



Council of the
European Union

Brussels, 19 November 2019
(OR. en)

8494/19

**Interinstitutional File:
2017/0231(COD)**

**CODEC 925
EF 153
ECOFIN 401
SURE 32
PE 185**

INFORMATION NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2014/65/EU on markets in financial instruments and Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)
- Outcome of the European Parliament's first reading and Corrigendum procedure
(Strasbourg, 16 April 2019 and Brussels, 14 November 2019)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint Declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this legislative file at first reading.

¹ OJ C 145, 30.6.2007, p.5

This file was expected² to undergo the Corrigendum procedure³ in the new European Parliament after adoption by the previous Parliament of its position at first reading.

II. VOTES

At its sitting of 16 April 2016, and following informal interinstitutional negotiations, the European Parliament adopted an amendment (without legal linguistic revision) to the Commission proposal and a legislative resolution with a view to the adoption of the abovementioned proposal, constituting the European Parliament's position at first reading. It reflects what had been provisionally agreed between the Institutions.

After finalisation of the adopted text by the legal linguists, on 14 November 2019 the European Parliament approved a corrigendum to the position adopted at first reading.

With this corrigendum, the Council should be able to approve the position of the European Parliament as set out in the Annex⁴ hereto, thus bringing to a close the first reading for both Institutions.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² 8507/19

³ Rule 241, EP Rules of Procedure.

⁴ The text of the corrigendum is set out in the Annex. It is presented in the form of a consolidated text, where changes to the Commission's proposal are highlighted in bold and italics. The symbol "■" indicates deleted text.

Markets in financial instruments and taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) *I**

European Parliament legislative resolution of 16 April 2019 on the proposal for a directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments and Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (COM(2017)0537 – C8-0318/2017 – 2017/0231(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2017)0537),
- having regard to Article 294(2) and Articles 53(1) and 62 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0318/2017),
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the opinion of the European Central Bank of 11 May 2018,¹
- having regard to the opinion of the European Economic and Social Committee of 15 February 2018,²
- having regard to the provisional agreement approved by the committee responsible under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 1 April 2019 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

¹ OJ C 251, 18.7.2018, p.2.

² OJ C 227, 28.6.2018, p. 63.

- having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A8-0012/2019),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 16 April 2019 with a view to the adoption of Directive (EU) 2019/... of the European Parliament and of the Council amending Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), Directive 2014/65/EU on markets in financial instruments and Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) and 62 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank⁷,

Having regard to the opinion of the European Economic and Social Committee⁸,

Acting in accordance with the ordinary legislative procedure⁹,

Whereas:

- (1) Directive 2014/65/EU of the European Parliament and of the Council¹⁰ creates a regulatory framework for data reporting services providers (DRSPs) and requires a post-trade data reporting services provider to be authorised as an approved publication arrangement (APA). In addition, a consolidated tape provider (CTP) is required to offer consolidated

⁷ OJ C 251, 18.7.2018, p. 2.

⁸ OJ C 227, 28.6.2018, p. 63.

⁹ Position of the European Parliament of 16 April 2019.

¹⁰ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

trading data covering all trades in both equity and non-equity instruments throughout the Union, in accordance with Directive 2014/65/EU. Directive 2014/65/EU also formalises transaction reporting channels to the competent authorities by requiring a third party that reports on behalf of investment firms to be authorised as an approved reporting mechanism (ARM).

- (2) The quality of trading data and of the processing and provision of such data, including cross-border data processing and provision, is of paramount importance for achieving the main objective of Regulation (EU) No 600/2014 of the European Parliament and of the Council¹¹, which is to strengthen the transparency of financial markets. Accurate trading data provide users with an overview of trading activity across Union financial markets and provide competent authorities with accurate and comprehensive information on relevant transactions. Given the cross-border dimension of data handling, the benefits of pooling data-related competences, including potential economies of scale, and the adverse impact of potential divergences in supervisory practices on both the quality of trading data and on the tasks of DRSPs, it is therefore appropriate to transfer the authorisation and supervision of DRSPs, as well as data gathering powers, from the competent authorities to the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council¹² (ESMA), ***other than with respect to ARMs or APAss that benefit from a derogation under Regulation (EU) No 600/2014.***
- (3) To achieve the consistent transfer of such powers, it is appropriate to delete provisions pertaining to the operational requirements for DRSPs and the competences of competent authorities with respect to DRSPs set out in Directive 2014/65/EU, and to introduce those provisions in Regulation (EU) No 600/2014.

¹¹ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

¹² Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

- (4) The transfer of the authorisation and supervision of DRSPs, other than with respect to APAs or ARMs that benefit from a derogation under Regulation (EU) No 600/2014, to ESMA is congruent with ESMA's tasks. More specifically, the conferral of data gathering powers, authorisation and supervision from competent authorities to ESMA is instrumental to other tasks that ESMA performs under Regulation (EU) No 600/2014, such as market monitoring, temporary intervention powers and position management powers, and ensures consistent compliance with pre-trade and post-trade transparency requirements.
- (5) Directive 2009/138/EC of the European Parliament and of the Council¹³ provides that, in accordance with the risk-oriented approach to the Solvency Capital Requirement, it is possible in specific circumstances for insurance and reinsurance undertakings and groups to use internal models for the calculation of that requirement, instead of using the standard formula.
- (6) ***Directive 2009/138/EC provides for a country component in the volatility adjustment. In order to ensure that this country component mitigates exaggerations of bond spreads in the relevant country effectively, an appropriate threshold for the risk-corrected country spread should be set for the activation of the country component.***

¹³ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

(7) *In view of increased cross-border insurance activities, it is necessary to enhance the convergent application of Union law in cases of cross-border insurance activity, especially at an early stage. For this purpose, information exchange and cooperation between supervisory authorities and the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council¹⁴(EIOPA), should be strengthened. In particular, notification requirements in the case of significant cross-border insurance activity or a crisis situation, as well as conditions for setting up cooperation platforms, should be provided for where the envisaged cross-border insurance activity is significant. The significance of the cross-border insurance activity should be assessed in terms of the annual gross written premium subscribed in the host Member State compared to the total annual gross written premiums of the insurance company, in terms of the impact on the policyholder protection in the host Member State and in terms of the impact of the branch or activity of the respective insurance company on the market of the host Member State in terms of freedom to provide services. Cooperation platforms are an effective tool to achieve stronger and timely cooperation between supervisory authorities and thus to enhance consumer protection. However, authorisation, supervision and enforcement decisions are and remain within the competence of the supervisory authority of the home Member State.*

¹⁴ Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

(8) *Where cross-border insurance activities are significant with respect to the market of the host Member State and require close collaboration between the supervisory authorities of the home Member State and the host Member State, especially where an insurer might risk being in financial difficulties to the detriment of policyholders and third parties, EIOPA should set up and coordinate collaboration platforms.*

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(9) To take account of the replacement of the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) by EIOPA, the references to CEIOPS in Directive 2009/138/EC should be deleted.

(10) Following changes to Regulation (EU) No 1093/2010 of the European Parliament and of the Council¹⁵, the European Supervisory Authority (European Banking Authority), established by that Regulation (EBA), will have a new role in the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and subsequent changes will need to be made to Directive (EU) 2015/849 of the European Parliament and of the Council¹⁶.

(11) Directives 2009/138/EC, 2014/65/EU and (EU) 2015/849 should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

¹⁵ 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 (OJ L 331, 15.12.2010, p. 12).

¹⁶ 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).

Article 1
Amendments to Directive 2014/65/EU

Directive 2014/65/EU is amended as follows:

(1) Article 1 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. This Directive shall apply to investment firms, market operators, and third-country firms providing investment services or performing investment activities through the establishment of a branch in the Union.’;

(b) in paragraph 2, point (d) is deleted;

(2) in Article 4, paragraph 1 is amended as follows:

(a) points (36) and (37) are replaced by the following:

‘(36) ‘management body’ means the body or bodies of an investment firm, a market operator, or a data reporting services provider as defined in point (36a) of Article 2(1) of Regulation (EU) No 600/2014, which are appointed in accordance with national law, which are empowered to set the entity’s strategy, objectives and overall direction, and which oversee and monitor management decision-making and include persons who effectively direct the business of the entity.

Where this Directive refers to the management body and, pursuant to national law, the managerial and supervisory functions of the management body are assigned to different bodies or different members within one body, the Member State shall identify the bodies or members of the management body responsible in accordance with its national law, unless otherwise specified by this Directive;

(37) ‘senior management’ means natural persons who exercise executive functions within an investment firm, a market operator, or a data reporting services provider as defined in point (36a) of Article 2(1) of Regulation (EU) No 600/2014, and who are responsible and accountable to the management body for the day-to-day management of the entity, including for the implementation of the policies concerning the distribution of services and products to clients by the firm and its personnel;’;

(b) points (52), (53), (54), (55)(c) and (63) are deleted;

(3) *in Article 22, the following paragraph is added:*

'Member States shall ensure that competent authorities, where they are in charge of authorising and supervising the activities of an approved publication arrangement (APA), as defined in point (34) of Article 2(1) of Regulation (EU) No 600/2014 with a derogation in accordance with Article 2(3) of that Regulation, or an approved reporting mechanism (ARM), as defined in point (36) of Article 2(1) of that Regulation with a derogation in accordance with Article 2(3) of that Regulation, monitor the activities of that APA or ARM so as to assess compliance with the operating conditions provided for in that Regulation. Member States shall ensure that the appropriate measures are in place to enable the competent authorities to obtain the information needed to assess the compliance of APAs and ARMs with those obligations.'

(4) Title V is deleted;

(5) Article 70 is amended as follows:

(a) paragraph 3 is amended as follows:

(i) in point (a), points (xxxvii) to (xxxx) are deleted;

(ii) in point (b), the following point is inserted :

‘(xxa) Article 27f(1), (2) and (3), Article 27g(1) to (5) and Article 27i(1) to (4), where an APA or ARM has a derogation in accordance with Article 2(3);’;

(b) in paragraph 4, points (a) and (b) are replaced by the following:

'(a) Article 5 or Article 6(2) or Article 34, 35, 39 or 44 of this Directive; or

(b) the third sentence of Article 7(1) of Regulation (EU) No 600/2014 or Article 11(1) of that Regulation, and, where an APA or ARM has a derogation in accordance with Article 2(3) of that Regulation, Article 27b of that Regulation.';

(c) in paragraph 6, point (c) is replaced by the following:

'(c) in the case of an investment firm, a market operator authorised to operate an MTF or OTF, or a regulated market, withdrawal or suspension of the authorisation of the institution in accordance with Articles 8 and 43 of this Directive and, where an APA or ARM has a derogation in accordance with Article 2(3) of Regulation (EU) No 600/2014, withdrawal or suspension of the authorisation in accordance with Article 27e of that Regulation.';

(6) in Article 71, paragraph 6 is replaced by the following:

'6. Where a published criminal or administrative sanction relates to an investment firm, market operator, credit institution in relation to investment services and activities or ancillary services, or a branch of third-country firms authorised in accordance with this Directive, or to an APA or ARM authorised in accordance with Regulation (EU) No 600/2014 which has a derogation in accordance with Article 2(3) of that Regulation, ESMA shall add a reference to the published sanction in the relevant register.';

(7) in Article 77(1), first subparagraph, the introductory sentence is replaced by the following:

‘Member States shall provide, at least, that any person authorised within the meaning of Directive 2006/43/EC of the European Parliament and of the Council^{*}, performing in an investment firm, in a regulated market, or in an APA or ARM authorised in accordance with Regulation (EU) No 600/2014 which has a derogation in accordance with Article 2(3) of that Regulation, the task described in Article 34 of Directive 2013/34/EU or Article 73 of Directive 2009/65/EC or any other task prescribed by law, shall have a duty to report promptly to the competent authorities any fact or decision concerning that undertaking of which that person has become aware while carrying out that task and which is liable to:

* Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).’;

(8) Article 89 is amended as follows:

(a) paragraphs 2 and 3 are replaced by the following:

2. The delegations of power referred to in Article 2(3), the second subparagraph of point (2) of Article 4(1), Article 4(2), Article 13(1), Article 16(12), Article 23(4), Article 24(13), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 52(4), Article 54(4), Article 58(6), and Article 79(8) shall be conferred on the Commission for an indeterminate period of time from 2 July 2014.

3. The delegations of powers referred to in Article 2(3), the second subparagraph of point (2) of Article 4(1), Article 4(2), Article 13(1), Article 16(12), Article 23(4), Article 24(13), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 52(4) Article 54(4), Article 58(6), and Article 79(8) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.';

(b) paragraph 5 is replaced by the following:

'5. A delegated act adopted pursuant to Article 2(3), the second subparagraph of point (2) of Article 4(1), Article 4(2), Article 13(1), Article 16(12), Article 23(4), Article 24(13), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 52(4), Article 54(4), Article 58(6) or Article 79(8) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.';

(9) in Article 90, paragraphs 2 and 3 are deleted;

(10) in Article 93(1), the second subparagraph is replaced by the following:

'Member States shall apply those measures from 3 January 2018.';

(11) in Annex I, Section D is deleted.

Article 2

Amendments to Directive 2009/138/EC

Directive 2009/138/EC is amended as follows:

(1) *in Article 77d(4), the first sentence is replaced by the following:*

‘For each relevant country, the volatility adjustment to the risk-free interest rates referred to in paragraph 3 for the currency of that country shall, before the application of the 65 % factor, be increased by the difference between the risk-corrected country spread and twice the risk-corrected currency spread whenever that difference is positive and the risk-corrected country spread is higher than 85 basis points.’;

(2) *in Article 112, the following paragraph is inserted:*

‘3a. Supervisory authorities shall inform EIOPA in accordance with Article 35(1) of Regulation (EU) No 1094/2010 of any applications to use or change an internal model. Upon the request of one or more supervisory authorities concerned, EIOPA may provide technical assistance, pursuant to point (b) of Article 8(1) of that Regulation, to the supervisory authority or authorities which requested the assistance, with respect to the decision on the application.’;

(3) *in Title I, Chapter VIII, the following section is inserted:*

'Section 2a

Notification and collaboration platforms

Article 152a

Notification

1. *Where the supervisory authority of the home Member State intends to authorise an insurance or reinsurance undertaking whose scheme of operations indicates that a part of its activities will be based on the freedom to provide services or the freedom of establishment in another Member State, and that scheme of operations also indicates that those activities are likely to be of relevance with respect to the host Member State's market, the supervisory authority of the home Member State shall notify EIOPA and the supervisory authority of the relevant host Member State thereof.*

- 2. The supervisory authority of the home Member State shall, in addition to the notification provided for in paragraph 1, also notify EIOPA and the supervisory authority of the relevant host Member State where it identifies deteriorating financial conditions or other emerging risks posed by an insurance or reinsurance undertaking carrying out activities which are based on the freedom to provide services or the freedom of establishment and which may have a cross-border effect. The supervisory authority of the host Member State may also notify the supervisory authority of the relevant home Member State where it has serious and reasoned concerns with regard to consumer protection. The supervisory authorities may refer the matter to EIOPA and request its assistance in cases where no bilateral solution can be found.*
- 3. The notifications referred to in paragraphs 1 and 2 shall be sufficiently detailed to allow for a proper assessment.*
- 4. The notifications referred to in paragraphs 1 and 2 are without prejudice to the supervisory mandate of the supervisory authorities of the home Member State and host Member State provided for in this Directive.*

Article 152b

Collaboration platforms

- 1. EIOPA may, in the case of justified concerns about negative effects on policy holders, on its own initiative or at the request of one or more of the relevant supervisory authorities, set up and coordinate a collaboration platform to strengthen the exchange of information and to enhance collaboration between the relevant supervisory authorities where an insurance or reinsurance undertaking carries out, or intends to carry out, activities which are based on the freedom to provide services or the freedom of establishment and where:**
 - (a) such activities are of relevance with respect to the host Member State's market;**
 - (b) a notification by the supervisory authority of the home Member State has been made under Article 152a(2) of deteriorating financial conditions or other emerging risks; or**
 - (c) the matter has been referred to EIOPA under Article 152a(2).**

2. *Paragraph 1 is without prejudice to the right of the relevant supervisory authorities to set up a collaboration platform where they all agree to do so.*
3. *The setting up of a collaboration platform pursuant to paragraphs 1 and 2 is without prejudice to the supervisory mandate of the supervisory authorities of the home Member State and host Member State provided for in this Directive.*
4. *Without prejudice to Article 35 of Regulation (EU) No 1094/2010, at the request of EIOPA, the relevant supervisory authorities shall provide all necessary information in a timely manner to allow for the proper functioning of the collaboration platform.’;*

(4) Article 231 is amended as follows:

- (a) in paragraph 1, the third subparagraph is replaced by the following:

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‘The group supervisor shall inform the other members of the college of supervisors, ***including EIOPA***, of the receipt of the application and shall forward the complete application, including the documentation submitted by the undertaking, to those members, ■ without delay. ***Upon the request of one or more supervisory authorities concerned, EIOPA may provide technical assistance, pursuant to point (b) of Article 8(1) of Regulation (EU) No 1094/2010, to the supervisory authority or authorities which requested the assistance, with respect to the decision on the application.***’;

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- (b) in paragraph 3, third subparagraph, the first sentence is replaced by the following:

‘Where EIOPA does not take a decision as referred to in the second subparagraph of this paragraph in accordance with Article 19(3) of Regulation (EU) No 1094/2010, the group supervisor shall take the final decision.’;

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(5) in Article 237(3), third subparagraph, the first sentence is replaced by the following:

'Where EIOPA does not take a decision as referred to in the second subparagraph of this paragraph in accordance with Article 19(3) of Regulation (EU) No 1094/2010, the group supervisor shall take the final decision.';

(6) in Article 248(4), the third subparagraph is deleted.

Article 3

Amendments to Directive (EU) 2015/849

Directive (EU) 2015/849 is amended as follows:

(1) Article 6 is amended as follows:

(a) paragraph 3 is replaced by the following:

3. The Commission shall make the report referred to in paragraph 1 available to Member States and obliged entities in order to assist them in identifying, understanding, managing and mitigating the risks of money laundering and terrorist financing, and to allow other stakeholders, including national legislators, the European Parliament, the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council* (EBA), and representatives from EU Financial Intelligence Units (FIUs), to better understand those risks. The report shall be made public at the latest six months after having been made available to Member States, except for those elements of the report which contain classified information.

* 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 (OJ L 331, 15.12.2010, p. 12).;

(b) in paragraph 5, the second sentence is replaced by the following:

'Thereafter, EBA shall issue an opinion every two years.'

(2) Article 7 is amended as follows:

(a) in paragraph 2, the second sentence is replaced by the following:

'The identity of that authority or the description of the mechanism shall be notified to the Commission, to EBA, and to the other Member States.'

(b) in paragraph 5, the first sentence is replaced by the following:

'5. Member States shall make the results of their risk assessments, including their updates, available to the Commission, to EBA and to the other Member States.';

(3) in Article 17, the first sentence is replaced by the following:

'By 26 June 2017, the ESAs shall issue guidelines addressed to competent authorities and to the credit institutions and financial institutions in accordance with Article 16 of Regulation (EU) No 1093/2010 on the risk factors to be taken into consideration and the measures to be taken in situations where simplified customer due diligence measures are appropriate. From 1 January 2020, EBA shall, where appropriate, issue such guidelines.';

(4) in Article 18(4), the first sentence is replaced by the following:

'4. By 26 June 2017, the ESAs shall issue guidelines addressed to competent authorities and the credit institutions and financial institutions, in accordance with Article 16 of Regulation (EU) No 1093/2010 on the risk factors to be taken into consideration and the measures to be taken in situations where enhanced customer due diligence measures are appropriate. From 1 January 2020, EBA shall, where appropriate, issue such guidelines.';

(5) *in Article 41, paragraph 1 is replaced by the following:*

'1. The processing of personal data under this Directive is subject to Regulations (EU) 2016/679 * and (EU) 2018/1725** of the European Parliament and of the Council.

* Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (*OJ L 119, 4.5.2016, p. 1*).

** 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*).';

(6) *Article 45 is amended as follows:*

(a) *paragraph 4 is replaced by the following:*

'4. The Member States and EBA shall inform each other of instances in which the law of a third country does not permit the implementation of the policies and procedures required under paragraph 1. In such cases, coordinated actions may be taken to pursue a solution. In assessing which third countries do not permit the implementation of the policies and procedures required under paragraph 1, Member States and EBA shall take into account any legal constraints that may hinder the proper implementation of those policies and procedures, including secrecy, data protection and other constraints limiting the exchange of information that may be relevant for that purpose.'

(b) paragraph 6 is replaced by the following:

'6. EBA shall develop draft regulatory technical standards specifying the type of additional measures referred to in paragraph 5 and the minimum action to be taken by credit institutions and financial institutions where a third country's law does not permit the implementation of the measures required under paragraphs 1 and 3.

EBA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 26 December 2016.';

(c) paragraph 10 is replaced by the following:

'10. EBA shall develop draft regulatory technical standards on the criteria for determining the circumstances in which the appointment of a central contact point pursuant to paragraph 9 is appropriate, and what the functions of the central contact points should be.

EBA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 26 June 2017.';

(7) Article 48 is amended as follows:

(a) in paragraph 1a, second subparagraph, the third sentence is replaced by the following:

'The financial supervisory authorities of the Member States shall also serve as a contact point for EBA.'

(b) in paragraph 10, the first sentence is replaced by the following:

'10. By 26 June 2017, the ESAs shall issue guidelines addressed to competent authorities in accordance with Article 16 of Regulation (EU) No 1093/2010, on the characteristics of a risk-based approach to supervision and the steps to be taken when conducting supervision on a risk-based basis. From 1 January 2020, EBA shall, where appropriate, issue such guidelines.'

(8) in Chapter VI, Section 3, Subsection II, the title is replaced by the following:

'Cooperation with EBA'

(9) Article 50 is replaced by the following:

'Article 50

The competent authorities shall provide EBA with all the information necessary to allow it to carry out its duties under this Directive.'

(10) Article 62 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Member States shall ensure that their competent authorities inform EBA of all administrative sanctions and measures imposed in accordance with Articles 58 and 59 on credit institutions and financial institutions, including of any appeal in relation thereto and the outcome thereof.'

(b) paragraph 3 is replaced by the following:

'3. EBA shall maintain a website with links to each competent authority's publication of administrative sanctions and measures imposed in accordance with Article 60 on credit institutions and financial institutions, and shall show the time period for which each Member State publishes administrative sanctions and measures.'

Article 4
Transposition

1. Member States shall adopt and publish, by... [■ 18 months as of entry into force of this amending Directive], the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately communicate to the Commission the main provisions of national law which they adopt in the field covered by this Directive.
2. *Member States shall adopt and publish, by...[six months as of entry into force of this amending Directive], the laws, regulations and administrative provisions necessary to comply with point (1) of Article 2 of this Directive. They shall immediately communicate to the Commission the main provisions of national law which they adopt in the field covered by this Directive.*
3. Member States shall apply the measures with respect to Article 1 from **1 January 2022**, and with respect to **Articles 2 and 3** from... [**18 months as of entry into force of this amending Directive**]. *Member States shall apply the measures with respect to point (1) of Article 2 by ... [six months and one day of entry into force of this amending Directive].*
4. When Member States adopt the measures referred to in paragraphs 1 and 2, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such a reference is to be made.

Article 5

Entry into force

This Directive shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

Article 6

Addressees

This Directive is addressed to the Member States.

Done at ,

For the European Parliament

For the Council

The President

The President