

I

(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 8 January 2010

on three proposals for regulations of the European Parliament and of the Council establishing a European Banking Authority, a European Insurance and Occupational Pensions Authority and a European Securities and Markets Authority

(CON/2010/5)

(2010/C 13/01)

Introduction and legal basis

On 6 October 2009 the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on: 1. a proposal for a regulation of the European Parliament and of the Council establishing a European Banking Authority ⁽¹⁾ (hereinafter the 'proposed EBA regulation'); 2. a proposal for a regulation of the European Parliament and of the Council establishing a European Insurance and Occupational Pensions Authority ⁽²⁾ (hereinafter the 'proposed EIOPA regulation'); and 3. a proposal for a regulation of the European Parliament and of the Council establishing a European Securities and Markets Authority ⁽³⁾ (hereinafter the 'proposed ESMA regulation').

The ECB's competence to deliver an opinion on each of the three proposed regulations (hereinafter the 'proposed regulations') is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union since the proposed regulations contain provisions affecting the European System of Central Banks' (ESCB's) contribution to the smooth conduct of policies relating to the prudential supervision of credit institutions and the stability of the financial system, as referred to in Article 127(5) of the Treaty. Since the three texts relate to the establishment of the three new European supervisory authorities (ESAs) which will form part of the European System of Financial Supervision (ESFS), the ECB has, for the sake of simplicity, adopted a single opinion on the proposed regulations.

The observations contained in this opinion must be read in conjunction with ECB Opinion CON/2009/88 of 26 October 2009 on a proposal for a regulation of the European Parliament and of the Council on Community macro-prudential oversight of the financial system and establishing a European Systemic Risk Board and a proposal for a Council decision entrusting the European Central Bank with specific tasks concerning the functioning of the European Systemic Risk Board (hereinafter the 'proposed ESRB regulation' and the 'proposed ESRB decision' respectively); these two proposals form part of the legislative

⁽¹⁾ COM(2009) 0501 final.

⁽²⁾ COM(2009) 0502 final.

⁽³⁾ COM(2009) 0503 final.

package adopted by the Commission on 23 September 2009 in view of the reform of European financial supervision ⁽¹⁾.

Furthermore, these observations are without prejudice to the future ECB opinion on the amendments proposed by the Commission to the Community financial sector legislation as a necessary complement to the abovementioned legislative package (hereinafter the 'proposed Omnibus directive') ⁽²⁾ and possible other ECB opinions on any other draft legislation adopted in the context of this package.

The issues covered in the present opinion are limited to those related to the establishment and functioning of the ESAs which are of direct relevance to the ECB/ESCB and to the ESRB.

In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

General observations

The proposed European Union institutional framework for supervision

1. The proposed regulations are part of a comprehensive review of the EU institutional framework for supervision, which includes both the enhancement of micro-prudential supervision through the establishment of the ESAs, and the designation of the ESRB as a new independent body, responsible for safeguarding financial stability by conducting macro-prudential supervision at the European level, with the conferral of specific related tasks on the ECB on the basis of Article 127(6) of the Treaty. The ECB broadly welcomes the proposed institutional framework. The ECB takes note in this respect that the Ecofin Council agreed on a general approach on the proposed framework on 2 December 2009 ⁽³⁾.

The ESAs and approximation of laws in the financial sector

2. On 18-19 June 2009, the European Council called for the establishment of a European single rulebook applicable to all financial institutions in the single market ⁽⁴⁾. The proposed regulations reflect the need to introduce an effective instrument to establish harmonised technical standards in financial services to ensure, through a single rulebook, a level playing field and an adequate protection of depositors, investors and consumers in Europe ⁽⁵⁾. The ECB welcomes this approach in view of its long-standing support for the development of an EU financial services rulebook. Moreover, the ESAs, as bodies with highly specialised expertise, are well placed to assist in the process of harmonisation in the financial sector by contributing to the establishment of high quality common regulatory and supervisory practices, in particular by providing opinions to the EU institutions and by developing guidelines, recommendations, and draft technical standards ⁽⁶⁾.

⁽¹⁾ Following the entry into force of the Treaty on European Union and the Treaty on the Functioning of the European Union ("TFEU") on 1 December 2009, the new legal basis for the proposed regulations and for the proposed ESRB regulation is Article 114 TFEU (ex Article 95 of the Treaty Establishing the European Community ("TEC")). The new legal basis for the proposed ESRB decision is Article 127(6) TFEU (ex Article 105(6) TEC), which implies that the proposed ESRB decision will be converted into a regulation.

⁽²⁾ The ECB was formally consulted by the Council on 25 November 2009 on the proposal for a Directive of the European Parliament and of the Council amending Directives 1998/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC, and 2009/65/EC in respect of the powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority, COM(2009) 0576 final.

⁽³⁾ See the proposal for a regulation of the European Parliament and of the Council establishing a European Banking Authority (EBA) — Presidency compromise agreed by the Ecofin Council [2009/0142(COD) — 16748/1/09 REV1], the proposal for a regulation of the European Parliament and of the Council establishing a European Insurance and Occupational Pensions Authority (EIOPA), Presidency compromise (2009/0143(COD) — 16749/1/09 REV1) and the proposal for a regulation of the European Parliament and of the Council establishing a European Securities and Markets Authority (ESMA), Presidency compromise (2009/0144(COD) — 16751/1/09 REV1).

⁽⁴⁾ See the Presidency Conclusions of the European Council of 18-19 June 2009, p. 8 and the Conclusions of the Ecofin Council of 9 June 2009, available at <http://www.europa.eu>

⁽⁵⁾ See recital 14 of the proposed EBA regulation, recital 14 of the proposed ESMA regulation and recital 13 of the proposed EIOPA regulation.

⁽⁶⁾ See Article 6(1)(a) of the proposed regulations.

Specific observations

Relation between the ESAs and the ESRB

3. The ECB strongly supports efficient institutional arrangements for cooperation between the ESAs and the ESRB. This requires effective information sharing procedures in order to ensure a smooth interaction of supervision at the macro-prudential and micro-prudential levels and the timely access of the ESRB to all relevant information required to perform its duties, including micro-prudential information relevant for macro-prudential analysis ⁽¹⁾. The ECB notes in this respect that one of the main tasks of the ESAs will concern cooperation with the ESRB, in particular by providing the latter with the information necessary for the achievement of its tasks ⁽²⁾. In this context, while the ECB welcomes the fact that the proposed regulations provide for the close involvement of the ESRB within the new micro-prudential institutional framework, it suggests an amendment with a view to ensuring that any obstacles to smooth flows of information between the ESRB and the ESFS are removed (see in this respect the proposed amendment 7). These proposed rules on exchange of confidential information under the proposed regulations will complement the other relevant EU rules on these matters, including the proposed ESRB regulation.

Relation between the ESAs and the ESCB

4. In line with Article 127(5) of the Treaty, the ECB and the national central banks (NCBs) of the ESCB are closely involved, given their competences and technical expertise, in the current EU financial architecture. The proposed regulations should also ensure an adequate institutional involvement and participation of the ECB and, where appropriate, of the NCBs of the ESCB, as regards the ESAs and newly established committees.
5. More specifically, the ESCB's involvement in payment, clearing and settlement systems reflects the task assigned to it by Article 127(2) of the Treaty of promoting the 'smooth operation of payment systems'. Safe and efficient post-trading infrastructures for securities markets are a critical component of the financial system and any malfunctioning of securities clearing and settlement systems can have serious systemic repercussions for the smooth functioning of payments systems, as well as for financial stability. In the light of the central banks' oversight tasks concerning payment, clearing and settlement systems, effective cooperation between central banks in their oversight capacity and supervisory authorities is required ⁽³⁾.
6. Recent events have confirmed that central banks may be extensively involved in the context of a crisis situation as suppliers of liquidity to the banking system. This is particularly the case when a crisis materialises through an event relating to the liquidity conditions in the money markets and/or to the functioning of payment or securities settlement systems ⁽⁴⁾.

Against this backdrop, central bank access to supervisory information on financial institutions may be relevant to the conduct of macro-prudential monitoring, the oversight of payment, clearing and settlement systems and the safeguarding of financial stability in general ⁽⁵⁾. While gateways for information sharing already exist in the context of EU financial sector legislation between competent

⁽¹⁾ See in this respect the de Larosière High-Level Group report on financial supervision in the EU of February 2009, the Communication of the Commission of 27 May 2009 on European financial supervision (COM(2009) 0252 final), the Ecofin Council Conclusions of 9 June 2009, and the proposed regulations (paragraphs 6.2.2 and 6.3 of the explanatory memorandum to the proposed EBA regulation and the corresponding paragraphs in the explanatory memoranda to the two other proposed regulations).

⁽²⁾ See, for instance, Article 6(1)(d) of the proposed regulations.

⁽³⁾ See Eurosystem Oversight Report 2009, November 2009, available at: <http://www.ecb.europa.eu>

⁽⁴⁾ See in this respect the Memorandum of Understanding on cooperation between the financial supervisory authorities, central banks and finance ministries of the EU on cross-border financial stability, June 2008, available at <http://www.ecb.europa.eu>

⁽⁵⁾ See in this respect paragraphs 2.1 to 2.4 of ECB Opinion CON/2006/15 of 9 March 2006 at the request of the Polish Minister of Finance on a draft law on the supervision of financial institutions. See also paragraphs 13 to 15 of ECB Opinion CON/2009/17 of 5 March 2009 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.

authorities and central banks ⁽¹⁾, it should be ensured for both substantive and consistency reasons that the proposed regulations provide for equivalent arrangements as regards the exchange of information between the ESAs and the ESCB when conducting their respective tasks.

ESAs and compliance with the monetary financing prohibition

7. When an NCB is a competent authority for the supervision of credit and/or financial institutions under national law, the NCB's performance of this task cannot constitute prohibited monetary financing under Article 123 of the Treaty. Insofar as the financing of each ESA consists, in particular, of obligatory contributions from the national authorities competent for the supervision of credit and/or financial institutions ⁽²⁾, it is not contrary to the prohibition of monetary financing for an NCB to contribute to the revenues of the ESA which, in such circumstances, would only involve the financing by the NCB of the performance of its own supervisory tasks.

Drafting proposals

Where the ECB recommends that the proposed regulations are amended, a specific drafting proposal (based on the text of the proposed EBA regulation ⁽³⁾) is set out in the Annex accompanied by explanatory text to this effect.

Done at Frankfurt am Main, 8 January 2010.

The President of the ECB
Jean-Claude TRICHET

⁽¹⁾ See, for instance, Article 12 of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1), Article 58(5) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1), Article 49 of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) (OJ L 177, 30.6.2006, p. 1), and Article 70 of the Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II) (recast) (OJ L 335, 17.12.2009, p. 1).

⁽²⁾ See Article 48(1)(a) of the proposed regulations.

⁽³⁾ Except for the last three amendments since Amendments 11 and 12 relate to the proposed ESMA regulation and Amendment 13 relates both to the proposed ESMA and EIOPA regulations. Amendments 9 and 10 only relate to the proposed EBA regulation.

ANNEX

Drafting proposals ⁽¹⁾:

Text proposed by the Commission	Amendments proposed by the ECB ⁽²⁾
---------------------------------	---

Amendment 1

Recital 21 of the proposed EBA and ESMA regulations and recital 20 of the proposed EIOPA regulation

Recital 21	Recital 21
<p>'(21) Serious threats to the orderly functioning and integrity of financial markets or the stability of the financial system in the Community require a swift and concerted response at Community level. The Authority should therefore be able to require national supervisory authorities to take specific actions to remedy an emergency situation. As the determination of an emergency situation involves a significant degree of discretion, this power should be conferred on the Commission. To ensure an effective response to the emergency situation, in the event of inaction by the competent national supervisory authorities, the Authority should be empowered to adopt, as a last resort, decisions directly addressed to financial institutions in areas of Community law directly applicable to them aimed at mitigating the effects of the crisis and restoring confidence in the markets.'</p>	<p>'(21) Serious threats to the orderly functioning and integrity of financial markets or the stability of the financial system in the Community require a swift and concerted response at Community level. The Authority should therefore be able to require national supervisory authorities to take specific actions to remedy an emergency situation. As the determination of an emergency situation involves a significant degree of discretion, this power should be conferred on the Commission. To ensure an effective response to the emergency situation, in the event of inaction by the competent national supervisory authorities, the Authority should be empowered to adopt, as a last resort, decisions directly addressed to financial institutions in areas of Community law directly applicable to them aimed at mitigating the effects of the crisis and restoring confidence in the markets. This is without prejudice to the competence of central banks of the ESCB regarding decisions to provide emergency liquidity assistance to individual financial institutions in pursuance of the central banks' mandate of contributing to the stability of the financial system.</p>

Explanation:

Decisions adopted by ESAs and addressed to competent authorities and/or individual financial institutions in the context of emergency situations should take account of the responsibilities of central banks of the ESCB with regard to the provision of emergency liquidity assistance.

Amendment 2

Recital 31a of the proposed EBA and ESMA regulations and recital 30a of the proposed EIOPA regulation (new)

No text.	Recital 31a/30a
	<p>'(31a)/(30a) There is a need for close cooperation of the Authority with the ECB and EU central banks and the access of central banks to prudential information may be essential, in particular in emergency situations. The Authority should not therefore be prevented from sharing any relevant information with the ECB and the NCBs of the ESCB, when this information is relevant to the exercise of their respective tasks, including the conduct of monetary policy and related liquidity provision, oversight of payment, clearing and settlement systems and the safeguarding of the stability of the financial system.'</p>

Explanation:

For the reasons outlined in paragraphs 4 to 6 of this opinion and in line with existing EU financial sector legislation, the proposed regulations should refer explicitly to the ESAs' duty to cooperate with the ECB and the NCBs of the ESCB and to the need for appropriate gateways for sharing information.

Text proposed by the Commission	Amendments proposed by the ECB (?)
---------------------------------	------------------------------------

Amendment 3

Article 6(1) of the proposed regulations

Text proposed by the Commission	Amendments proposed by the ECB (?)
<p>Article 6</p> <p>'1. The Authority shall have the following tasks:</p> <p>[...]</p> <p>(d) cooperate closely with the ESRB, in particular by providing the ESRB with the necessary information for the achievement of its tasks and by ensuring a proper follow up to the warnings and recommendations of the ESRB.'</p>	<p>Article 6</p> <p>'1. The Authority shall have the following tasks:</p> <p>[...]</p> <p>(d) cooperate closely with the ECB and, where appropriate, the NCBs of the ESCB, in particular by providing them with the necessary information for the achievement of their respective tasks in accordance with the relevant EU legislation;</p> <p>(de) cooperate closely with the ESRB, in particular by providing the ESRB with the necessary information for the achievement of its tasks and by ensuring a proper follow up to the warnings and recommendations of the ESRB.'</p>

Explanation:

For the reasons outlined in paragraphs 4 to 6 of this opinion and in line with existing EU financial sector legislation, the proposed regulations should refer explicitly to the Authority's duty to cooperate closely with the ECB and, where appropriate, the NCBs of the ESCB and to provide them with any relevant information should such information be necessary for the fulfilment of their tasks.

Amendment 4

Article 10(1) of the proposed regulations

Text proposed by the Commission	Amendments proposed by the ECB (?)
<p>Article 10</p> <p>'1. In the case of adverse developments which may seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Community, the Commission, upon its own initiative or following a request by the Authority, the Council, or the ESRB, may adopt a decision addressed to the Authority, determining the existence of an emergency situation for the purposes of this regulation.'</p>	<p>Article 10</p> <p>'1. In the case of adverse developments which may seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Community, the Commission, upon its own initiative or following a request by the Authority, the Council, the ECB or the ESRB, may adopt, after consulting the Council, the ECB, the ESRB and, where appropriate, the European Supervisory Authorities, a decision addressed to the Authority, determining the existence of an emergency situation for the purposes of this regulation.'</p>

Explanation:

For the reasons outlined in paragraphs 4 to 6 of this opinion, the ECB should be included in the list of authorities entitled to formulate requests to the Commission to adopt decisions determining the existence of an emergency situation, and the list of authorities to be consulted before the adoption of such decisions. Recital 21 of the proposed EBA and ESMA regulations and recital 20 of the proposed EIOPA regulation should be amended accordingly.

Amendment 5

Article 16 of the proposed regulations

Text proposed by the Commission	Amendments proposed by the ECB (?)
<p>Article 16</p> <p>Coordination function</p> <p>'The Authority shall fulfil a general coordination role between competent authorities, including where adverse developments could potentially jeopardise the orderly functioning and integrity of financial markets or the stability of the financial system in the Community.</p> <p>The Authority shall promote a coordinated Community response, inter alia by:</p> <p>[...]</p>	<p>Article 16</p> <p>Coordination function</p> <p>'The Authority shall fulfil a general coordination role between competent authorities, including where adverse developments could potentially jeopardise the orderly functioning and integrity of financial markets or the stability of the financial system in the Community.</p> <p>The Authority shall promote a coordinated Community response, inter alia by:</p> <p>[...]</p>

Text proposed by the Commission	Amendments proposed by the ECB (2)
(4) notifying the ESRB of any potential emergency situations without delay.'	(4) notifying the ECB and the ESRB of any potential emergency situations without delay, including any decisions adopted by the Commission and the Authority under Article 10.'

Explanation:

For the reasons outlined in paragraphs 4 to 6 of this opinion, the ECB should be informed by the ESAs of any potential emergency situations without delay (including any decisions adopted by the Commission and the ESAs under Article 10 of the proposed regulations).

Amendment 6

Article 41(2) of the proposed regulations

Article 41	Article 41
'2. The Executive Director, the Commission and the ESRB shall be invited to the meetings of the Joint Committee of European Supervisory Authorities as well as the Sub-Committees mentioned in Article 43 as observers.'	'2. The Executive Director, the Commission, the ECB and the ESRB shall be invited to the meetings of the Joint Committee of European Supervisory Authorities as well as the Sub-Committees mentioned in Article 43 as observers.'

Explanation:

The Joint Committee will deal with issues of common interest to all authorities. It could serve as a platform for discussing issues that are of interest to both central banks and the ESAs, such as those related to market infrastructures and financial conglomerates. It is therefore advisable to include the ECB as an observer within the Joint Committee. Furthermore, the participation of the ECB in the Sub-Committee on financial conglomerates is in line with the current institutional arrangements according to which the ECB attends the meetings of the Joint Committee on Financial Conglomerates and the Interim Working Committee on Financial Conglomerates.

Amendment 7

Article 56(3) of the proposed regulations

Article 56	Article 56
'3. Paragraphs 1 and 2 shall not prevent the Authority from exchanging information with national supervisory authorities in accordance with this Regulation and other community legislation applicable to financial institutions. That information shall be subject to the conditions of professional secrecy indicated in paragraphs 1 and 2. The Authority shall lay down in its internal rules of procedure the practical arrangements for implementing the confidentiality rules referred to in paragraphs 1 and 2.'	'3. Paragraphs 1 and 2 shall not prevent the Authority from exchanging information with national supervisory authorities, the ESCB and the ESRB in accordance with this Regulation and other community legislation applicable to financial institutions. That information shall be subject to the conditions of professional secrecy indicated in paragraphs 1 and 2. The Authority shall lay down in its internal rules of procedure the practical arrangements for implementing the confidentiality rules referred to in paragraphs 1 and 2.'

Explanation:

For the reasons outlined in paragraphs 3 to 6 of this opinion, the ESRB and the ESCB should not be prevented from being involved in the exchange of prudential information.

Amendment 8

Article 66(1) of the proposed regulations

Article 66	Article 66
'1. Within three years from the date set out in the second paragraph of Article 67 and every three years thereafter, the Commission shall publish a general report on the experience acquired as a result of the operation of the Authority and the procedures laid down in this Regulation. [...]	'1. Within three years from the date set out in the second paragraph of Article 67 and every three years thereafter, after having received the opinion of the European Supervisory Authorities, the ESRB and the ECB , the Commission shall publish a general report on the experience acquired as a result of the operation of the Authority and the procedures laid down in this Regulation. [...]

Explanation:

A similar review clause is included in the proposed ESRB Regulation, as agreed by the Ecofin Council on 20 October 2009 (Article 20) (3).

Text proposed by the Commission	Amendments proposed by the ECB (?)
---------------------------------	------------------------------------

Amendment 9

Article 25 of the proposed EBA regulation

Article 25	Article 25
<p>'Composition</p> <p>1. The Board of Supervisors shall be composed of:</p> <p>(a) the Chairperson, who shall be non-voting;</p> <p>(b) the Head of the national public authority competent for the supervision of credit institutions in each Member State;</p> <p>(c) one representative of the Commission who shall be non-voting;</p> <p>(d) one representative of the European Central Bank who shall be non-voting;</p> <p>(e) one representative of the ESRB who shall be non-voting;</p> <p>(f) one representative of each of the other two European Supervisory Authorities who shall be non-voting;</p> <p>2. Each competent authority shall be responsible for nominating a high-level alternate from its authority, who may replace the member of the Board of Supervisors referred to in paragraph 1(b), in case this person is prevented from attending.</p> <p>3. Where the authority referred to in paragraph 1(b) is not a central bank, the member of the Board of Supervisors referred to in paragraph 1(b) may be accompanied by a representative from the Member States' central bank, who shall be non-voting.</p> <p>4. For the purpose of acting within the scope of Directive 94/19/EC the member of the Board of Supervisors referred to in paragraph 1(b) may, where appropriate, be accompanied by a representative from the relevant bodies which administers deposit-guarantee schemes in each Member State, who shall be non-voting.</p> <p>5. The Board of Supervisors may decide to admit observers.</p> <p>The Executive Director may participate in meetings of the Board of Supervisors without the right to vote.'</p>	<p>'Composition</p> <p>1. The Board of Supervisors shall be composed of:</p> <p>(a) the Chairperson, who shall be non-voting;</p> <p>(b) the Head of the national public authority competent for the supervision of credit institutions in each Member State;</p> <p>(c) if an authority referred to in (b) is not a central bank, one representative of the Member State's central bank, who shall be non-voting;</p> <p>(d) (d) one representative of the Commission who shall be non-voting;</p> <p>(e) (e) one representative of the European Central Bank who shall be non-voting;</p> <p>(f) (f) one representative of the ESRB who shall be non-voting;</p> <p>(g) (g) one representative of each of the other two European Supervisory Authorities who shall be non-voting;</p> <p>2. Each competent authority shall be responsible for nominating a high-level alternate from its authority, who may replace the member of the Board of Supervisors referred to in paragraph 1(b), in case this person is prevented from attending.</p> <p>3. Where the authority referred to in paragraph 1(b) is not a central bank, the member of the Board of Supervisors referred to in paragraph 1(b) may be accompanied by a representative from the Member States' central bank, who shall be non-voting.</p> <p>34. For the purpose of acting within the scope of Directive 94/19/EC the member of the Board of Supervisors referred to in paragraph 1(b) may, where appropriate, be accompanied by a representative from the relevant bodies which administers deposit-guarantee schemes in each Member State, who shall be non-voting.</p> <p>45. The Board of Supervisors may decide to admit observers.</p> <p>The Executive Director may participate in meetings of the Board of Supervisors without the right to vote.'</p>

Explanation:

It should be ensured that the representatives of NCBs benefit from an independent right of participation in the Board of Supervisors of the EBA as non-voting members.

Amendment 10

Article 29(4) of the proposed regulations

Article 29(4)	Article 29(4)
<p>'4. The rules of procedure shall set out in detail the arrangements governing voting, including, where appropriate, the rules governing quorums. The non-voting members and the observers, with the exception of the Chairperson and the Executive Director, shall not attend any discussions within the Board of Supervisors relating to individual financial institutions, unless otherwise provided for in Article 61 or in the legislation referred to in Article 1(2).'</p>	<p>'4. The rules of procedure shall set out in detail the arrangements governing voting, including, where appropriate, the rules governing quorums. The non-voting members and the observers, with the exception of the Chairperson, and the Executive Director and the representatives of the Member States' central banks in the event of substantial involvement in the field of banking supervision, shall not attend any discussions within the Board of Supervisors relating to individual financial institutions, unless otherwise provided for in Article 61 or in the legislation referred to in Article 1(2).'</p>

Text proposed by the Commission	Amendments proposed by the ECB ⁽²⁾
---------------------------------	---

Explanation:

This amendment would allow non-voting representatives of Member States' central banks with substantial involvement in the field of banking supervision to participate in confidential discussions relating to individual financial institutions.

Amendment 11

Recital 31a of the proposed ESMA regulation (new)

No text.	<p>Recital 31a</p> <p>'(31a) Safe and efficient post-trading infrastructures for securities markets are a critical component of the financial system and any malfunctioning of securities clearing and settlement systems can have serious systemic repercussions for the smooth functioning of payments systems, as well as for financial stability. In the light of the central banks oversight tasks concerning payment, clearing and settlement systems, effective cooperation between central banks in their oversight capacity and the Authority is required in matters of common interest.'</p>
----------	---

Explanation:

The ECB is of the view that the existing cooperation between the Committee of European Securities Regulators and central banks should be continued between the ESMA and central banks in matters of common interest.

Amendment 12

Article 1(2a) of the proposed ESMA regulation (new)

No text.	<p>Article 1</p> <p>'(2a) Without prejudice to the relevant competences of the ESCB, the Authority shall take appropriate action in the context of clearing and settlement and the functioning of derivatives markets.'</p>
----------	--

Explanation:

Any tasks conferred upon the ESMA under the proposed ESMA regulation regarding the above issues should take account of the existing competences of the ECB and the NCBS of the ESCB in the field of clearing and settlement.

Amendment 13

Article 25(1) of the proposed ESMA and EIOPA regulations

<p>Article 25</p> <p>'1. The Board of Supervisors shall be composed of:</p> <p>[...]</p> <p>(d) one representative of the ESRB who shall be non-voting; [...]'</p>	<p>Article 25</p> <p>'1. The Board of Supervisors shall be composed of:</p> <p>[...]</p> <p>(d) one representative of the ECB who shall be non-voting;</p> <p>(e) (e) one representative of the ESRB who shall be non-voting; [...]'</p>
--	--

Explanation:

For the reasons outlined in paragraphs 4 to 6 of this opinion, it is advisable to include the ECB as a non-voting representative in the Board of Supervisors of the ESMA and of the EIOPA. The ECB notes that this is already the case in the proposed EBA and EIOPA regulations, as agreed by the Ecofin Council on 2 December 2009 ⁽⁴⁾.

⁽¹⁾ The proposed regulations were adopted on 23 September 2009, i.e. before the entry into force of the Treaties on European Union and on the Functioning of the European Union. Treaty citations in the texts proposed by the Commission will need to be adapted.

⁽²⁾ Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.

⁽³⁾ 2009/0140(COD) — 14491/1/09 REV1.

⁽⁴⁾ See 2009/0142(COD) — 16748/1/09 REV1 (for the EBA) and 2009/0143(COD) — 16749/1/09 (for the EIOPA).