



Lisbon Treaty: impact on EU decision-making

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Presentation to EIOPA
Stakeholder Groups - joint
meeting



Overview

- Before and after the Lisbon Treaty
- Hierarchy of legislation / rules
- Delegated acts and implementing acts
- Regulatory and implementing technical standards of EIOPA
- Guidelines and recommendations of EIOPA

The Lisbon Treaty

- New financial supervisory structure initiated by the de Larosière report, February 2009
- Entered into force in December 2009
- Introduced two new articles that allow EU Member States and European Parliament to delegate power to the European Commission to adopt
 - delegated acts
 - and
 - implementing acts

Prior to Lisbon

- The Commission adopted implementing measures under *comitology* procedures
- The Commission was required to consult a committee composed of Member State representatives before adopting new measures
- Lamfalussy was a specific *comitology* procedure for the financial services sector

New post-Lisbon hierarchy of legislation

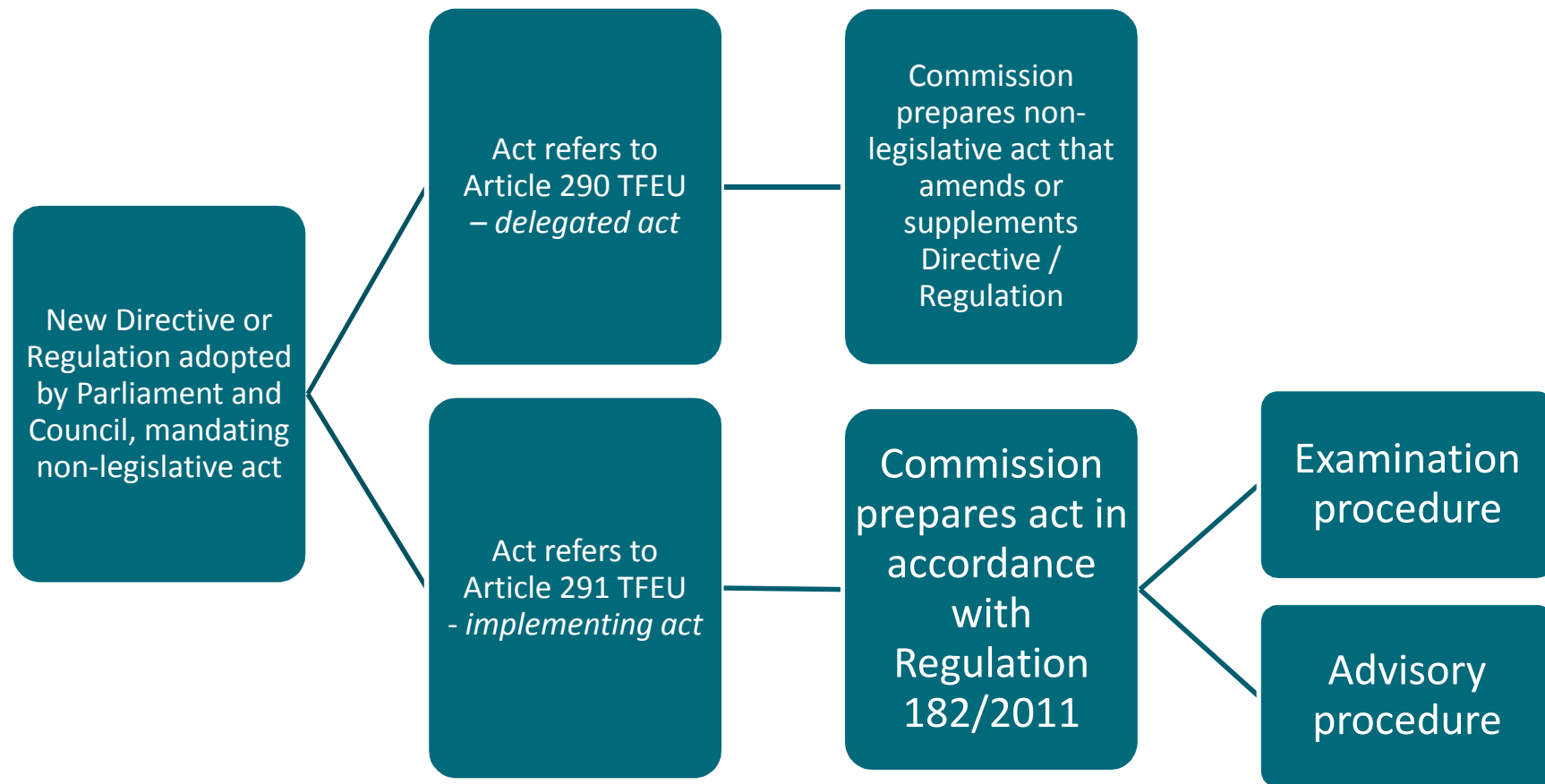


Delegated and implementing acts

- Procedures for adopting these acts are a balancing act between:
 - more efficient decision-making, and
 - a desire by Parliament and the Council to preserve some influence over Commission
- It is up to the legislators (Parliament and Council) to prescribe which of the two procedures is to be used by the Commission

Articles 290 and 291 Treaty

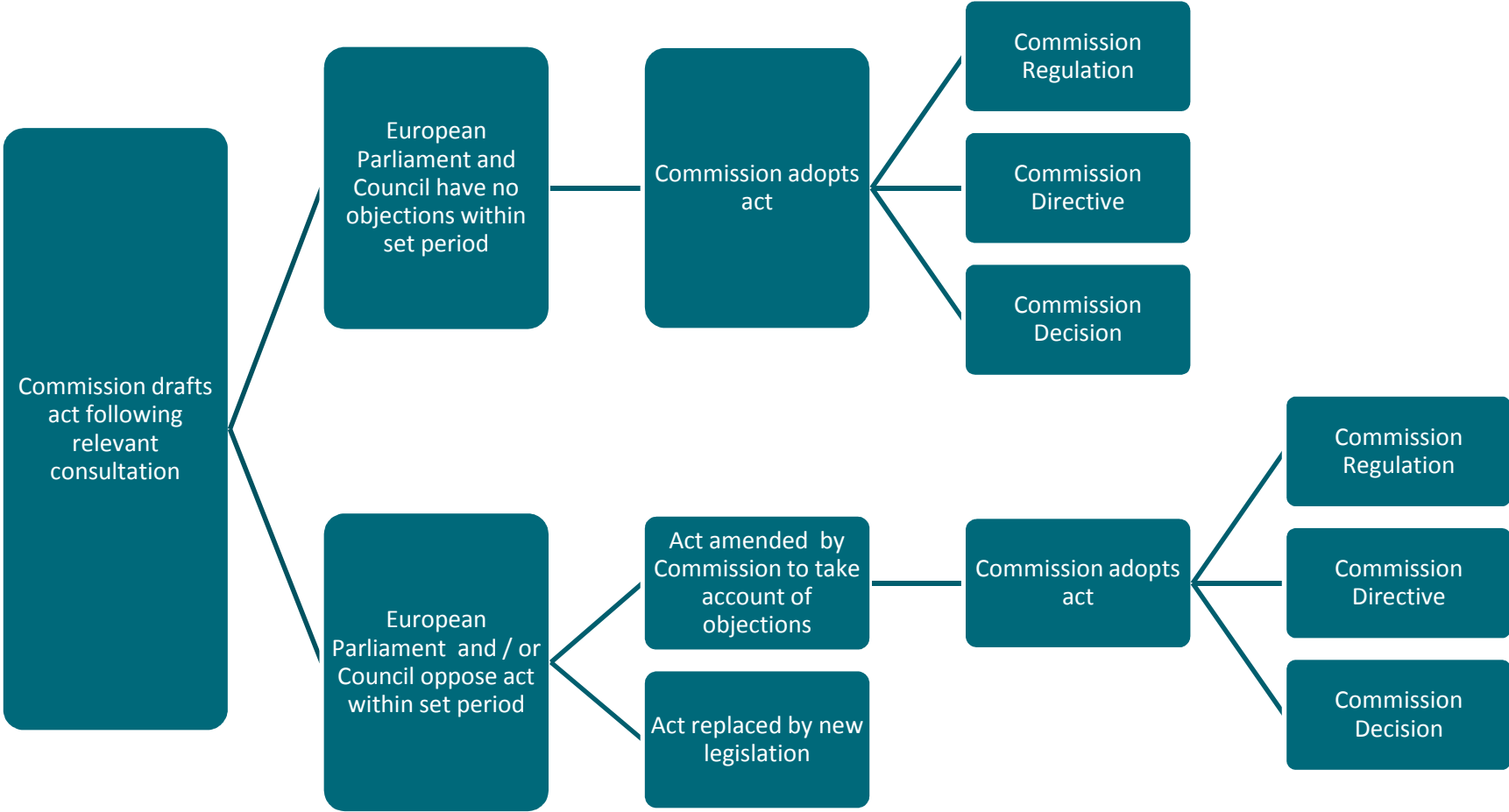
When does which apply?



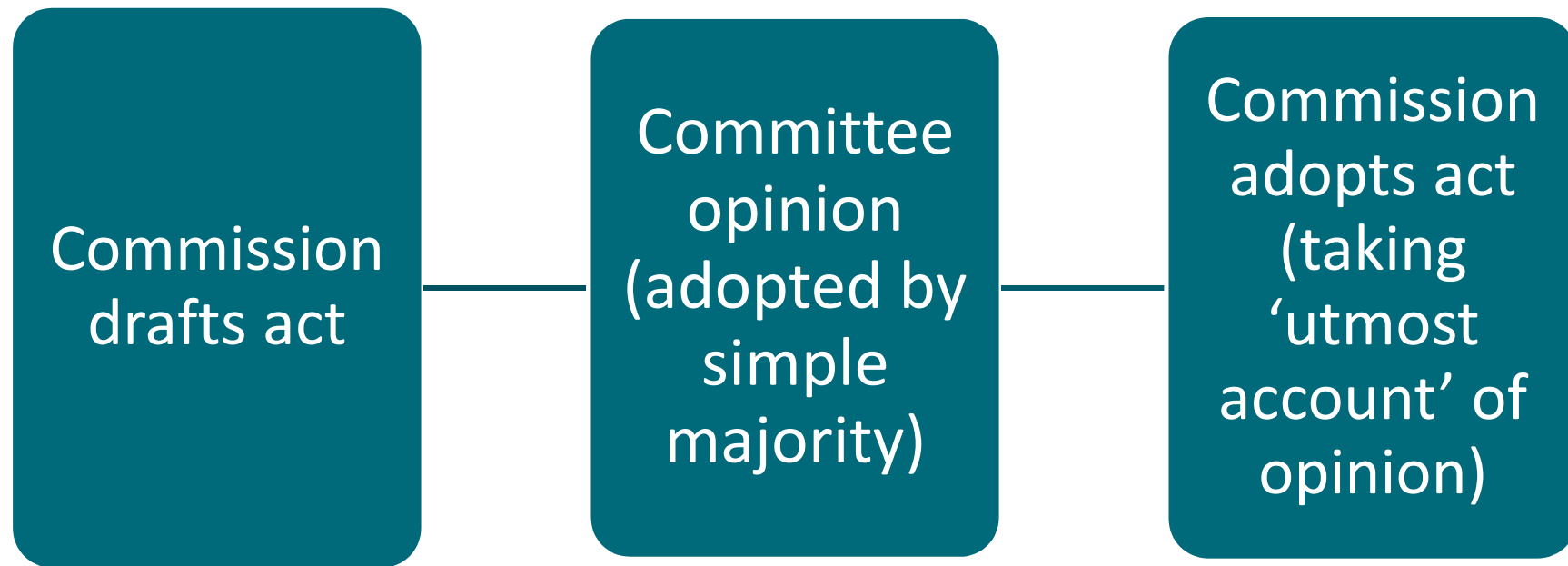
Delegated and implementing acts

Delegated acts	Implementing acts
Article 290 TFEU; common understanding	Article 291 TFEU; Regulation 182/2011
Amends or supplements non-essential elements of Directive / Regulation	Implements Directive / Regulation
Parliament and Council regulate a particular field only partially, leaving the Commission to supplement / amend with quasi-legislative measures	Commission is entrusted by Parliament and Council to ensure the harmonised implementation of the Directive / Regulation
Advice of competent ESA	Advice of competent ESA
Consultation of expert committees	<i>Comitology</i> procedure with relevant technical committee
Parliament and Council can revoke delegation and raise objections	Parliament and Council must be informed, but cannot prevent entry into force
Commission Regulations and Commission Directives	Implementing Regulations, Implementing Decisions or Implementing Directives adopted by Commission

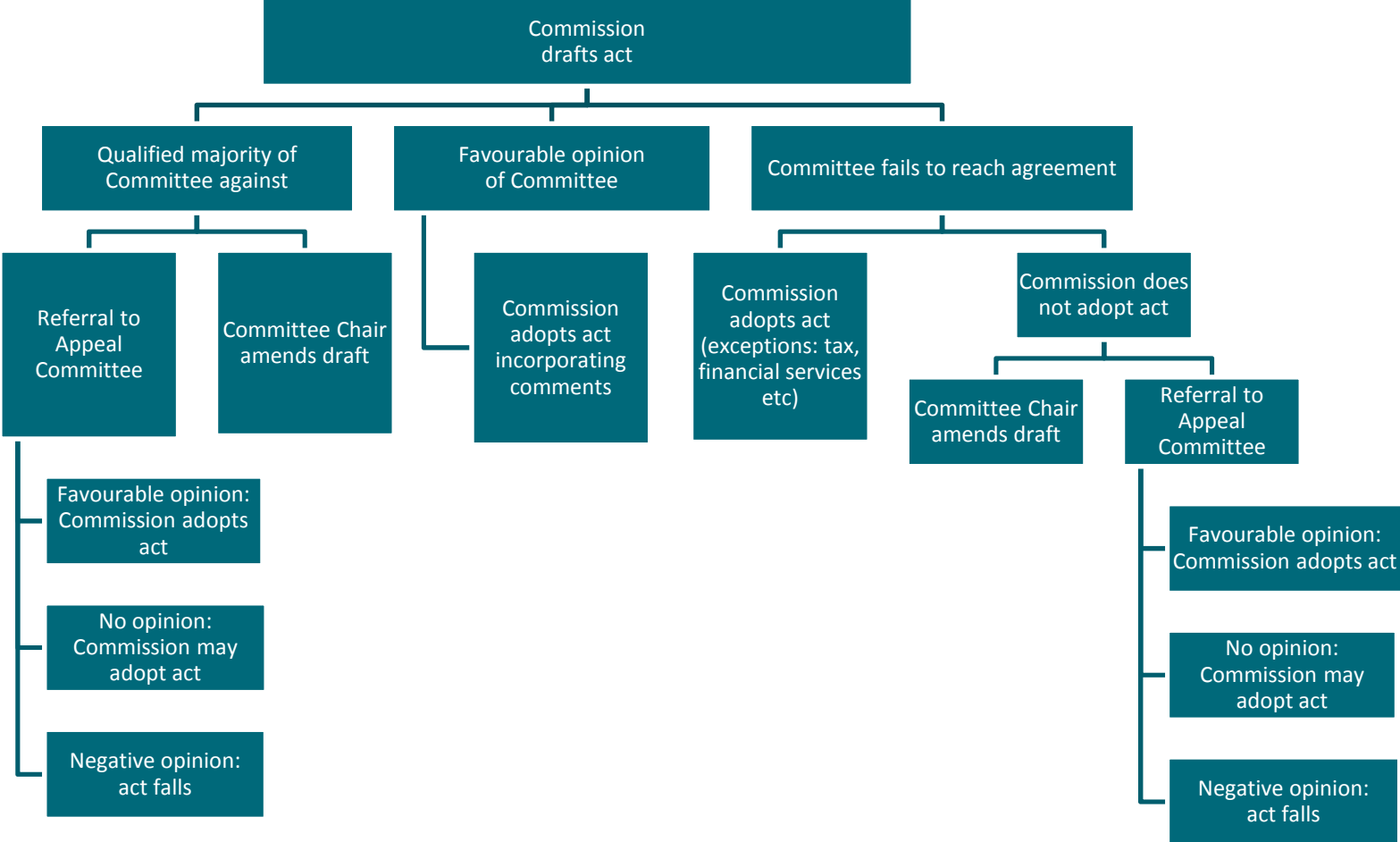
Delegated act (Article 290)



Implementing act (Article 291) Advisory procedure



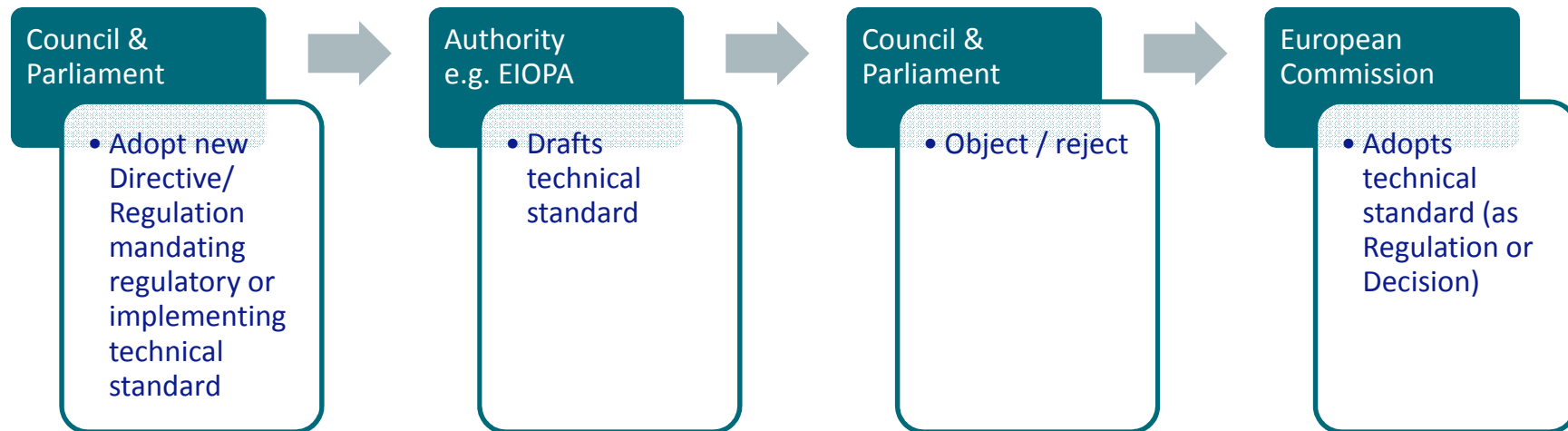
Implementing act (Article 291) Examination procedure



Regulatory and implementing technical standards of EIOPA

Regulatory technical standards	Implementing technical standards
Article 10 and subsequent of Regulation establishing EIOPA (Regulation 1094/2010)	Article 15 of Regulation establishing EIOPA (Regulation 1094/2010)
Delegated acts of the European Commission (Article 290 Treaty)	Implementing acts of the European Commission (Article 291 Treaty)
Technical, not political or strategic decisions	
Prepared by EIOPA	
Public hearings, cost-benefit analyses, consultation of stakeholders	
Parliament and Council can revoke delegation and raise objections	Parliament and Council must be informed, but cannot prevent entry into force
Regulation or Decision adopted by the European Commission	

Roles & Responsibilities



Guidelines and recommendations of EIOPA

(Article 16 Regulation 1094/2010)

Purpose

- Establish consistent, efficient and effective supervisory practices across the EU

Addressees

- National supervisory authorities and market participants

Comply-or-explain

- Within two months of issuance of guideline / recommendation, supervisors must indicate whether they meet the guideline / recommendation or explain why they do not meet them
- EIOPA will publish the fact that a supervisor does not comply and may also publish the reasons given for non-compliance
- Market participants may be required to report whether they comply with the guideline / recommendation

Powers of EIOPA in cases of breach of EU law (Article 17 Regulation 1094/2010)

Breach of EU law by national supervisory authority

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graph TD; A[Breach of EU law by national supervisory authority] --> B[Investigation by EIOPA]; B --> C[EIOPA issues recommendation]; C --> D[European Commission issues formal opinion]; D --> E[EIOPA may issue individual decision addressed to financial market participant(s)];
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Investigation by EIOPA

EIOPA issues recommendation

European Commission issues formal opinion

EIOPA may issue individual decision addressed to financial market participant(s)

Further powers of intervention of EIOPA in relation to national supervisory authorities and market participants

Emergency situations

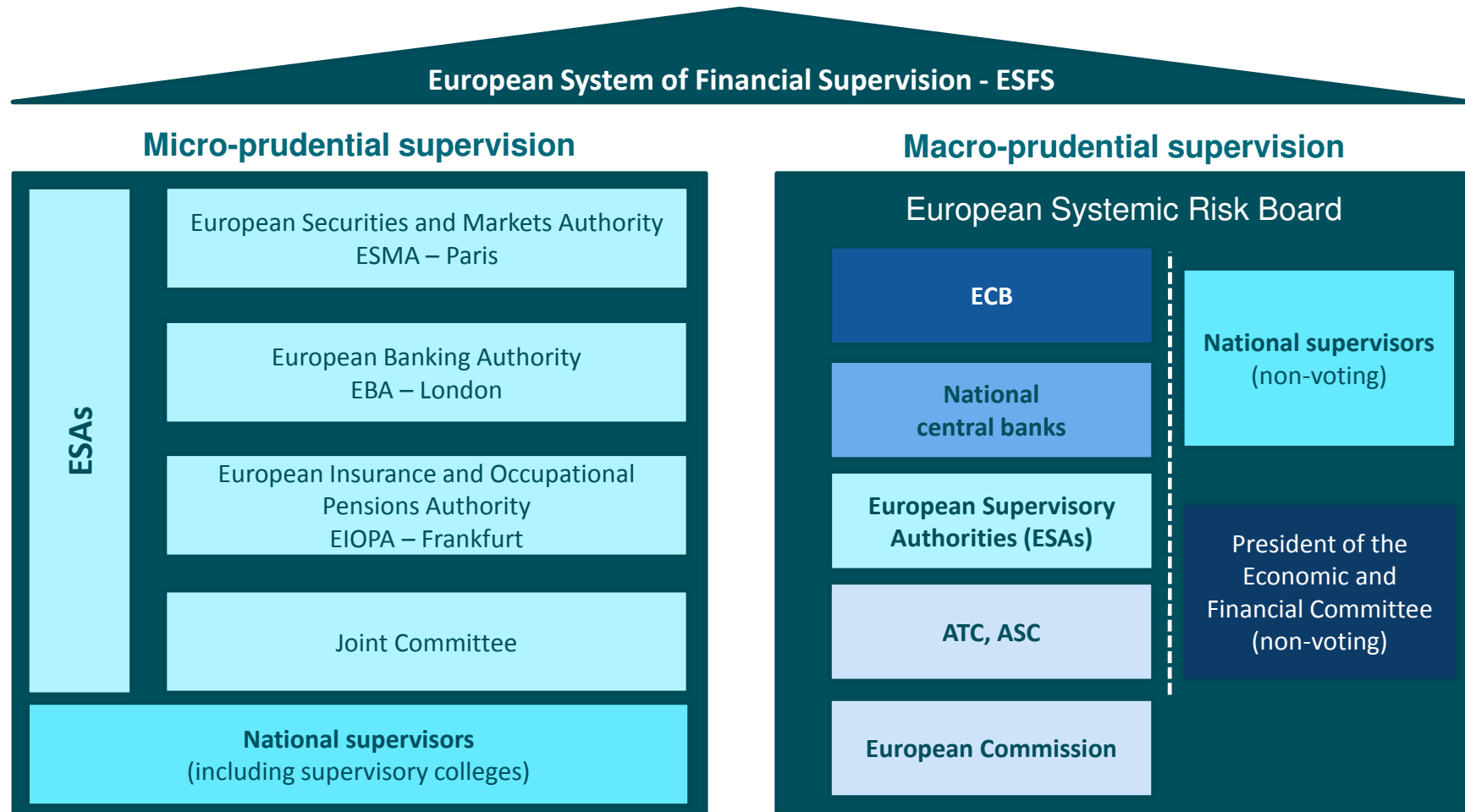
(Article 18 Regulation 1094/2010)

Settlement of disagreements between national
supervisors in cross-border situations

(Article 19 Regulation 1094/2010)

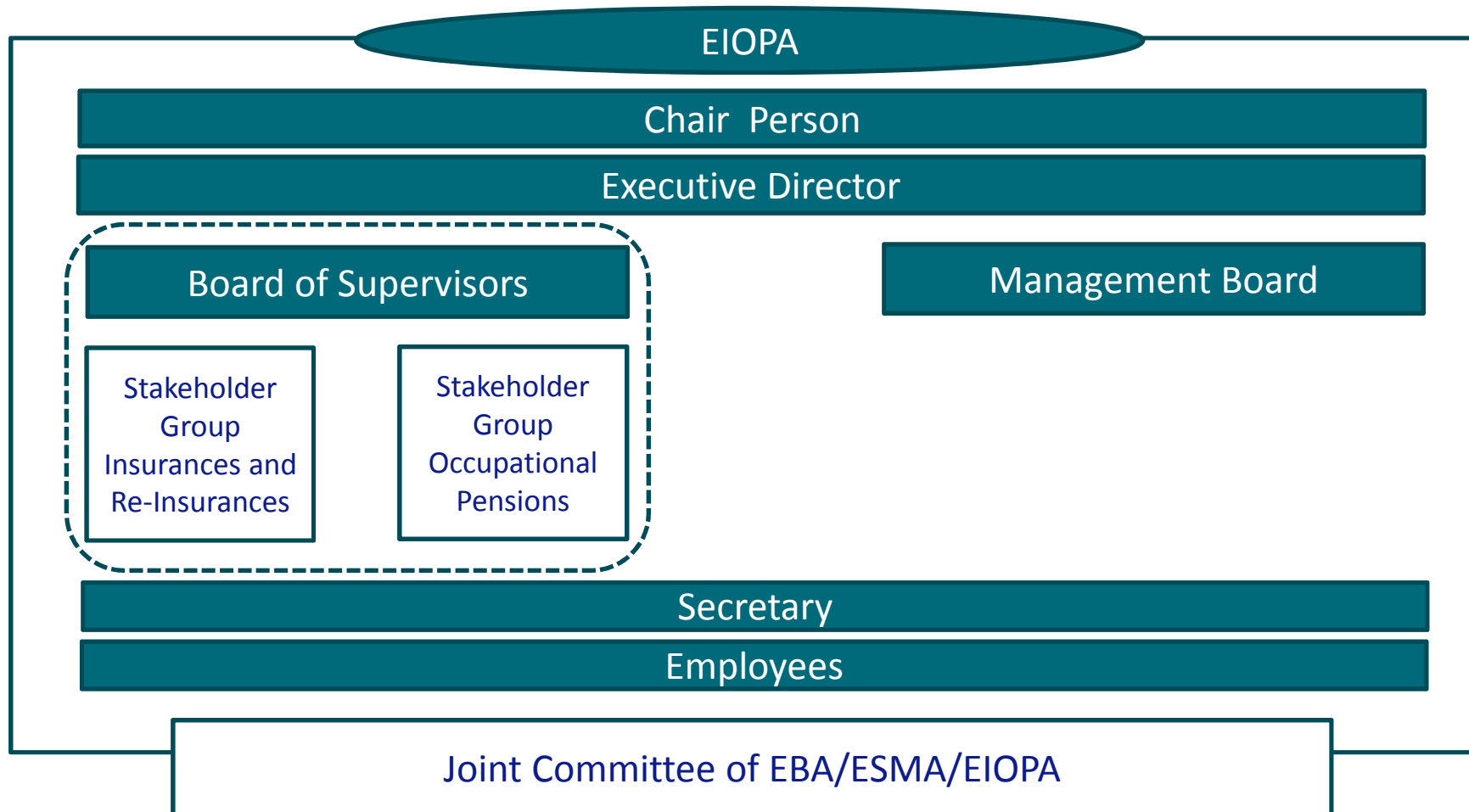
Annexes

New European supervisory structure

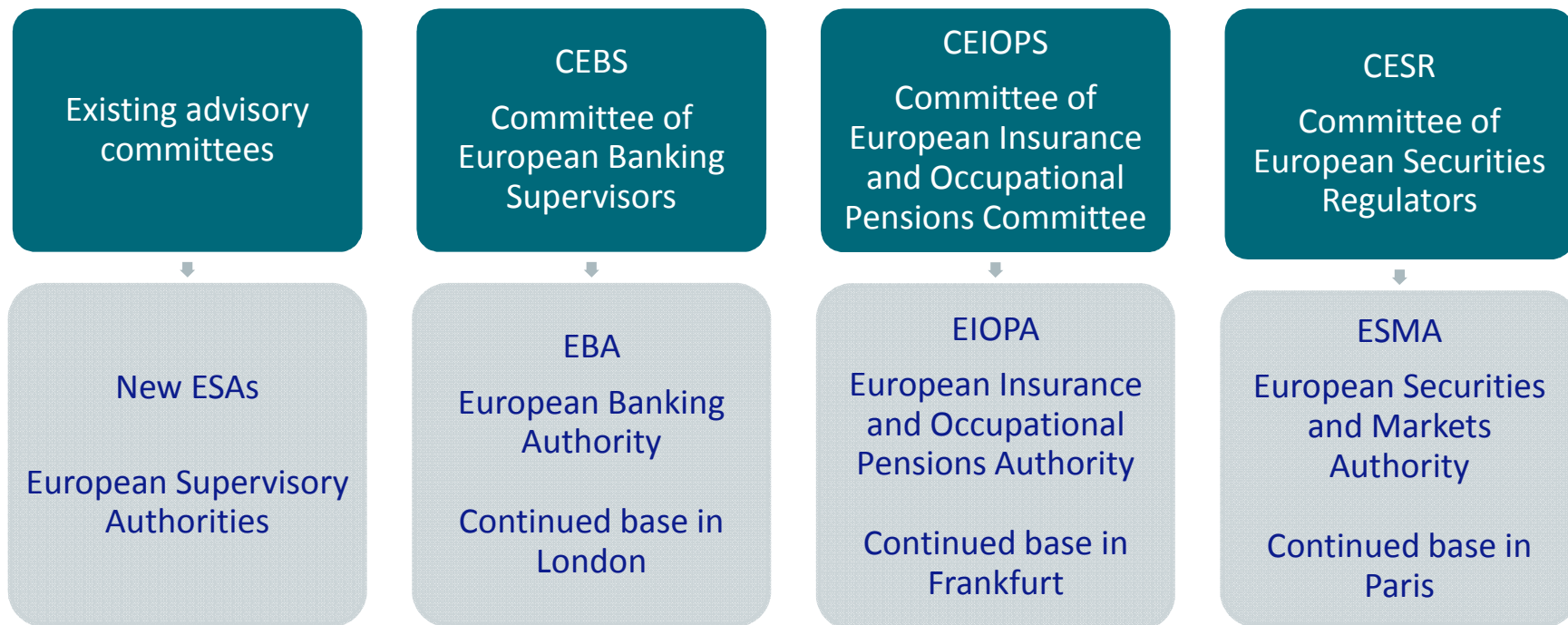


EIOPA

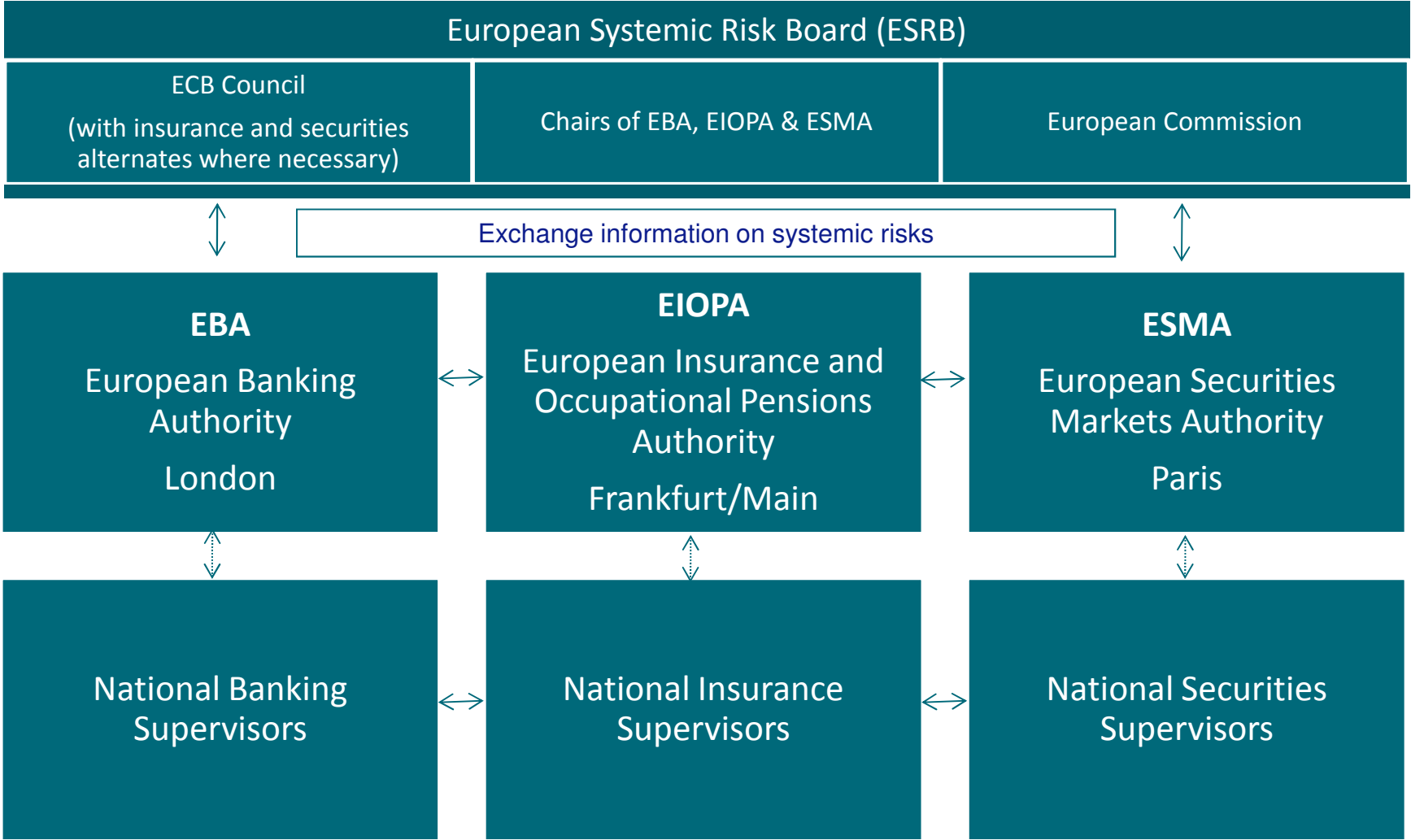
New European supervisory structure



Micro-prudential supervision



European System Risk Board



Comparison Lamfalussy / Lisbon Treaty

Old World: original Lamfalussy process

Level 1

- Primary, framework legislation (directive or regulation)
- Proposed by European Commission, adopted by European Parliament and Council under ordinary legislative procedure

Level 2

- Secondary legislation (directive or regulation) to flesh out primary legislation
- Drafted by Commission and then adopted by Commission as “delegated” or “implementing” act
(Articles 290 and 291 of the Treaty on the Functioning of the European Union)

Level 3

- **Non-binding** guidance issued by old Committees/new ESAs

Level 4

- Enforcement/compliance
- Led by European Commission

New World: additional ESA power

Level 2+

- ESAs will be able to create legally binding technical standards to flesh out Level 1 legislation
- Will co-exist with European Commission’s Level 2 legislation

(see Articles 10-15 of the establishing regulations)

Lisbon Treaty Articles 290 and 291

Article 290

1. A legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act.

The objectives, content, scope and duration of the delegation of power shall be explicitly defined in the legislative acts. The essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power.

2. Legislative acts shall explicitly lay down the conditions to which the delegation is subject; these conditions may be as follows:

(a) the European Parliament or the Council may decide to revoke the delegation;

(b) the delegated act may enter into force only if no objection has been expressed by the European Parliament or the Council within a period set by the legislative act.

For the purposes of (a) and (b), the European Parliament shall act by a majority of its component members, and the Council by a qualified majority.

3. The adjective 'delegated' shall be inserted in the title of delegated acts.

Article 291

1. Member States shall adopt all measures of national law necessary to implement legally binding Union acts.

2. Where uniform conditions for implementing legally binding Union acts are needed, those acts shall confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided for in Articles 24 and 26 of the Treaty on European Union, on the Council.

3. For the purposes of paragraph 2, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall lay down in advance the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

4. The word 'implementing' shall be inserted in the title of implementing acts.

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