

European Supervisory Authorities: powers, governance and funding

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OPINION OF THE EUROPEAN CENTRAL BANK on a proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) and related legal acts.

The proposed regulation forms part of a comprehensive package of proposals to reform the European System of Financial Supervision (ESFS) introduced in September 2017, consisting of the three European Supervisory Authorities (ESAs) and the European Systemic Risk Board (ESRB).

The ECB **welcomes the proposed regulation's objective** and supports further integration of the supervisory framework at Union level for the banking sector and strengthening the Union dimension of supervision by re-examining the ESAs' current set-up.

With regard to aligning the governance framework of the European Banking Authority (EBA) with the outlined objectives and developments, the ECB would like to highlight that the Banking Union and the Capital Markets Union (CMU) projects are at different stages of progress. The review of the ESAs should thus not necessarily produce three identical outcomes for the three agencies, but rather address their respective **mandates and functions**.

Specifically with regard to the new supervisory functions in the proposed regulation, the ECB is of the view that certain proposed amendments **do not adequately distinguish between the scope of the ECB's microprudential supervisory tasks and the EBA's competence** to set regulatory standards to promote supervisory convergence. The ECB considers it vital that synergies arising from the ECB's and the EBA's mandates are maximised. In order to accomplish this objective, duplication or inappropriate allocation of tasks, which could blur the responsibilities of the respective authority and thereby render the system less effective as a whole, should be avoided.

The ECB's main recommendations address the following issues:

New EBA governance framework: the proposed regulation seeks to establish an Executive Board as a new body within the EBA's governance structure.

While supporting the review of the governance structure of the ESAs, the ECB recommends that the **Board of Supervisors** should remain the decision-making body in relation to tasks aimed at fostering supervisory convergence in the Union, rather than granting broad supervisory powers to a newly set-up body. The ECB does not support conferring a general right of initiative for regulatory acts on the Executive Board. Moreover, the Council and the Parliament should consider **granting the ECB observer status** on the proposed Executive Board.

Strategic supervisory plans: the ECB does not consider it **appropriate** to confer strategic planning powers on the EBA. Identifying micro-prudential trends, potential risks and vulnerabilities for financial institutions, and defining respective strategic supervisory priorities, are core supervisory tasks that should be **carried out by the competent micro-prudential supervisory authority, and not the EBA** in its function as a standard-setting regulator.

The EBA must not decide on any strategic supervisory planning for which the ECB might ultimately be held accountable.

From a practical perspective, the ECB considers that the proposed regulation poses the risk of significantly impeding the SSM's strategic and operational planning processes as well as its required risk identification process.

Stress testing: the proposed regulation transfers the decision-making powers of the Board of Supervisors with respect to the initiation and coordination of Union-wide stress tests to the Executive Board. The ECB considers stress tests to be a **key supervisory tool**, which needs to be employed by those authorities that have supervisory responsibilities, in order to ensure that stress tests fulfil their purpose of supporting individual risk assessments of supervised credit institutions. Therefore, the ECB would remark specifically on why the envisaged changes could undermine the effectiveness of supervision, and thus run counter to the Commission's objective of strengthening the stability of the internal market. The ECB is concerned that the proposed regulation, in its current form, does not adequately ensure the quality and comprehensiveness of stress tests for supervisory purposes.

Coordination on delegation and outsourcing of activities as well as risk transfers to third countries: from a supervisory perspective, the requirement to notify the EBA in respect of such arrangements may not adequately cater for the proposed regulation's objective of deterring regulatory arbitrage across Member States. It may instead overlap with micro-prudential supervisory tasks carried out by the ECB in the context of the SSM, and could add an unwarranted layer of administrative burden in the supervisory process.

International cooperation: the ECB welcomes the EBA's role to assist the Commission in preparing and monitoring equivalence decisions. However, the ECB would like to make a few remarks regarding the envisaged procedure for negotiating and concluding administrative agreements between CAs and the respective third-country supervisory authority. The ECB considers that if the EBA takes an active role in the negotiation process, this would add unnecessary complexity to the negotiation process, and might delay the conclusion of Memoranda of Understanding (MoUs) for supervisory cooperation.

Changes to fining powers and requests for information: the ECB generally supports the stated objective of ensuring that the EBA has the right to collect information that is necessary to enable it to carry out its duties and tasks. However, the ECB considers that the proposed strengthening of the EBA's right to collect information, by empowering it to impose fines and periodic penalty payments, should be without prejudice to the possibility that CAs exercise powers available to them in response to a failure by respective financial institutions to comply with CAs' requests for information in an accurate, complete, or timely manner.

Supervisory reporting and Pillar 3 disclosure requirements: looking ahead, the co-legislators may consider formalising and expanding the EBA's role with respect to the transparency of financial institutions, while avoiding the duplication of their reporting obligations. In particular, the EBA could be tasked with integrating supervisory reporting and quantitative Pillar 3 disclosure requirements for financial institutions, as set out under Union law, into a single reporting framework, in which the data disclosed under Pillar 3 would form a sub-set of the data subject to supervisory reporting. Moreover, establishing a framework for a **central data repository at the EBA** could significantly improve the quality of supervisory data.