Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds (Text with EEA relevance)

REGULATION (EU) 2019/2175 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 18 December 2019

amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds

(Text with EEA relevance)

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 114 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 opinions of the European Central Bank[(1)],

Having regard to the opinions of the European Economic and Social Committee[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

(1) Following the financial crisis and the recommendations of a group of high-level experts led by Jacques de Larosière, the Union has made important progress in creating not only stronger, but also more harmonised rules for the financial markets in the form of the Single Rulebook. The Union has also set up the European system of

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financial supervision (ESFS), built on a two-pillar system which combines micro-prudential supervision, coordinated by the European Supervisory Authorities (ESAs), and macro-prudential supervision through the establishment of the European Systemic Risk Board (ESRB). The three ESAs, namely the European Supervisory Authority (European Banking Authority) (EBA) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council[(4)], the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council[(5)], and the European Supervisory Authority (European Securities and Markets Authority) (ESMA) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(6)] (collectively the 'founding regulations'), became operational in January 2011. The overall objective of the ESAs is to sustainably reinforce the stability and effectiveness of the financial system throughout the Union and to enhance consumer and investor protection.

(2) The ESAs have made a crucial contribution to the harmonisation of the rules of the financial markets in the Union by providing the Commission with input for its initiatives for regulations and directives adopted by the European Parliament and by the Council. The ESAs have also provided the Commission with drafts of detailed technical rules which have been adopted as delegated and implementing acts.

(3) The ESAs have also contributed to the convergence in financial supervision and supervisory practices in the Union by means of guidelines directed at competent authorities, financial institutions or financial market participants and by coordinating reviews of supervisory practices.

(4) Enhanced powers afforded to the ESAs, to enable them to meet their objective, would also require appropriate governance, an efficient use of resources and sufficient funding. Enhanced powers alone would not be sufficient to achieve the ESAs' objectives where they do not have sufficient funding or where they are not governed in an effective and efficient manner.

(5) When performing their tasks and exercising their powers, the ESAs should act in accordance with the principle of proportionality laid down in Article 5 of the Treaty on European Union (TEU), as well as with the better regulation policy. The content and form of the ESAs' actions and measures including instruments such as guidelines, recommendations, opinions or questions and answers should always be based on and within the boundaries of the legislative acts referred to in Article 1(2) of the founding regulations or within the scope of their powers. The ESAs should not exceed what is necessary to achieve the objectives of this Regulation and should act proportionately to the nature, scale and complexity of the risks inherent in the financial activity or business of the affected financial institution or undertaking.

(6) In its Communication of 8 June 2017 on the mid-term review of the Capital Markets Union Action Plan, the Commission emphasised that more effective and consistent supervision of financial markets and services is pivotal for the elimination of regulatory arbitrage between Member States in the exercise of their supervisory tasks, in order to

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accelerate market integration and to create internal market opportunities for financial entities and investors.

(7) Further progress in supervisory convergence is therefore particularly urgent to complete the capital markets union. Ten years after the onset of the financial crisis and the establishment of the new supervisory system, financial services and the capital markets union will be increasingly driven by two major developments: sustainable finance and technological innovation. Both have the potential to transform financial services and our system of financial supervision should be equipped for them. It is therefore crucial that the financial system plays its full part in meeting critical sustainability challenges. This will require active contribution by the ESAs to create the appropriate regulatory and supervisory framework.

(8) The ESAs should play an important role in identifying and reporting risks that environmental, social and governance related factors pose to financial stability, and in rendering financial markets activity more consistent with sustainability objectives. The ESAs should provide guidance on how sustainability considerations can be effectively embodied in relevant Union financial legislation and promote coherent implementation of those provisions upon adoption. When initiating and coordinating Union-wide assessments of the resilience of financial institutions to adverse market developments, the ESAs should duly consider risks that environmental, social and governance related factors could pose to the financial stability of those institutions.

(9) Technological innovation has had an increasing impact on the financial sector and competent authorities have therefore taken various initiatives to deal with those technological developments. In order to continue promoting supervisory convergence and to exchange best practices between relevant authorities on the one hand, and between relevant authorities and financial institutions or financial market participants on the other hand, the role of the ESAs with regard to their oversight function and supervisory coordination should be strengthened.

(10) Technological advancements in financial markets can improve financial inclusion, provide access to finance, enhance market integrity and operational efficiency and also lower barriers to entry in those markets. To the extent relevant for the applicable substantive rules, training of competent authorities should also extend to technological innovation. This should help prevent Member States developing divergent approaches in those matters.

(11) EBA should, in its area of expertise, monitor the obstacles to or impact on prudential consolidation and could provide opinions or recommendations with the aim of identifying appropriate ways to address such obstacles or impact.

(12) Questions and answers are an important convergence tool that promote common supervisory approaches and practices by giving guidance on the application of Union legal acts within the scope of the ESAs.

(13) It is becoming increasingly important to promote consistent, systematic and effective monitoring and assessment of risks in relation to money laundering and terrorist financing in the Union’s financial system. The prevention and countering of money

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laundering and of terrorist financing is a shared responsibility of Member States and Union institutions and bodies, within their respective mandates. They should establish mechanisms for enhanced cooperation, coordination and mutual assistance, fully utilising all the tools and measures available under the existing regulatory and institutional framework.

(14) Given the consequences for financial stability which may stem from abuses of the financial sector for money laundering or terrorist financing purposes, considering that it is in the banking sector that money laundering and terrorist financing risks are most likely to have systemic impact, and building on the experience already gained by EBA, which is an authority where the national competent authorities of all Member States are represented, in protecting the banking sector from such abuses, EBA should take a leading, coordinating and monitoring role at Union level to prevent the use of the financial system for such purposes. Therefore, it is necessary to entrust EBA, in addition to its current competences, with the power to act within the scope of Regulations (EU) No 1094/2010 and (EU) No 1095/2010 insofar as such power relates to the prevention and countering of money laundering or of terrorist financing where it concerns financial sector operators and the competent authorities supervising them, which are covered by those Regulations. Moreover, concentrating that mandate for the entire financial sector within EBA would optimise the use of its expertise and resources, and would be without prejudice to the material obligations laid down in Directive (EU) 2015/849 of the European Parliament and of the Council[(7)].

(15) In order for EBA to exercise its mandate effectively, it should make full use of all its powers and tools under Regulation (EU) No 1093/2010 while respecting the principle of proportionality. For that purpose, it should develop regulatory and supervisory standards, in particular by developing draft regulatory technical standards, draft implementing technical standards, guidelines and recommendations, and providing opinions for preventing and countering money laundering and terrorist financing in the financial sector and promoting their consistent implementation in line with the mandate provided for in the relevant legislative acts referred to in Article 1(2) and Article 16 of the founding regulations. The measures that EBA adopts to promote integrity, transparency and security in the financial system and to prevent and counter money laundering and terrorist financing should not exceed what is necessary to achieve the objectives of this Regulation or of the legislative acts referred to in Article 1(2) of the founding regulations and should take duly into account the nature, scale and complexity of risks, business practices, business models and the size of financial sector operators and of markets.

(16) In line with its new role, it is important that EBA collects all relevant information on weaknesses in relation to money laundering and terrorist financing activities identified by the relevant Union and national authorities, without prejudice to the tasks assigned to authorities under Directive (EU) 2015/849 and without any unnecessary duplication. In accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council[(8)], EBA should store such information in a centralised database and foster cooperation among authorities by ensuring appropriate dissemination of relevant information. EBA should therefore be mandated to develop draft regulatory technical

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standards regarding the collection of information. EBA may also, where appropriate, transmit evidence in its possession which could give rise to criminal proceedings to the national judicial authorities of the Member State concerned and, to the extent it concerns Member States participating in enhanced cooperation on the establishment of the European Public Prosecutor's Office under Council Regulation (EU) 2017/1939[9], to the European Public Prosecutor's Office, for those explicitly conferred tasks.

(17) EBA should not collect information on concrete suspicious transactions which financial sector operators are obliged to report to EU Financial Intelligence Units in their Member States pursuant to Directive (EU) 2015/849. Weaknesses should be considered material where they constitute a breach or a potential breach by a financial sector operator, or constitute inappropriate or ineffective application by a financial sector operator, or inappropriate or ineffective application by a financial sector operator of its internal policies and procedures to comply with the legal provisions related to the prevention of the use of the financial system for the purpose of money laundering or terrorist financing. A breach is considered to have occurred where a financial sector operator fails to comply with the requirements of any Union act and of national law transposing such requirements referred to in Article 1(2) of the founding regulations to the extent that those acts contribute to the prevention of the use of the financial system for the purpose of money laundering or terrorist financing. A potential breach is where the competent authority has reasonable grounds to suspect that a breach has occurred, but at that stage is not in a position to finally conclude that it has occurred. However, due to the information obtained at that stage such as information from on-site inspections or off-site proceedings, it is very likely that a breach has occurred. Inappropriate or ineffective application of legal provisions is constituted by the failure of a financial sector operator to implement the requirements of those acts in a satisfactory manner. Inappropriate or ineffective application of a financial sector operator's internal policies and procedures aiming at ensuring compliance with those acts should be considered as constituting a weakness substantially raising the risk that breaches have occurred or can occur.

(18) When assessing vulnerabilities to and risks of money laundering and terrorist financing in the financial sector, EBA should also consider the implications for money laundering and terrorist financing from all predicate offences, including those that are tax crimes, where applicable.

(19) Upon request, EBA should provide assistance to competent authorities in the exercise of their prudential supervisory functions. EBA should also coordinate closely, and, where appropriate, exchange information, with competent authorities including the European Central Bank, in its supervisory capacity, and with authorities entrusted with supervising obliged entities listed in points (1) and (2) of Article 2(1) of Directive (EU) 2015/849 to ensure efficiency and to avoid any form of duplicative or inconsistent actions in the prevention and countering of money laundering or of terrorist financing.

(20) EBA should carry out peer reviews of competent authorities, as well as risk assessments on the appropriateness of the strategies and resources of competent authorities with a view to the most important emerging money laundering and terrorist financing risks as