work. Their mandate is to be consulted on actions taken in accordance with Articles 10 to 15. This new power would change the SGs role into something more supervisory, interfering with the SGs core advisory function.

A second concern is that the proposal may create unrealistic expectations of the ability of the SGs to perform this role. In part this is because the Commission's proposals seem predicated on a view that the SGs scrutinise and provide views on all consultations at present, whereas this is by far not the case in practice. Another aspect of this concern arises from the technical legal nature of the test that the SGs are asked to apply ("exceeded its competence") and it is not clear that the SGs would be well placed to form the view as to whether this test had in fact been met.

Thirdly, the European Commission's proposal goes beyond Stakeholder Groups' mandate as it would in fact empower the industry to challenge the ESAs guidelines and recommendations more easily and reserves itself the right to propose the withdrawal of guidelines issued by the ESAs if, for instance, a majority of two thirds of the ESAs' Stakeholder Groups asks for it. This approach is un-democratic, as the ESAs stakeholder groups are dominated by financial industry representatives and members who are economically dependent of the industry. It will therefore be quite easy for them to get such a majority. This is a very dangerous measure as the ESAs already frequently violate the EU Law (Article 37.2) that requires that the membership of stakeholder groups represents "in balanced proportions" the different categories of stakeholders. For example, the EIOPA "Occupational Pensions Stakeholder Group" counts only 3 consumer representatives at best, while at least 20 of its members defend the interests of the financial industry, of its providers and of its employees.

<p style="text-align: center;"><i>Article 19</i></p> <p style="text-align: center;">Settlement of disagreements between competent authorities in cross-border situations</p> <p>1. Without prejudice to the powers laid down in Article 17, where a competent authority disagrees about the procedure or content of an action or inaction of a competent authority of another Member State in cases specified in the acts referred to in Article 1(2), the Authority, at the request of one or more of the competent authorities concerned may assist the authorities in reaching an agreement in accordance with the procedure set out in paragraphs 2 to 4 of this Article.</p> <p>In cases specified in the legislation referred to in Article 1(2), and where on the basis of objective criteria, disagreement between competent authorities from different Member States can be determined, the Authority may, on its own initiative, assist the authorities in reaching an agreement in accordance with the procedure set out in paragraphs 2 to 4.</p> <p>2. The Authority shall set a time limit for conciliation between the competent authorities taking into account any relevant time periods specified in the acts referred to in Article 1(2) and the complexity and urgency of the matter. At that stage the Authority shall act as a mediator.</p>	<p>Article 19 is amended as follows:</p> <ul style="list-style-type: none"> • paragraph 1 is replaced by the following: <p>"1. In cases specified in the Union acts referred to in Article 1(2) and without prejudice to the powers laid down in Article 17, the Authority may assist the competent authorities in reaching an agreement in accordance with the procedure set out in paragraphs 2 to 4 in either of the following circumstances:</p> <ul style="list-style-type: none"> (a) at the request of one or more of the competent authorities concerned where a competent authority disagrees with the procedure or content of an action, proposed action, or inactivity of another competent authority; (b) on its own initiative where on the basis of objective criteria, disagreement can be determined between competent authorities. <p>In cases where the acts referred to in Article 1(2) require a joint decision to be taken by competent authorities, a disagreement shall be presumed in the absence of a joint decision being taken by those authorities within the time limits set out in those acts.";</p> <ul style="list-style-type: none"> • the following paragraphs 1a and 1b are inserted: <p>"1a. The competent authorities concerned shall in the following cases notify the</p> 	<p><i>-2 (new). Competent authorities, including dispute resolution bodies, of the country where a product or service is marketed shall be competent to act directly to prevent and solve any detriment to consumers and other users of financial services caused by financial institutions established in other Member States and providing services across border</i></p> <p><i>(Note: The same amendment proposal for all three ESAs Regulations)</i></p>
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<p>3. If the competent authorities concerned fail to reach an agreement within the conciliation phase referred to in paragraph 2, the Authority may, in accordance with the procedure set out in the third and fourth subparagraph of Article 44(1) take a decision requiring them to take specific action or to refrain from action in order to settle the matter, with binding effects for the competent authorities concerned, in order to ensure compliance with Union law.</p> <p>4. Without prejudice to the powers of the Commission under Article 258 TFEU, where a competent authority does not comply with the decision of the Authority, and thereby fails to ensure that a financial market participant complies with requirements directly applicable to it by virtue of the acts referred to in Article 1(2), the Authority may adopt an individual decision addressed to a financial market participant requiring the necessary action to comply with its obligations under Union law, including the cessation of any practice.</p> <p>5. Decisions adopted under paragraph 4 shall prevail over any previous decision adopted by the competent authorities on the same matter. Any action by the competent authorities in relation to facts which are subject to a decision pursuant to paragraph 3 or 4 shall be compatible with those decisions.</p>	<p>Authority without delay that an agreement has not been reached:</p> <p>(a) where a time limit for reaching an agreement between competent authorities has been provided for in the Union acts, referred to in Article 1(2), and the earlier of the following occurs :</p> <p>(i) the time limit has expired;</p> <p>(ii) one or more of the competent authorities concerned conclude that a disagreement exists, on the basis of objective factors;</p> <p>(b) where no time limit for reaching an agreement between competent authorities has been provided in the Union acts referred to in Article 1(2), and the earlier of the following occurs:</p> <p>i. one and more of the competent authorities concerned conclude that a disagreement exists on the basis of objective factors; or</p> <p>ii. two months have elapsed from the date of receipt by a competent authority of a request from another competent authority to take certain action in order to comply with Union law and the requested authority has not yet</p>	
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<p>6. In the report referred to in Article 50(2), the Chairperson of the Authority shall set out the nature and type of disagreements between competent authorities, the agreements reached and the decisions taken to settle such disagreements.</p>	<p>adopted a decision that satisfies the request.";</p> <ul style="list-style-type: none"> • paragraph 1, sub-paragraph 2 is deleted; <p>1b. The Chairperson shall assess whether the Authority should act in accordance with paragraph 1. Where the intervention is at the Authority's own initiative, the Authority shall notify the competent authorities concerned of its decision regarding the intervention. Pending the Authority's decision in accordance with the procedure set out in Article 47(3a), in cases where the acts referred to in Article 1(2) require a joint decision to be taken, all competent authorities involved in the joint decision shall defer their individual decisions. Where the Authority decides to act, all competent authorities involved in the joint decision shall defer their decisions until the procedure set out in paragraphs 2 and 3 is concluded.";</p> <ul style="list-style-type: none"> • paragraph 3 is replaced by the following: <p>"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 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</p>	
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	<p>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.";</p> <ul style="list-style-type: none"> the following paragraph 3a is inserted: <p>"3a. The Authority shall notify the competent authorities concerned of the conclusion of the procedures under paragraphs 2 and 3 together with, where applicable its decision taken under paragraph 3.";</p> <ul style="list-style-type: none"> paragraph 4 is replaced by the following: <p>"4. Without prejudice to the powers of the Commission pursuant to Article 258 of the Treaty, where a competent authority does not comply with the decision of the Authority, and thereby fails to ensure that a financial institution complies with requirements directly applicable to it by virtue of the acts referred to in Article 1(2), the Authority may adopt an individual decision addressed to a financial institution requiring the necessary action to comply with its obligations under Union law, including the cessation of any practice.";</p>	
<p style="text-align: center;"><u>Justification</u></p> <p>Para -2(new): <i>Financial service providers may perform their activities throughout the EU, either through the establishment of a branch or the free provision of services, based on a single authorisation (passport) issued by the competent authorities of the home Member State. While we understand the idea behind this is to strengthen the single market for companies, passporting in its current form presents serious challenges for consumers. Passporting may cause regulatory</i></p>		

arbitrage, where companies obtain the passport in a country with lower consumer protection requirements, and then operate in all other Member States. And because those companies are being supervised by their home state competent authorities, consumers in countries where companies operate may find themselves unprotected in case of incidents, such as mis-selling, low-quality advice, fraud, company going bust. Many financial providers registered and supervised in one EU country market products and services to consumers in other Member States. And in case of an incident, out-of-court redress bodies of the consumer's country are not competent to address the consumer's complaint. The Alliance advocates for a 'European driving license' rather than a 'European Passport'. Competent authorities of the host country should be empowered to supervise where a financial service provider is doing business and, in case of relevant failure, can revoke the provider's access to the market. Consumer complaints should be resolved by competent bodies of their country of residence.

<p style="text-align: center;"><i>Article 30</i></p> <p style="text-align: center;">Peer reviews of competent authorities</p> <p>1. The Authority shall periodically organise and conduct peer reviews of some or all of the activities of competent authorities, to further strengthen consistency in supervisory outcomes. To that end, the Authority shall develop methods to allow for objective assessment and comparison between the authorities reviewed. When conducting peer reviews, existing information and evaluations already made with regard to the competent authority concerned shall be taken into account.</p> <p>2. The peer review shall include an assessment of, but shall not be limited to:</p> <p>(a) the adequacy of resources and governance arrangements of the competent authority, with particular regard to the effective application of the regulatory technical standards and implementing technical standards referred to in Articles 10 to 15 and of the acts referred to in Article 1(2) and the</p>	<p>(4) Article 30 is amended as follows:</p> <p>(a) the title of the article is replaced by the following: "Reviews of competent authorities";</p> <p>(b) paragraph 1 is replaced by the following: "1. The Authority shall periodically conduct reviews of some or all of the activities of competent authorities, to further strengthen consistency 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.";</p> <p>(c) the following paragraph 1a is inserted: "1a. For the purposes of this Article, the Authority shall establish a review committee, exclusively composed of staff from the</p>	<p>(b) paragraph 1 is replaced by the following: "1. The Authority shall periodically conduct independent reviews and peer reviews (hereinafter collectively referred to as 'reviews') of some or all of the activities of competent authorities, to further strengthen consistency 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</p>
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<p>capacity to respond to market developments;</p> <p>(b) the 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 under Articles 10 to 16, and the extent to which the supervisory practice achieves the objectives set out in Union law;</p> <p>(c) best practices developed by some competent authorities which might be of benefit for other competent authorities to adopt;</p> <p>(d) the effectiveness and the degree of convergence reached with regard to the enforcement of the provisions adopted in the implementation of Union law, including the administrative measures and sanctions imposed against persons responsible where those provisions have not been complied with.</p> <p>3. On the basis of a peer review, the Authority may issue guidelines and recommendations pursuant to Article 16. In accordance with Article 16(3), the competent authorities shall endeavour to follow those guidelines and recommendations. The Authority shall take into account the outcome of the peer review when developing draft regulatory technical or implementing technical standards in accordance</p>	<p>Authority. The Authority may delegate certain tasks or decisions to the review committee.";</p> <p>(d) paragraph 2 is amended as follows:</p> <p>(i) the introductory sentence is replaced by the following:</p> <p>"The review shall include an assessment of, but shall not be limited to:";</p> <p>(ii) point (a) is replaced by the following:</p> <p>"(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;"</p> <p>(e) paragraph 3 is replaced by the following:</p> <p>"3. The Authority shall produce a report setting out the results of the review. That report shall explain and indicate the follow-up measures that are foreseen 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). 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</p>	<p>information provided to the Authority in accordance with Article 35, and any information from stakeholders shall be taken into account.";</p> <p><i>(Note: The same amendment proposal for all three ESAs Regulations)</i></p>
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<p>with Articles 10 to 15.</p> <p>4. The Authority shall make the best practices that can be identified from those peer reviews publicly available. In addition, all other results of peer reviews may be disclosed publicly, subject to the agreement of the competent authority that is the subject of the peer review.</p>	<p>follow-up measures indicated in the report, the Authority shall issue a follow-up report. 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 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.";</p> <p>(f) the following paragraph 3a is inserted: "3a. The Authority shall submit an opinion to the Commission where, having regard to the outcome of the 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.";</p> <p>(g) paragraph 4 is replaced by the following:</p> <p>4. The Authority shall publish the reports referred to in paragraph 3 including any follow-up report , 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</p>	<p>4. The Authority shall make the best practices that can be identified from those peer reviews publicly available. In addition, all other results of peer reviews may shall be disclosed publicly, subject to the agreement of the competent authority that is the subject of the peer review.</p> <p><i>(Note: The same amendment proposal for all three ESAs Regulations)</i></p>
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	involve risks to the stability of the financial system.";	
<p style="text-align: center;"><u>Justification</u></p> <p><i>We support the Commission proposal empowering the ESAs to conduct periodic independent reviews of national competent authorities. However, those reviews should not replace the existing peer reviews – both tools are complementary, and not mutually exclusive.</i></p> <p><i>In addition, the peer review process needs also to be enhanced. A serious limitation which negatively affects the efficiency of the peer reviews is that the results of the evaluation process may be disclosed publicly only with the agreement of the competent authority that is the subject of the peer review, which is a source of moral hazard and conflicts of interest. There should be full transparency regarding the results of peer reviews and follow up actions taken by NCAs and ESAs.</i></p>		
<p style="text-align: center;"><i>Article 31</i> Coordination function</p> <p>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.</p> <p>The Authority shall promote a coordinated Union response, inter alia, by:</p> <ul style="list-style-type: none"> (a) facilitating the exchange of information between the competent authorities; (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; 	<p>(g) in Article 31 a paragraph is added: "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.";</p>	

<p>(c) without prejudice to Article 19, carrying out non-binding mediation upon a request from the competent authorities or on its own initiative;</p> <p>(d) notifying the ESRB of any potential emergency situations without delay.</p> <p>(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;</p> <p>(f) centralising information received from competent authorities in accordance with Articles 21 and 35 as the result of the regulatory reporting obligations for financial market participants active in more than one Member State. The Authority shall share that information with the other competent authorities concerned.</p>		<p>(e) taking all appropriate measures in case of developments which may jeopardise the functioning of the financial markets and protection of consumers and other users of financial services with a view to facilitating the coordination of actions undertaken by relevant competent authorities;</p> <p><i>(Note: The same amendment proposal for all three ESAs Regulations)</i></p>
<p><u>Justification</u></p> <p><i>Point (e): Overall, the ESAs should have greater focus on their task of protecting consumers and other users of financial services. In that context, ‘protection of consumers and other users of financial services’ should be part of their potential coordination actions.</i></p>		
<p style="text-align: center;"><i>Article 37</i></p> <p style="text-align: center;">Securities and Markets Stakeholder Group</p> <p>1. To help facilitate consultation with stakeholders in areas relevant to the tasks of the Authority, a Securities and Markets Stakeholder</p>	<p>(5) Article 37 is amended as follows:</p> <p>(a) in paragraph 4, the last sentence of the first subparagraph is replaced by the following:</p>	

<p>Group shall be established. The Securities and Markets Stakeholder Group shall be consulted on actions taken in accordance with Articles 10 to 15 concerning regulatory technical standards and implementing technical standards and, to the extent that these do not concern individual financial market participants, Article 16 concerning guidelines and recommendations. If actions must be taken urgently and consultation becomes impossible, the Securities and Markets Stakeholder Group shall be informed as soon as possible.</p> <p>The Securities and Markets Stakeholder Group shall meet at least four times a year.</p> <p>2. The Securities and Markets Stakeholder Group shall be composed of 30 members, representing in balanced proportions financial market participants operating in the Union, their employees' representatives as well as consumers, users of financial services and representatives of SMEs. At least five of its members shall be independent top-ranking academics. Ten of its members shall represent financial market participants.</p> <p>3. The members of the Securities and Markets Stakeholder Group shall be appointed by the Board of Supervisors, following proposals from the</p>	<p>"Members of the Banking Stakeholder Group shall serve for a period of four years, following which a new selection procedure shall take place.";</p>	<p>2. The Securities and Markets Stakeholder Group shall be composed of 30 members, representing in balanced proportions financial market participants institutions services providers operating in the Union, their employees' representatives as well as consumers, investors, users of financial services and representatives of SMEs. At least five of its members shall be independent top-ranking academics. Ten of its members shall represent financial market participants. There shall be an equal number of representatives of consumers, investors and users of financial services on the one side and financial institutions on the other side".</p> <p>3. The members of the Securities and Markets Stakeholder Group shall be appointed by the Executive Board Board of Supervisors, following</p>
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<p>relevant stakeholders. In making its decision, the Board of Supervisors shall, to the extent possible, ensure an appropriate geographical and gender balance and representation of stakeholders across the Union.</p> <p>4. The Authority shall provide all necessary information, subject to professional secrecy, as set out in Article 70, and ensure adequate secretarial support for the Securities and Markets Stakeholder Group. Adequate compensation shall be provided to members of the Securities and Markets Stakeholder Group that are representing non-profit organisations, excluding industry representatives. The Securities and Markets Stakeholder Group may establish working groups on technical issues. Members of the Securities and Markets Stakeholder Group shall serve for a period of two-and-a-half years, following which a new selection procedure shall take place.</p> <p>The members of the Securities and Markets Stakeholder Group may serve two successive terms.</p> <p>5. The Securities and Markets Stakeholder Group may submit opinions and advice to the Authority on any issue related to the tasks of the</p>		<p>proposals from the relevant stakeholders. In making its decision, the Board of Supervisors Executive Board shall, to the extent possible, ensure an appropriate geographical and gender balance and representation of stakeholders across the Union. <i>The Executive Board shall take its decision independently from any internal or external influence. The selection process should be fully transparent.</i></p> <p>4. The Authority shall provide all necessary information, subject to professional secrecy, as set out in Article 70, and ensure adequate secretarial support for the Securities and Markets Stakeholder Group. Adequate compensation shall be provided to members of the Securities and Markets Stakeholder Group that are representing non-profit organisations, excluding industry representatives. <i>This compensation shall take into account preparatory work undertaken by non-industry members of the Stakeholder Group and shall be proportionately equivalent to the Authority's external experts' compensation.</i> The Securities and Markets Stakeholder Group may establish working groups on technical issues. Members of the Securities and Markets Stakeholder Group shall serve for a period of four years <i>in staggered terms</i>, following which a new selection procedure shall take place. <i>(Note: The same amendment proposal for EIOPA Regulation)</i></p>
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<p>Authority with particular focus on the tasks set out in Articles 10 to 16 and Articles 29, 30 and 32.</p> <p>6. The Securities and Markets Stakeholder Group shall adopt its rules of procedure by a majority of two-thirds of its members.</p>	<p style="text-align: center; font-size: 48px; opacity: 0.2; transform: rotate(-45deg);">CONFIDENTIAL</p>	<p><i>(Note: EBA Regulation)</i></p> <p>Article 37(2) The Banking Stakeholder Group shall be composed of 30 members, representing in balanced proportions financial or credit institutions representative operating in the Union, their employees’ representatives as well as consumer representatives. At least five of its members shall be independent top-ranking academics. Ten of its members shall represent financial market participant There shall be an equal number of consumer-side representatives on the one side and financial or credit institutions’ representatives on the other side.</p> <p>Article 37(4) The Authority shall provide all necessary information, subject to professional secrecy, as set out in Article 70, and ensure adequate secretarial support for the Banking Stakeholder Group. Adequate compensation shall be provided to members of the Banking Stakeholder Group that are representing non-profit organisations, excluding industry representatives. This compensation shall take into account preparatory work undertaken by non-industry members of the Stakeholder Group and shall be proportionately equivalent to the Authority’s external experts compensation. The Banking Stakeholder Group may establish working groups on technical issues. Members of the Banking</p>
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<p>7. The Authority shall make public the opinions and advice of the Securities and Markets Stakeholder Group and the results of its consultations</p>	<p>(b) in paragraph 5, the following subparagraphs are added:</p> <p>"Where members of the Banking Stakeholder Group cannot reach a common opinion or advice, the members representing one group of stakeholders shall be permitted to issue a separate opinion or separate advice. The Banking Stakeholder Group, the Securities and Markets Stakeholder Group, the Insurance and Reinsurance Stakeholder Group, and the Occupational Pensions Stakeholder Group may issue joint opinions and advice on issues related to the work of the European Supervisory Authorities under Article 56 of this Regulation on joint positions and common acts.</p>	<p>Stakeholder Group shall serve for a period of four years <i>in staggered terms</i>, following which a new selection procedure shall take place.</p> <p>(b) in paragraph 5, the following subparagraphs are added:</p> <p>Where members of the Banking Stakeholder Group cannot reach a common opinion or advice, the members representing one group of stakeholders shall be permitted to issue a separate opinion or separate advice. The Banking Stakeholder Group, the Securities and Markets Stakeholder Group, the Insurance and Reinsurance Stakeholder Group, and the Occupational Pensions Stakeholder Group may issue joint opinions and advice on issues related to the work of the European Supervisory Authorities under Article 56 of this Regulation on joint positions and common acts. <i>Members of the Stakeholder Groups shall be supported in their work of issuing joint opinions by adequate compensation and secretarial support.</i></p> <p>7. The Authority shall make public the opinions and advice of the Securities and Markets Stakeholder Group and the results of its consultations <i>and inform the public how the Stakeholder Group's advice was taken into account.</i></p>
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		<i>(Note: The same amendment proposal for EIOPA Regulation)</i>
<p style="text-align: center;"><u>Justification</u></p> <p>Para 2 & 4: <i>In stakeholder groups at EBA, EIOPA and ESMA imbalances still remain. For example, the relationship between the providers and users of pension services in the “Occupational Pensions Stakeholder Group” at EIOPA is still unbalanced, in fact it counts only 3 consumer representatives at best, while at least 20 of its members defend the interests of the financial industry, of its providers and of its employees. Moreover, the three supervisory authorities are still not complying with the provision of the regulation requiring that “adequate compensation shall be provided to members of the Stakeholder Groups representing non-profit organisations, excluding industry representatives”. Indeed, those members still only receive an allowance of € 150 per meeting day and € 150 for preparing the meeting, i.e. € 18.75 per hour (gross of social contributions and income tax). This is obviously not “adequate” for international financial user-side experts, when one compares it for example to the hourly rate of senior commercial consultants hired by European Public Authorities. This also obviously contributes to the imbalance in the representation of retail financial user interests versus those of the financial industry. It should be underlined that there are authorities that should be seen as exemplary in the way they value user-side expertise and compensation the non-industry experts. For instance, the UK Financial Conduct Authority not only compensates their Consumer Panel's experts adequately (the ordinary members of the UK FCA Consumer Panel receive a compensation of 400 £ per day), but also differentiates between different categories of experts as naturally chairing an Advisory/Working Group is more challenging and time consuming since it involves additional responsibilities apart from providing expert input.</i></p> <p><i>Moreover, we strongly support the Commission’s proposal to extend the mandate of Stakeholder Groups’ members to 4 years as it will ensure even more effective work of the Stakeholder Groups’ especially with view to long-term projects. In fact, the Alliance believes that providing for staggered terms (e.g. half the group being changed every 2 years) would even further enhance continuity of knowledge and experience and building institutional memory.</i></p> <p>Para 3: <i>The Alliance believes that members of the Stakeholder Groups should be appointed by the independent Executive Board, following proposals from the relevant stakeholders. The Executive Board should take its decision independently from any internal or external influence and the selection process should be transparent.</i></p> <p>Para 5: <i>The Alliance strongly supports the proposal enabling Securities and Markets Stakeholder Group, the Insurance and Reinsurance Stakeholder Group, and the Occupational Pensions Stakeholder Group to issue joint opinions and advice on issues related to the work of the European Supervisory Authorities under Article 56 on joint positions and common acts. However, we think it is necessary for the ESAs support the members of the Stakeholder Groups in their work of issuing joint opinions by adequate compensation and secretarial support.</i></p> <p>Para 7: <i>The Alliance strongly believes that ESAs shall make public the opinions and advice of the Securities and Markets Stakeholder Group and the results of its consultations and inform the public how the Stakeholder Group’s advice was taken into account.</i></p>		

<p style="text-align: center;">CHAPTER III ORGANISATION</p> <p style="text-align: center;"><i>SECTION 1</i></p> <p>Board of Supervisors</p> <p style="text-align: center;"><i>Article 40</i> Composition</p> <p>1. The Board of Supervisors shall be composed of:</p> <p>(a) the Chairperson, who shall be non-voting;</p> <p>(b) the head of the national public authority competent for the supervision of financial market participants in each Member State, who shall meet in person at least twice a year;</p> <p>(c) one representative of the Commission, who shall be non-voting;</p> <p>(d) one representative of the ESRB, who shall be non-voting;</p> <p>(e) one representative of each of the other two European Supervisory Authorities who shall be non-voting;</p> <p>2. The Board of Supervisors shall convene meetings with the Securities and Markets Stakeholder Group regularly, at least twice a year.</p>	<p>(6) Article 40 is amended as follows:</p> <p>(a) paragraph 1 is amended as follows:</p> <p>(i) the following point (aa) is inserted:</p> <p>"(aa) the full time members of the Executive Board referred to Article 45(1), who shall be non-voting;"</p> <p>(b) in paragraph 7, the second subparagraph is deleted;</p> <p>(c) the following paragraph 8 is added:</p> <p>"8. Where the national public authority referred to in paragraph 1(b) is not responsible for the enforcement of consumer protection rules, the member of the Board of Supervisors referred to in that point may decide to invite a representative from the Member State's consumer protection authority, who shall be non-voting. In the case where the responsibility for consumer protection is shared by several authorities in a Member State, those authorities shall agree on a common representative.";</p>	<p>"8. Where the national public authority referred to in paragraph 1(b) is not responsible for the enforcement of consumer protection rules, the member of the Board of Supervisors referred to in that point may decide to shall invite a representative from the Member State's consumer protection authority, who shall be non-voting. In the case where the responsibility for consumer protection is shared by several authorities in a Member State, those authorities shall agree on a common representative.";</p> <p><i>(Note: The same amendment proposal for all three ESAs Regulations)</i></p>
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<p>3. Each competent authority shall be responsible for nominating a high-level alternate from its authority, who may replace the member of the Board of Supervisors referred to in paragraph 1(b), where that person is prevented from attending.</p> <p>4. In Member States where more than one authority is responsible for the supervision according to this Regulation, those authorities shall agree on a common representative. Nevertheless, when an item to be discussed by the Board of Supervisors does not fall within the competence of the national authority being represented by the member referred to in paragraph 1(b), that member may bring a representative from the relevant national authority, who shall be non-voting.</p> <p>5. For the purpose of acting within the scope of Directive 97/9/EC, the member of the Board of Supervisors referred to in paragraph 1(b) may, where appropriate, be accompanied by a representative from the relevant bodies which administer investor compensation schemes in each Member State, who shall be non-voting.</p> <p>6. The Board of Supervisors may decide to admit observers.</p>		
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<p>The Executive Director may participate in meetings of the Board of Supervisors without the right to vote.</p>		
<p style="text-align: center;"><u>Justification</u></p> <p><i>Para 8: Several national supervisory authorities are not in charge of financial consumer protection but are members of the Boards of Supervisors. At the same time, not all national authorities in charge of financial consumer protection are represented on the ESAs Boards of Supervisors. This makes it difficult for consumer protection issues to get as much attention as other issues that directly come under the responsibility of all members of the Boards of Supervisors. Now the Commission proposes to allow all national consumer protection authorities to join the Boards of Supervisors, but with no-voting rights. We consider this to be a superficial semblance of reform rather than a real reform. NCAs dealing with financial consumer protection should be involved in the Boards of Supervisors and have a voting right.</i></p>		
<p style="text-align: center;"><i>Article 41</i> Internal committees and panels</p> <p>1. The Board of Supervisors may establish internal committees or panels for specific tasks attributed to the Board of Supervisors, and may provide for the delegation of certain clearly defined tasks and decisions to internal committees or panels, to the Management Board or to the Chairperson.</p> <p>2. For the purposes of Article 19, the Board of Supervisors shall convoke an independent panel to facilitate an impartial settlement of the disagreement, consisting of the Chairperson and two of its members, who are not representatives of the competent authorities which are party to the disagreement and who have neither any interest in the conflict nor direct links to the competent authorities concerned.</p>	<p style="text-align: center;"><i>"Article 41</i> <i>Internal committees</i></p> <p>"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.";</p>	<p>-2 (new). The Board of Supervisors shall establish a permanent committee composed of national competent authorities responsible for the enforcement of consumer protection rules.</p> <p><i>(Note: The same amendment proposal for all three ESAs Regulations)</i></p>

<p>3. Subject to Article 19(2), the panel shall propose a decision for final adoption by the Board of Supervisors, in accordance with the procedure set out in the third subparagraph of Article 44(1).</p> <p>4. The Board of Supervisors shall adopt rules of procedure for the panel referred to in paragraph 2.</p>		
<p><u>Justification</u></p> <p><i>Para -2 (new): The way how the ESAs governance function is key in prioritising their consumer protection mandate. More work in this direction could be done within the existing Boards of Supervisors. Within each BoS we propose to establish a permanent committee composed of national competent authorities responsible for the enforcement of consumer protection rules. These committees would set the direction for the ESAs work on conduct of business/consumer protection.</i></p>		
<p style="text-align: center;">SECTION 2 Management Board</p> <p style="text-align: center;"><i>Article 45</i> Composition</p> <p>1. The Management Board shall be composed of the Chairperson and six other members of the Board of Supervisors, elected by and from the voting members of the Board of Supervisors.</p> <p>Other than the Chairperson, each member of the Management Board shall have an alternate, who may replace him if he is prevented from attending.</p> <p>The term of office of the members elected by the</p>	<p>(7) Article 45 is replaced by the following: <i>"Article 45</i> <i>Composition</i></p> <p>1. The Executive Board shall be composed of the Chairperson and three 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.</p>	

<p>Board of Super- visors shall be two-and-a-half years. That term may be extended once. The composition of the Management Board shall be balanced and proportionate and shall reflect the Union as a whole. Mandates shall be overlapping and an appropriate rotating arrangement shall apply.</p> <p>2. Decisions by the Management Board shall be adopted on the basis of a majority of the members present. Each member shall have one vote.</p> <p>The Executive Director and a representative of the Commission shall participate in meetings of the Management Board without the right to vote.</p> <p>The representative of the Commission shall have the right to vote on matters referred to in Article 63.</p> <p>The Management Board shall adopt and make public its rules of procedure.</p> <p>3. Meetings of the Management Board shall be convened by the Chairperson at his own initiative or at the request of at least a third of its members, and shall be chaired by the Chairperson.</p> <p>The Management Board shall meet prior to every meeting of the Board of Supervisors and as often as the Management Board deems necessary. It shall meet at least five times a year.</p>	<p>2. The full time members shall be 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 a shortlist of qualified candidates.</p> <p>The 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 Executive Board including the Member in charge. The Executive Board shall be balanced and proportionate and shall reflect the Union as a whole.</p> <p>3. Where a full time member of the Executive 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.</p>	
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<p>4. The members of the Management Board may, subject to the rules of procedure, be assisted by advisers or experts. The non- voting members, with the exception of the Executive Director, shall not attend any discussions within the Management Board relating to individual financial market participants.</p>	<p>4. 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:</p> <ul style="list-style-type: none"> (a) the results achieved in the first term of office and the way in which they were achieved; (b) the Authority's duties and requirements in the coming years. <p>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.";</p> <p>(8) the following Article 45a is inserted:</p> <p style="text-align: center;"><i>"Article 45a Decision-making</i></p> <ul style="list-style-type: none"> 1. Decisions by the Executive Board shall be adopted by simple majority of its members. Each member shall have one vote. In the event of a tie, the Chairperson shall have a casting vote. 2. The representative of the Commission shall participate in meetings of the Executive Board without the right to vote save in respect of matters referred to in Article 63. 	
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	<p>3. The Executive Board shall adopt and make public its rules of procedure.</p> <p>4. Meetings of the Executive 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.</p> <p>The Executive Board shall meet prior to every meeting of the Board of Supervisors and as often as the Executive Board deems necessary. It shall meet at least five times a year.</p> <p>5. The members of the Executive Board may, subject to the rules of procedure, be assisted by advisers or experts. The non-voting participants shall not attend any discussions within the Executive Board relating to individual financial institutions.";</p> <p>(9) the following Article 45b is inserted: <i>"Article 45b Internal committees</i> The Executive Board may establish internal committees for specific tasks attributed to it.";</p>	
<p style="text-align: center;"><u><i>Comment</i></u></p> <p><i>We strongly support the Commission proposal to bring a pan-EU vision to the ESAs. EU market integration (CMU, single market for financial services) and equally fair treatment of all financial service consumers cannot be achieved without a pan-EU vision and strong coordination. At the same time, the reform proposed by the Commission should not come to the detriment of national competences. A balance should be found between the Executive Board and the Board of Supervisors.</i></p>		

Next to that, the Boards of Supervisors are mostly composed of national supervisory authorities (in fact much more supervisors than regulators). Thus, it is politically very difficult for the ESAs to increase the effectiveness of their supervisory activities since the institutions that they have to control are their board members. A crucial example of this is the investigation of potential breaches of EU Law or of non-implementation of EU Law (article 17 of the ESAs Regulations) by one or several of their board members. This has never happened as far as investor and consumer protection is concerned. The ESAs Boards should be more open to national regulators.

<p style="text-align: center;">Article 46</p> <p style="text-align: center;">Independence</p> <p>The members of the Management Board shall act independently and objectively in the sole interest of the Union as a whole and shall neither seek nor take instructions from the Union institutions or bodies, from any government of a Member State or from any other public or private body.</p> <p>Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence the members of the Management Board in the performance of their tasks.</p>	<p>Article 46 is replaced by the following:</p> <p style="text-align: center;">"Article 46</p> <p style="text-align: center;">Independence</p> <p>The members of the Executive Board shall act independently and objectively in the sole interest of the Union as a whole and shall neither seek nor take instructions from the Union institutions or bodies, from any government of a Member State or from any other public or private body.</p> <p>Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence the members of the Executive Board in the performance of their tasks.";</p>	<p><i>(new paragraph) In order to ensure the Executive Board's independence at least two of its full time members in the period of minimum 2 years prior to their appointment shall not have held any position in a National Competent Authority or received any kind of remuneration from a National Competent Authority.</i></p>
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		<i>(Note: The same amendment proposal for all three ESAs Regulations)</i>
<p><u>Justification</u></p> <p><i>The way how the ESAs' governance functions is key for ensuring their independence and in prioritising their activities, e.g. resulting from their consumer protection mandate. In order to ensure an independent Executive Board, at least 50% of its members should fulfil the requirement of at least 2 years of cooling off period after having worked for or received remuneration from an NCA (as defined in Article 4).</i></p>		
<p style="text-align: center;">CHAPTER VI FINANCIAL PROVISIONS</p> <p style="text-align: center;"><i>Article 62</i> Budget of the Authority</p> <p>1. The revenues of the Authority, a European body in accordance with Article 185 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾ (hereinafter the Financial Regulation), shall consist, in particular, of any combination of the following:</p> <p>(a) obligatory contributions from the national public authorities competent for the supervision of financial market participants which shall be made in accordance with a formula based on the weighting of votes set out in Article 3(3) of Protocol (No 36) on transitional provisions. For the purposes of this Article, Article 3(3) of Protocol (No 36) on</p>	<p>(10) Article 62 is amended as follows:</p> <p>(a) paragraph 1 is replaced by the following:</p> <p>"1. The revenues of the Authority shall consist, without prejudice to other types of revenue, of any combination of the following:</p> <p>(a) a balancing contribution from the Union, entered in the General Budget of the Union (Commission section) which shall not exceed 40% of the estimated revenues of the Authority;</p> <p>(b) annual contributions from financial institutions, based on the annual estimated expenditure relating to the activities required by this Regulation and by the Union Acts referred to in Article 1(2) for each category of participants within the remit of the Authority;</p> <p>(c) any fees paid to the Authority in the cases specified in the</p>	

<p>transitional provisions shall continue to apply beyond the deadline of 31 October 2014 therein established;</p> <p>(b) a subsidy from the Union, entered in the General Budget of the European Union (Commission Section);</p> <p>(c) any fees paid to the Authority in the cases specified in the relevant instruments of Union law.</p> <p>2. The expenditure of the Authority shall include, at least, staff, remuneration, administrative, infrastructure professional training and operational expenses.</p> <p>3. Revenue and expenditure shall be in balance.</p> <p>4. Estimates of all Authority revenue and expenditure shall be prepared for each financial year, corresponding to the calendar year, and shall be presented in the budget of the Authority.</p>	<p>relevant instruments of Union law.</p> <p>(d) any voluntary contribution from Member States or observers;</p> <p>(e) charges for publications, training and for any other services requested by competent authorities.";</p> <p>(b) the following paragraphs 5 and 6 are added:</p> <p>"5. The annual contributions referred to in paragraph 1(b) shall be collected each year from individual financial institutions by the authorities designated by each Member State. By 31 March of each financial year, each Member State shall pay to the Authority the amount that it is required to collect in accordance with the criteria set out in the delegated act referred in to Article 62a.</p> <p>6. Voluntary contributions from Members States and observers as referred to in point (d) of paragraph 1 shall not be accepted if such acceptance would cast doubt on the independence and impartiality of the Authority.";</p>	<p><i>2a (new). At least 20% of the expenditure of the Authority shall be dedicated to its work on consumer protection.</i></p> <p><i>(Note: The same amendment proposal for all three ESAs Regulations)</i></p>
<p><u>Justification</u></p>		

It is important that the consumer protection activities of the ESAs are financed appropriately. We propose a minimum of 20% of the budget is dedicated to these activities. We believe this is a proportionate amount, when considering also the funding of some national competent authorities dealing with financial consumer protection. For example, in the UK, the FCA's budget is double that of the PRA.

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