



## **Decision of the European Securities and Markets Authority establishing its Review Panel**

The Board of Supervisors,

Having regard to the Regulation (EU) No 1095/2010<sup>1</sup> 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 (the “Regulation” and “ESMA”), and in particular:

Articles 8(1)(b) and (e) on Tasks and Powers of the Authority (ESMA), and particularly, on its powers to contribute to the consistent application of legally binding Union acts and prevention of regulatory arbitrage as well as to organize 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,

Articles 29(1)(d) on reviewing the application of the relevant regulatory and implementing technical standards adopted by the Commission and of guidelines and recommendations issued by ESMA and,

Article 30 thereof on Peer Reviews of Competent Authorities.

Whereas recital 41 of Regulation No 1095/2010 states: ‘Peer reviews are an efficient and effective tool for fostering consistency within the network of financial supervisors. The Authority should therefore develop the methodological framework for such reviews and conduct them on a regular basis. Reviews should focus not only on the convergence of supervisory practices, but also on the capacity of supervisors to achieve high-quality supervisory outcomes, as well as on the independence of those competent authorities. The outcome of peer reviews should be made public with the agreement of the competent authority subject to the review. Best practices should also be identified and made public.’

Whereas it is necessary to establish ESMA’s Review Panel as the successor of CESR’s Review Panel in the light of the new requirements of the ESMA Regulation, to set out its role, the purpose of its work, its functioning, as well as the commitment of the competent authorities to actively ensure that the Review Panel fulfils its role,

Having regard to arrangements between ESMA and EEA-EFTA countries represented in the Board of Supervisors which are considered having the same rights and duties as ESMA members in all matters related to the Review Panel,

Has adopted this decision:

### **Article 1 - Establishment of the Review Panel**

This decision establishes the Review Panel of ESMA and sets out its mandate.

### **Article 2 - Purpose and role of the Review Panel**

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<sup>1</sup> OJ L 331/48 of 15.12.2010



- 2.1. The Review Panel is established by ESMA for “reviewing the application of the relevant regulatory and implementing technical standards adopted by the Commission, and of the guidelines and recommendations issued by the Authority and proposing amendments where appropriate” , and will contribute to preventing regulatory arbitrage, ensuring the consistent, efficient and effective application of sector legislation and foster supervisory convergence. In line with the Regulation recital 41, it also focuses “on the capacity of supervisors to achieve high-quality supervisory outcomes as well as on the independence of the competent authorities”.
- 2.2. In accordance with the Regulation Article 30.1, the Review Panel “shall periodically organize and conduct peer reviews of some or all of the activities of competent authorities, to further strengthen consistency of supervisory outcomes.”

### **Article 3 - Chair, members and sub-groups of the Review Panel**

- 3.1. The Chair of the Review Panel shall be a member of the Board of Supervisors appointed by the Board of Supervisors.
- 3.2. Each member of ESMA shall appoint one of its expert staff members.
- 3.3. The members of the Review Panel shall have the necessary seniority, knowledge of Union law and decisions and acts adopted pursuant to the Regulation, and expertise in supervisory practices in order to ensure that the Review Panel is able to fulfill its role. In case of a conflict of interests, the member shall abstain from participating in decisions on the specific case under review.
- 3.4. The Chair and the members of the Review Panel shall act in an independent and objective way.
- 3.5. The Review Panel may create sub-groups composed of persons delegated by competent authorities if this is deemed necessary for the purpose of its work. A sub-group shall be chaired by a Coordinator, who is a member of the Review Panel or a member of ESMA’s staff. Coordinators, which need to have sufficient seniority, are appointed by the Review Panel on proposal of the Chair. Sub-groups shall be set up for a limited time and shall usually serve to fulfill work on a specific project/task/report.

### **Article 4 - Role of competent authorities**

- 4.1. Competent authorities are expected to participate in the work of the Review Panel and, in accordance with Article 35 of the Regulation, provide it with the necessary information and input. Each competent authority is responsible for the accuracy and completeness of the information it provides.

### **Article 5 - Role of ESMA Staff**

- 5.1. ESMA staff with relevant expertise shall participate in the work of the Review Panel and provide the necessary and appropriate support and assistance to the ESMA Review Panel Chair and the Review Panel and its sub-groups.

### **Article 6 - Methodologies of the Review Panel**

- 6.1. To achieve the objectives set out in this Decision, the Review Panel shall “develop methods to allow for objective assessment and comparison between the authorities reviewed” in accordance with Article 30.1, and elaborate and review as appropriate tools to conduct its work. The tools shall be approved by ESMA’s Board of Supervisors upon proposal by the Review Panel. The Board of Supervisors or ESMA’s Chairperson may ask the Review Panel to develop and use other specific tools when needed.

- 6.2. Without prejudice to the methods referred to in the previous paragraph, where appropriate and prior to each work stream, the Review Panel may further specify procedures, methodologies and tools, taking into account the nature of the issues under review.

#### **Article 7 - Work programme**

- 7.1. The Review Panel shall contribute to the ESMA annual and multi-annual work programmes.
- 7.2. For determining its own work programme, the Review Panel may take into consideration the suggestions by, notably, other committees and panels of ESMA, the Joint Committee of the European Supervisory Authorities, the Securities and Markets Stakeholder Group, and the European Commission.

#### **Article 8 - Cooperation with other ESMA committees, panels and groups**

- 8.1. Where appropriate the Review Panel may ask for cooperation and clarification from other ESMA committees, panels and groups, and from ESMA staff.

#### **Article 9 - Cooperation with Review Panels of other**

##### **European Supervisory Authorities and other external parties**

- 9.1. Where deemed appropriate or upon request of the Joint Committee, the Review Panel may conduct its work in collaboration with the Review Panels of the other European Supervisory Authorities.
- 9.2. In conducting its work, the Review Panel may seek views from external parties on specific technical issues, provided the confidentiality of the Review Panel's work is not compromised.

#### **Article 10 - Process of approval of the Review Panel's reports**

- 10.1. The Review Panel shall prepare reports for submission to and approval by the Board of Supervisors. The Chair of the Review Panel shall highlight any significant difficulty encountered.

#### **Article 11 - Purpose, scope and outcome of peer reviews**

- 11.1. The purpose and scope of peer reviews shall be in accordance with Regulation Article 30.2.<sup>2</sup>.
- 11.2. The Review Panel shall submit the final outcome of each work stream to the Board of Supervisors. Where appropriate the Review Panel shall:

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<sup>2</sup> "The peer reviews shall include an assessment of, but shall not be limited to:

- (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 of the Regulation and of the acts referred to in Article 1(2) of the Regulation, and the capacity to respond to market developments;
- (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 of the Regulation, and the extent to which the supervisory practice achieves the objectives set out in Union law;
- (c) best practices developed by some competent authorities which might be of benefit for other competent authorities to adopt;
- (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".

- (a) signal the extent to which competent authorities achieve convergence in supervisory practices and apply specific supervisory provisions;
  - (b) present the measures that competent authorities not applying specific supervisory provisions intend to take to correct the situation or to adopt a more convergent supervisory practice;
  - (c) express views on specific problems encountered by individual competent authorities and recommend ways for achieving full implementation by the relevant jurisdictions, where necessary;
  - (d) include an assessment of the level of convergence (generally and provision by provision) achieved;
  - (e) signal inconsistencies, differences in interpretation, or general problems in the implementation or potential breaches of Union law, ESMA technical standards, guidelines or recommendations in the conduct of commonly agreed supervisory practices and identify the reasons;
  - (f) recommend that work is undertaken to amend a specific provision or practice that raises significant problems in relation to the operation of the Single Market or to clarify provisions which are interpreted differently;
  - (g) describe possible best practices developed by some competent authorities which might be of benefit for other competent authorities to adopt.
- 11.3. On the basis of a peer review, the Review Panel may, in liaison with the relevant committee, panel, group or ESMA, propose to the Executive Director the inclusion in the current or proposed annual regulatory programme a project for guidelines and recommendations, and shall identify best practices.

#### **Article 12 - Publication of the outcome of Review Panel work**

- 12.1. In accordance with the Regulation Article 30.4, "the best practices that can be identified from a peer review" and other outcomes from Review Panel work "shall be made publicly available", in particular through publication on ESMA's website.
- 12.2. All other results of the peer review and the outcome of Review Panel work shall, as a rule, be published on ESMA's website in full on a named basis together with the individual responses of the competent authorities, "subject to the agreement of the competent authority that is subject of the peer review." A Competent Authority that does not give its agreement to publication is expected to state the reasons for this to ESMA. If the Review Panel agrees, such publications may exclude certain information for confidentiality reasons.

#### **Article 13 - Entry into force**

This decision shall enter into force on the date of its adoption. From its entry into force, it shall supersede the protocol on the Review Panel of CESR (CESR/07-070b).

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