

European Supervisory Authorities: powers, governance and funding

2017/0230(COD) - 07/12/2018 - European Central Bank: opinion, guideline, report

Opinion of the European Central Bank on an amended 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 ECB fully supports the amended proposal which seeks to reinforce the mandate of the European Banking Authority (EBA) in the prevention of the use of the financial system for the purpose of money laundering (ML) and terrorism financing (TF), in order to strengthen confidence in the Banking and Capital Market Unions.

In particular, the risk of the use of the financial system for ML or TF is relevant for ECB prudential supervisory decisions concerning acquisitions of qualifying holdings in supervised entities (including regarding the process of granting authorisations to credit institutions) and fit and proper assessments of existing or prospective managers of supervised entities, as well as for day-to-day supervision in the context of the supervisory review and evaluation process.

It is therefore of utmost importance that the ECB, as well as other prudential supervisors, receive from AML/CFT supervisors timely and reliable information about ML/TF risks and breaches of AML/CFT requirements by supervised entities.

Since the ECB has already given its opinion on the original legislative proposal, it will focus only on the new elements contained in the amended proposal.

Information to be collected by the EBA

The ECB notes that the precise information that needs to be reported to the EBA is not clear and that the amended proposal does not contain any qualification of the weaknesses that should be reported. It suggests that the regulation should clarify that this new reporting requirement captures any material weaknesses that increase the risk that the financial system could be used for ML or TF and calls on the EBA to develop guidance for competent authorities as to what constitutes such material weaknesses.

Further, the regulation should specify any additional elements or processes that might be necessary for the efficient functioning of the information exchange procedure.

The ECB also suggests extending the information collected by the EBA to include such as procedures in granting authorisations or assessments of acquisitions of qualifying holdings in financial market operators.

In addition, the amended proposal should:

- further clarify that reporting to the EBA and the subsequent dissemination of information by the EBA does not replace the direct exchange of information among competent authorities;
- stipulate that only the competent authority that originally collected the information or produced the document should report to the EBA;

- ensure that where the EBA participates in colleges of supervisors and receives information about a relevant material weakness through those colleges, competent authorities should not be required to report it again to the EBA;
- specify what the EBA should coordinate with the Financial Intelligence Units with regard to the information to be provided to it, and clarify whether and how this coordination is related to information collection.

Promoting convergence of supervisory processes and risk assessments on competent authorities

The ECB understands that these supervisory processes only concern AML/CFT supervisors and not prudential supervisors. This fact should be explicitly clarified in the amended proposal.

The ECB suggests rephrasing the amended proposal to more clearly distinguish the risk assessments (which refer only to the ‘most important emerging risks’) from the periodic reviews (which appear to cover ML/TF risks in general). At the same time; the notion of ‘the most important emerging risks’ should be further clarified.

Facilitating cooperation with relevant authorities in third countries

The ECB welcomes any support from the EBA that helps competent authorities interact more efficiently with relevant authorities in third countries. The ECB believes, however, that the EBA’s coordination should not replace any direct contacts that competent authorities may need to have with relevant authorities in third countries.

The concept of ‘material breaches’ should be further specified, so that it is clear in which situations the requirement for EBA support would be triggered. To this end, the ECB recommends specifying the criteria that the EBA or national competent authorities should follow in identifying such cases.

The ECB therefore suggests that the EBA should issue guidelines specifying all the necessary elements and processes necessary for the efficient functioning of this procedure.