Financial markets: banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management

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OPINION OF THE EUROPEAN CENTRAL BANK at the request of the Council of the European Union on a proposal for a Directive of the European Parliament and of the Council amending Directives 2006/48/EC and 2006/49/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management.

On 22 October 2008 the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a Directive amending Directives 2006/48/EC and 2006/49/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management.

The ECB makes a number of **general observations**, including:

Reform of European supervisory arrangements in the financial sector: the specific observations in this opinion are without prejudice to possible future contributions to the broader European debate on the reform of European supervisory arrangements.

Legal instruments for consistent implementation of European banking legislation: the current structure of Directives 2006/48/EC and 2006/49/EC should not be viewed as the final desirable outcome. The ECB is of the view that most of the technical Annexes to Directives 2006/48/EC and 2006/49/EC should be adopted directly as Level 2 measures and as Commission regulations. Moreover, the proposed directive should specify the areas in which the Committee of European Banking Supervisors (CEBS) is requested to contribute to enhance convergence of supervisory practices. Lastly, in the ECB's view, a radical overhaul of these directives would greatly contribute to enhancing the transparency and legal certainty of Community banking legislation.

Comitology: the ECB agrees with the Commission's view that: (i) Level 2 measures should not precede Level 1 measures and thus risk pre-empting the discussion on their substance; (ii) work on Level 1 and 2 measures should be carried out as much as possible in parallel.

The ECB also makes a number of **specific observations** concerning:

Inter-bank exposures and implementation of monetary policy: the ECB shares the Commission's view that inter-bank exposures pose a significant risk as banks, although regulated, can fail and that large inter-bank exposures require very prudent management. Nevertheless, the ECB calls for caution when designing measures on limits to inter-bank exposures as the proposed measures should avoid impairing the smooth flow of liquidity within the inter-bank market. Moreover, the ECB is of the view that the proposed limit on inter-bank exposures (25 % of the credit institution's own funds or the amount of EUR 150 million) would constrain the smooth flow of liquidity within the inter-bank market and could be detrimental to the smooth functioning of the euro money market.

Liquidity issues: the amendments to Directive 2006/48/EC are a necessary and welcome step in view of the importance of liquidity risk management revealed by the current market turmoil. Having regard to the on-going work on liquidity risk management and liquidity concessions practices, the ECB notes that one consequence of economic and monetary union is that only the home Member State should be responsible for supervising the liquidity of credit institution branches within the euro area.

Exchange of information and cooperation between central banks and supervisory authorities: the ECB supports the clarification of the existing coordination and information sharing obligations between financial stability authorities in an emergency situation, including adverse developments in financial markets. The proposed amendments do not intend to modify the current framework for information sharing between supervisory authorities and central banks in normal situations but seek to further improve information sharing among these authorities when an emergency situation arises.

Colleges of supervisors: the use of supervisory colleges would enhance cooperation in the day-to-day supervision of cross-border banks, financial stability risk assessment and the coordination of the management of crisis situations.

The Community dimension of the mandate of national supervisory authorities: the ECB fully supports the objective of enhancing the Community dimension in the mandate of national supervisors.

Securitisation: the ECB stresses the need to avail of a broad, liquid and well functioning secondary securitisation market, in particular with regard to the eligibility of asset-backed securities as collateral for monetary policy operations. If this proposed directive remains a Level 1 act, the ECB highlights the need to: (i) clarify the scope of application; (ii) define ‘material net economic interest’; (iii) use terms consistently to increase convergence in their implementation. Moreover, the ECB welcomes the Commission’s intention of reporting to the European Parliament and the Council on the application and effectiveness of the proposed provisions in light of market developments. Lastly, the ECB would see merits in a general review of the securitisation terminology used both in Directive 2006/48/EC and in the proposed directive to align it more closely with the usual legal terminology and to ensure increased legal certainty.

The ECB also makes a number of **legal and technical observations**.