

## III

*(Preparatory acts)*

## EUROPEAN CENTRAL BANK

## OPINION OF THE EUROPEAN CENTRAL BANK

of 11 April 2018

**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****(CON/2018/19)**

(2018/C 255/02)

**Introduction and legal basis**

On 23 November 2017 the European Central Bank (ECB) received a request from the Council of the European Union and the European Parliament for an opinion 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); Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority); Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority); Regulation (EU) No 345/2013 on European venture capital funds; Regulation (EU) No 346/2013 on European social entrepreneurship funds; Regulation (EU) No 600/2014 on markets in financial instruments; Regulation (EU) 2015/760 on European long-term investment funds; Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds; and Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market <sup>(1)</sup> (hereinafter the 'proposed regulation').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union since the proposed regulation contains provisions affecting the contribution of the European System of Central Banks (ESCB) 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, and the specific tasks conferred on the ECB in accordance with Article 127(6) of the Treaty. 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.

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 <sup>(2)</sup>. Since the package relates to different tasks carried out by the ESCB and the ECB, the ECB has decided to adopt separate opinions on the package. This opinion must, therefore, be read in conjunction with Opinion CON/2018/12 of 2 March 2018 on a proposal for a regulation amending Regulation (EU) No 1092/2010 on macro-prudential oversight of the financial system and establishing a European Systemic Risk Board <sup>(3)</sup>.

**1. General observations**

- 1.1. The ECB welcomes the proposed regulation's objective of fostering effective and consistent prudential supervision and regulation across the EU. The ECB supports further integration of the supervisory framework at Union

<sup>(1)</sup> COM(2017) 536 final.

<sup>(2)</sup> COM(2017) 542 final.

<sup>(3)</sup> Opinion CON/2018/12 of the European Central Bank of 2 March 2018 on a proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1092/2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ C 120, 6.4.2018, p. 2). All opinions are available on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu)

level for the banking sector and strengthening the Union dimension of supervision by re-examining the ESAs' current set-up<sup>(1)</sup>. Moreover, notwithstanding amendments to specific provisions of Regulation (EU) No 1093/2010<sup>(2)</sup> in 2013, the ESAs have not been reviewed since their establishment in 2010.

- 1.2. 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.
- 1.3. Specifically with regard to the new supervisory functions in the proposed regulation, the ECB is of the view that certain proposed amendments to Regulation (EU) No 1093/2010 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.

## 2. Specific observations

### 2.1. *The revised EBA governance framework*

- 2.1.1. The proposed regulation seeks to establish an Executive Board as a new body within the EBA's governance structure<sup>(3)</sup>. The members of the Executive Board are to be appointed on the basis of merit, skills, knowledge of clearing, post-trading and financial matters, as well as experience relevant to financial supervision, through an open selection procedure with the involvement of the European Parliament and the Council<sup>(4)</sup>. While the main function of the Executive Board, as proposed by the European Commission, is to make proposals on all matters to be decided by the Board of Supervisors, the Executive Board is also proposed to be granted exclusive decision-making powers in a number of areas with a view to ensuring effective, impartial and Union-oriented decisions. For example, the Executive Board would be solely responsible for settling disputes between competent authorities (CAs) and setting out strategic supervisory objectives for those CAs. The Executive Board is also proposed to make decisions on the initiation, coordination, and communication of Union-wide stress tests.
- 2.1.2. The ECB supports the review of the governance structure of the ESAs, including a review of the voting rights and membership structure of their respective Boards. However, 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<sup>(5)</sup>. At the same time, with a view to enhancing the effectiveness and efficiency of the Board of Supervisors' decision-making procedures, the ECB supports the establishment of an Executive Board focused on administrative tasks and composed of permanent, non-CA members, which would ensure a stronger Union perspective. While, therefore, the ECB welcomes the proposal to task the Executive Board with the preparation of the EBA's annual work programme, it does not support conferring a general right of initiative for regulatory acts on the Executive Board<sup>(6)</sup>. Such right of initiative should not be extended to the regulatory competences of the Board of Supervisors as regards the adoption of opinions, recommendations, and decisions.
- 2.1.3. Moreover, the ECB endorses the proposal to strengthen the Executive Board's statutory independence, as well as the proposal that makes the appointment procedure of Executive Board members more transparent than the one used to appoint the existing Management Board.

<sup>(1)</sup> See page 3 of the ECB's contribution to the European Commission's consultation on the operations of the European Supervisory Authorities, 7 June 2017 (hereinafter the 'ECB contribution on the ESAs'), available on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu)

<sup>(2)</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

<sup>(3)</sup> See proposed new Article 45 of Regulation (EU) No 1093/2010.

<sup>(4)</sup> See Recital 23 of the proposed regulation.

<sup>(5)</sup> See Recital 52 of Regulation (EU) No 1093/2010.

<sup>(6)</sup> See Article 1(27)(a) of the proposed regulation.

2.1.4. The ECB supports the proposed regulation's objective of recognising and reflecting the establishment of the Single Supervisory Mechanism (SSM) in the ESFS. However, the proposed regulation does not take proper account of the existing Union dimension with regard to the prudential supervision of credit institutions. More specifically, it is not anticipated that the ECB will be a member of the proposed Executive Board, in spite of its tasks relating to the prudential supervision of credit institutions in the euro area. Consequently, the Council and the Parliament should consider granting the ECB observer status on the proposed Executive Board. Given the close cooperation between the EBA and the ECB with regard to their joint workload, the ECB's presence as an observer on the proposed Executive Board would be advantageous <sup>(1)</sup>.

## 2.2. Strategic supervisory plans

2.2.1. The ECB generally supports the proposed regulation's objective of deepening financial integration and strengthening the stability of the internal market through more supervisory convergence at Union level <sup>(2)</sup>. However, conferring strategic planning powers on the EBA is inappropriate in this context. 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 <sup>(3)</sup>.

2.2.2. More specifically, separating planning and implementation when setting supervisory priorities would lead to inefficiencies that unduly complicate the supervisory planning process as well as, more generally, inefficiencies in supervision. Ensuring sound, effective and reliable supervisory processes, and retaining flexibility in responding to adverse developments at both a micro- and a macroprudential level, is essential for the responsible supervisory authority. Hence, the same authority should be responsible for the planning and the implementation of supervision to ensure swift supervisory responses to risks and to efficiently allocate resources.

2.2.3. Ensuring the alignment of the planning and the implementation of supervisory strategies and tasks is also reflected in secondary legislation. Notably, pursuant to Article 26 of Council Regulation (EU) No 1024/2013 <sup>(4)</sup>, the planning and execution of tasks conferred on the ECB as a CA for prudential supervision in the euro area is fully undertaken by the ECB Supervisory Board. Consequently, under the proposed regulation, there is a risk that the EBA might duplicate tasks already performed by the ECB, which may lead to unnecessary redundancies and less efficiency and effectiveness in the overall supervision of credit institutions in the euro area. In addition, there should be full alignment between the ECB's and the EBA's competences and their respective accountability regimes. The EBA must not decide on any strategic supervisory planning for which the ECB might ultimately be held accountable.

2.2.4. From a practical perspective, 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. More specifically, the proposed regulation would require the SSM to submit draft supervisory work programmes several months in advance for the following year to the EBA. Reporting the supervisory work programme for the following year at such an early stage to the EBA would disrupt the established SSM strategic and operational planning processes, as well as the preceding risk identification process — all processes which are conducted in close cooperation with the 19 CAs — and would therefore undermine the goal of ensuring effective and efficient supervisory processes. In addition, the proposed regulation would grant the EBA the right to issue a recommendation to require an adjustment of the CAs' work programme <sup>(5)</sup>.

2.2.5. Such a practice could lead to situations where supervisory priorities may have to be adjusted at a very late stage of the SSM supervisory planning process, raising serious questions about planning reliability for joint supervisory teams, CAs and horizontal functions, thus compromising the effectiveness of prudential supervision in the euro area. Since CAs are closely involved in the SSM supervisory planning process, the proposed amendments would severely affect the existing arrangements between the ECB and the CAs as regards planning and implementing supervisory objectives. In the light of the outlined potential adverse effects on the effectiveness and efficiency of prudential supervision in the euro area, the ECB strongly recommends removing the provision on strategic supervisory planning powers from the proposed regulation.

<sup>(1)</sup> See pages 2 and 3 of the ECB's contribution on the ESAs.

<sup>(2)</sup> See proposed new Article 47(3) in conjunction with proposed new Article 29a of Regulation (EU) No 1093/2010.

<sup>(3)</sup> See recital 17 of the proposed regulation.

<sup>(4)</sup> Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

<sup>(5)</sup> Proposed new Article 29a(3) of Regulation (EU) No 1093/2010.

### 2.3. *Stress testing*

- 2.3.1. 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 <sup>(1)</sup>. Since the Board of Supervisors would no longer be involved in key aspects of Union-wide stress tests, such as the development of methodologies, sample selection or communication of their outcomes, the current procedures governing Union-wide stress tests would be subject to significant changes. 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.
- 2.3.2. First, it is noted that the proposed new process unduly complicates the stress-testing process at Union level, since the prudential supervisory authority would have to make every effort to comply with decisions of the EBA's Executive Board on several aspects of stress tests, notably on the scope and level of detail of information to be published. Since CAs carry out significant parts of the stress test exercise, such as the quality assurance of submissions from supervised credit institutions, it is important that they are involved in the decision-making process in line with their exclusive responsibility for those elements of the framework that ultimately define their work programme and resource needs.
- 2.3.3. Second, if the Executive Board were to solely decide on several aspects of Union-wide stress tests, including disclosure, it might decide, possibly unintentionally, to disclose information that CAs would prefer to keep confidential. Therefore, the Board of Supervisors should retain its competence to decide which information is disclosed in the outcome of Union-wide stress tests. In order to avoid discrepancies across jurisdictions and mitigate possible negative effects on financial stability, it is vital that the degree of disclosure is decided on together with the CAs, having in mind the continuous aim to achieve the highest possible level of harmonisation across CAs.
- 2.3.4. Finally, 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, e.g. coverage of banking activities, associated risks and appropriateness of stress test methodologies. If stress testing competencies were conferred on the Executive Board, it is likely that stress tests would neither be sufficiently tailored to supervisory purposes, nor duly reflect specificities and risks of the banking sector supervised by the ECB and the respective CAs. Against this backdrop, the ECB recommends removing the provisions in the proposed regulation related to stress testing in favour of retaining the current arrangements, which have served their purpose well.

### 2.4. *Independent reviews of CAs*

- 2.4.1. The proposed regulation provides for the EBA to review the activities of CAs with the aim of further strengthening consistency in supervisory outcomes. For this purpose, the EBA is to develop methods to allow objective assessment and comparison between CAs and to produce a report setting out the results of the review <sup>(2)</sup>.
- 2.4.2. While the ECB supports the stated objective of ensuring effective, impartial and Union-oriented decisions, it considers the existing peer review process to be a valuable and successful mechanism in furthering supervisory convergence in the Union and sharing best practices between CAs. Thus, the ECB sees no need to abandon the peer review mechanism. At the same time, as further set out in the technical working document, the ECB supports certain elements of the proposal to transform peer reviews into independent reviews.

### 2.5. *Coordination on delegation and outsourcing of activities as well as risk transfers to third countries*

- 2.5.1. The proposed regulation tasks the Executive Board with scrutinising delegation and outsourcing activities, as well as risk transfer arrangements to third countries. The proposed regulation requires the CA to notify the EBA of any authorisation or registration where the business plan of the financial institution involves delegation or outsourcing activities, or risk transfers <sup>(3)</sup>. 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 <sup>(4)</sup>.

<sup>(1)</sup> See proposed new Article 47(3) of Regulation (EU) No 1093/2010 in conjunction with proposed new Article 32 of Regulation (EU) No 1093/2010.

<sup>(2)</sup> See Article 1(13) of the proposed regulation.

<sup>(3)</sup> Proposed new Articles 31a(2) and 31a(3) of Regulation (EU) No 1093/2010.

<sup>(4)</sup> Recital 18 of the proposed regulation.

2.5.2. 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. According to Regulation (EU) No 1024/2013, the authorisation procedure is already a two-layer process requiring the CAs and the ECB to assess the applications for authorisation. Coordinating the assessment with the EBA would add a third layer and thus further increase the complexity and duration of authorisation procedures. Therefore, the ECB is of the view that the proposed tasks should neither be conferred on any EBA administrative body nor on the Board of Supervisors.

## 2.6. *International cooperation*

2.6.1. The proposed regulation introduces a key role for the EBA in the assessment of the regulatory and supervisory equivalence of third country legal regimes otherwise performed by the Commission <sup>(1)</sup>. More specifically, the EBA is tasked with monitoring the regulatory and supervisory developments, enforcement practices, and relevant market developments in third countries for which equivalence decisions have been adopted. In addition to this, the EBA would cooperate with CAs of equivalent jurisdictions by entering into bilateral administrative agreements.

2.6.2. The ECB welcomes the EBA's role to assist the Commission in preparing <sup>(2)</sup> and monitoring equivalence decisions <sup>(3)</sup>. 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 <sup>(4)</sup>.

2.6.3. The ECB considers that clarification of point (b) of Article 33(2a) is warranted. The ECB understands that the EBA's powers for negotiating and including provisions in cooperation arrangements, according to this paragraph, are only intended to allow follow up of equivalence decisions. It could be clarified that the CA is still responsible for coordinating supervisory activities and on-site inspections.

2.6.4. Additionally, the ECB welcomes proposed Article 33(2c) of Regulation (EU) No 1093/2010, which tasks the EBA with developing model administrative arrangements. These should be developed jointly with the CAs. Nevertheless, 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. Moreover, since each third country operates under its own legal framework, and since supervisory authorities need maximum flexibility in adapting MoUs in the course of negotiations, considerable practical difficulties may arise with regard to the obligation to use a standardised MoU template developed by the EBA. Therefore, relying on such model administrative arrangements should be done on a best effort basis.

## 2.7. *Changes to fining powers and requests for information*

2.7.1. The proposed regulation establishes a mechanism to strengthen the effective enforcement of the EBA's right to collect information with a view to further ensuring that the EBA effectively carries out its tasks and functions <sup>(5)</sup>. To this end, the proposed regulation entrusts the EBA with the power to impose fines and periodic penalty payments when relevant financial institutions, holding companies or branches of a relevant financial institution and non-regulated operational entities within a financial group or conglomerate that are significant to the financial activities of the relevant financial institutions fail to comply accurately, completely or in a timely manner with a request or decision from the EBA <sup>(6)</sup>. The EBA must give that financial institution the right to be heard prior to any such fines or penalty payments being imposed <sup>(7)</sup> and any decision imposing these fines and penalty payments is subject to review by the Court of Justice of the European Union <sup>(8)</sup>.

2.7.2. 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.

<sup>(1)</sup> Article 1(17) of the proposed regulation.

<sup>(2)</sup> Proposed new Article 33(2) of Regulation (EU) No 1093/2010.

<sup>(3)</sup> Proposed new Article 33(2a) of Regulation (EU) No 1093/2010.

<sup>(4)</sup> See proposed new Article 33(2c) of Regulation (EU) No 1093/2010.

<sup>(5)</sup> See proposed new Articles 35 to 35h of Regulation (EU) No 1093/2010.

<sup>(6)</sup> See Recital 20 of the proposed regulation.

<sup>(7)</sup> See proposed new Article 35f of Regulation (EU) No 1093/2010.

<sup>(8)</sup> See proposed new Article 35h of Regulation (EU) No 1093/2010.

## 2.8. Supervisory reporting and Pillar 3 disclosure requirements

- 2.8.1. 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. The integration of these two data streams would allow the EBA to develop and maintain a hub of data comprising information disclosed in accordance with the quantitative Pillar 3 disclosure requirements and extracted from supervisory data. Credit institutions would benefit from such a framework, since they would only report the respective information once, and prudential supervisors as well as other data users would benefit from having easier access to pertinent data.
- 2.8.2. Moreover, establishing a framework for a central data repository at the EBA could significantly improve the quality of supervisory data, as discovered during the EBA transparency exercise. It would also more broadly foster the integration of the Union banking sector by facilitating market participants' access to information disclosed under Pillar 3 of the Basel framework <sup>(1)</sup>. Such a data hub would disclose Pillar 3 data in accordance with requirements for financial institutions (on a quarterly, semi-annual or annual basis) in order to ultimately put the Union at the same level as the United States in terms of data availability <sup>(2)</sup>. The EBA has already expressed its readiness to set up the technical infrastructure for such a data hub, but it requires a legal mandate to make available data public as part of a central repository without the explicit consent of the financial institutions <sup>(3)</sup> to which this data belongs. This mandate should, however, be without prejudice to the power of CAs to request additional ad hoc information from supervised entities. Therefore, the ECB sees merit in further exploring the legal and practical feasibility of establishing a central data repository at the EBA.

Where the ECB recommends that the proposed regulation is amended, specific drafting proposals are set out in a separate technical working document accompanied by an explanatory text to this effect. The technical working document is available in English on the ECB's website.

Done at Frankfurt am Main, 11 April 2018.

*The President of the ECB*

Mario DRAGHI

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<sup>(1)</sup> See the Basel Committee on Banking Supervision's 'Pillar 3 disclosure requirements — consolidated and enhanced framework', March 2017, available on the Bank for International Settlement's website at [www.bis.org](http://www.bis.org)

<sup>(2)</sup> In the US, the Federal Financial Institutions Examination Council (FFIEC) provides a bank-by-bank supervisory data repository for the public, available on the FFIEC's website at [cdr.ffiec.gov/public](http://cdr.ffiec.gov/public)

<sup>(3)</sup> See Enria, A., *Ensuring transparency in the European financial system*, Official Monetary and Financial Institutions Forum (OMFIF) City Lecture, May 2016, p. 9, available on the OMFIF's website at [www.omfif.org](http://www.omfif.org)





Technical working document  
produced in connection with ECB Opinion CON/2018/19<sup>1</sup>  
Drafting proposals

Text proposed by the Commission	Amendments proposed by the ECB <sup>2</sup>
<p>Amendment 1</p> <p>Point (c) of Article 1(7) of the proposed regulation (Article 16(2) of Regulation (EU) No 1093/2010)</p>	
<p>'2. The Authority shall, save in exceptional circumstances, conduct open public consultations regarding the guidelines and recommendations which it issues and shall analyse the related potential costs and benefits of issuing such guidelines and recommendations. Those consultations and analyses shall be proportionate in relation to the scope, nature and impact of the guidelines or recommendations. The Authority shall, save in exceptional circumstances, also request opinions or advice from the Banking Stakeholder Group referred to in Article 37.'</p>	<p>'2. The Authority shall, <b>where appropriate</b>, <del>save in exceptional circumstances</del>, conduct open public consultations regarding the guidelines and recommendations which it issues and shall analyse the related potential costs and benefits of issuing such guidelines and recommendations. Those consultations and analyses shall be proportionate in relation to the scope, nature and impact of the guidelines or recommendations. The Authority shall, <b>where appropriate</b>, <del>save in exceptional circumstances</del>, also request opinions or advice from the Banking Stakeholder Group referred to in Article 37.'</p>
<p><u>Explanation</u></p> <p><i>Since guidelines and recommendations are not legally binding, and the European Banking Authority (EBA) is accountable to Union institutions when carrying out its regulatory tasks, the revised wording is sufficient to ensure an appropriate balance between transparency and flexibility when the EBA issues guidelines and recommendations.</i></p>	

<sup>1</sup> This technical working document is produced in English only and communicated to the consulting Union institution(s) after adoption of the opinion. It is also published in the Legal framework section of the ECB's website alongside the opinion itself.

<sup>2</sup> 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.

Text proposed by the Commission	Amendments proposed by the ECB <sup>2</sup>
Amendment 2 Point (e) of Article 1(7) of the proposed regulation ((new) Article 16(5) of Regulation (EU) No 1093/2010)	
<p>'5. Where two thirds of the members of the Banking Stakeholder Group are of the opinion that the Authority has exceeded its competence by issuing certain guidelines or recommendations, they may send a reasoned opinion to the Commission. The Commission shall request an explanation justifying the issuance of the guidelines or recommendations concerned from the Authority. The Commission shall, on receipt of the explanation from the Authority, assess the scope of the guidelines or recommendations in view of the Authority's competence. Where the Commission considers that the Authority has exceeded its competence, and after having given the Authority the opportunity to state its views, the Commission may adopt an implementing decision requiring the Authority to withdraw the guidelines or recommendations concerned. The decision of the Commission shall be made public.'</p>	<p><del>'5. Where two thirds of the members of the Banking Stakeholder Group are of the opinion that the Authority has exceeded its competence by issuing certain guidelines or recommendations, they may send a reasoned opinion to the Commission. The Commission shall request an explanation justifying the issuance of the guidelines or recommendations concerned from the Authority. The Commission shall, on receipt of the explanation from the Authority, assess the scope of the guidelines or recommendations in view of the Authority's competence. Where the Commission considers that the Authority has exceeded its competence, and after having given the Authority the opportunity to state its views, the Commission may adopt an implementing decision requiring the Authority to withdraw the guidelines or recommendations concerned. The decision of the Commission shall be made public.'</del></p>
<p><u>Explanation</u></p> <p><i>The current accountability regime to which the EBA is subject according to Regulation (EU) No 1093/2010 is sufficient to ensure that the EBA stays within the remit of its competence for the purposes of issuing guidelines and recommendations. Therefore, it is suggested that the provisions regarding the involvement of the Banking Stakeholder Group in the procedure, as set out in the proposed regulation, should be deleted, since this may otherwise result in a disproportionate limitation to the EBA's ability to issue non-binding acts aimed at harmonising the approach on technical aspects within prudential regulation.</i></p>	

Text proposed by the Commission	Amendments proposed by the ECB <sup>2</sup>
Amendment 3 Article 1(12) of the proposed regulation ((new) Article 29a of Regulation (EU) No 1093/2010)	
<p><i>'Strategic Supervisory Plan</i></p> <p>1. Upon the entry into application of Regulation [XXX insert reference to amending Regulation] and every three years thereafter by 31 March, the Authority shall issue a recommendation addressed to competent authorities, laying down supervisory strategic objectives and priorities ("Strategic Supervisory Plan") and, taking into account any contributions from competent authorities,. The Authority shall transmit the Strategic Supervisory Plan for information to the European Parliament, the Council and the Commission and shall make it public on its website.</p> <p>The Strategic Supervisory Plan shall identify specific priorities for supervisory activities in order to promote consistent, efficient and effective supervisory practices and the common, uniform and consistent application of Union law and to address relevant micro-prudential trends, potential risks and vulnerabilities identified in accordance with Article 32.</p> <p>2. By 30 September of each year, each competent authority shall submit a draft annual work programme for the following year to the Authority for consideration and specifically stipulate how that draft programme is aligned with the Strategic Supervisory Plan.</p> <p>The draft annual work programme shall contain specific objectives and priorities for supervisory activities and quantitative and qualitative criteria for the selection of financial institutions, market practices and behaviours and financial markets to be examined by the competent authority submitting</p>	<p><del><i>'Strategic Supervisory Plan</i></del></p> <p><del>1. Upon the entry into application of Regulation [XXX insert reference to amending Regulation] and every three years thereafter by 31 March, the Authority shall issue a recommendation addressed to competent authorities, laying down supervisory strategic objectives and priorities ("Strategic Supervisory Plan") and, taking into account any contributions from competent authorities,. The Authority shall transmit the Strategic Supervisory Plan for information to the European Parliament, the Council and the Commission and shall make it public on its website.</del></p> <p><del>The Strategic Supervisory Plan shall identify specific priorities for supervisory activities in order to promote consistent, efficient and effective supervisory practices and the common, uniform and consistent application of Union law and to address relevant micro-prudential trends, potential risks and vulnerabilities identified in accordance with Article 32.</del></p> <p><del>2. By 30 September of each year, each competent authority shall submit a draft annual work programme for the following year to the Authority for consideration and specifically stipulate how that draft programme is aligned with the Strategic Supervisory Plan.</del></p> <p><del>The draft annual work programme shall contain specific objectives and priorities for supervisory activities and quantitative and qualitative criteria for the selection of financial institutions, market practices and behaviours and financial markets to be examined by the competent authority submitting</del></p>

Text proposed by the Commission	Amendments proposed by the ECB <sup>2</sup>
<p>the draft annual work programme during the year covered by that programme.</p> <p>3. The Authority shall assess the draft annual work programme and where there are material risks for not attaining the priorities set out in the Strategic Supervisory Plan, the Authority shall issue a recommendation to the relevant competent authority aiming at the alignment of the relevant competent authority's annual work programme with the Strategic Supervisory Plan.</p> <p>By 31 December of each year, the competent authorities shall adopt their annual work programmes taking into account any such recommendations.</p> <p>4. By 31 March of each year, each competent authority shall transmit to the Authority a report on the implementation of the annual work programme. The report shall include at least the following information:</p> <p>(a) a description of the supervisory activities and examinations of financial institutions, market practices and behaviours and of financial markets, and on the administrative measures and sanctions imposed against financial institutions responsible for breaches of Union and national law;</p> <p>(b) a description of activities that were carried out and which were not foreseen in the annual work programme;</p> <p>(c) an account of the activities provided for in the annual work programme that were not carried out and of the objectives of that programme that were not met, as well as the reasons for the failure to carry out those activities and to reach those objectives.</p> <p>5. The Authority shall assess the implementation reports of the competent authorities. Where there are material risks of not attaining the priorities set</p>	<p><del>the draft annual work programme during the year covered by that programme.</del></p> <p><del>3. The Authority shall assess the draft annual work programme and where there are material risks for not attaining the priorities set out in the Strategic Supervisory Plan, the Authority shall issue a recommendation to the relevant competent authority aiming at the alignment of the relevant competent authority's annual work programme with the Strategic Supervisory Plan.</del></p> <p><del>By 31 December of each year, the competent authorities shall adopt their annual work programmes taking into account any such recommendations.</del></p> <p><del>4. By 31 March of each year, each competent authority shall transmit to the Authority a report on the implementation of the annual work programme. The report shall include at least the following information:</del></p> <p><del>(a) a description of the supervisory activities and examinations of financial institutions, market practices and behaviours and of financial markets, and on the administrative measures and sanctions imposed against financial institutions responsible for breaches of Union and national law;</del></p> <p><del>(b) a description of activities that were carried out and which were not foreseen in the annual work programme;</del></p> <p><del>(c) an account of the activities provided for in the annual work programme that were not carried out and of the objectives of that programme that were not met, as well as the reasons for the failure to carry out those activities and to reach those objectives.</del></p> <p><del>5. The Authority shall assess the implementation reports of the competent authorities. Where there are material risks of not attaining the priorities set</del></p>

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<p>out in the Strategic Supervisory Plan the Authority shall issue a recommendation to each competent authority concerned on how the relevant shortcomings in its activities can be remedied.</p> <p>Based on the reports and its own assessment of risks, the Authority shall identify the activities of the competent authority that are critical to fulfilling the Strategic Supervisory Plan and shall, as appropriate, conduct reviews under Article 30 of those activities.</p> <p>6. The Authority shall make best practices identified during the assessment of the annual work programmes publicly available.’</p>	<p><del>out in the Strategic Supervisory Plan the Authority shall issue a recommendation to each competent authority concerned on how the relevant shortcomings in its activities can be remedied.</del></p> <p><del>Based on the reports and its own assessment of risks, the Authority shall identify the activities of the competent authority that are critical to fulfilling the Strategic Supervisory Plan and shall, as appropriate, conduct reviews under Article 30 of those activities.</del></p> <p><del>6. The Authority shall make best practices identified during the assessment of the annual work programmes publicly available.’</del></p>
<p><u>Explanation</u></p> <p><i>The proposed amendment reflects the view of the European Central Bank (ECB) that strategic supervisory plans are not appropriate means to foster supervisory convergence. Separating planning and implementation of supervisory tasks is likely to lead to inefficiencies that unduly complicate the supervisory planning process and, more generally, a lack of effectiveness in supervision. See paragraph 2.2 of this opinion.</i></p>	
<p>Amendment 4</p> <p>Points (c), (e), (f), (g) and (h) of Article 1(13) of the proposed regulation (Article 30(1), (new) Article 30(1a), Article 30(3), (new) Article 30(3a) and Article 30(4) of Regulation (EU) No 1093/2010)</p>	
<p><i>‘Article 30</i></p> <p><b>Reviews of competent authorities</b></p> <p>1. The Authority shall periodically conduct reviews of some or all of the activities of competent authorities, to further strengthen consistency in supervisory outcomes. To that end, the Authority shall develop methods to allow for objective assessment and comparison between the competent authorities reviewed. When conducting reviews, existing information and evaluations already made with regard to the competent authority concerned, including all information</p>	<p><i>‘Article 30</i></p> <p><b>Peer Reviews of competent authorities</b></p> <p>1. The Authority shall periodically <b>organise and</b> conduct <b>peer</b> reviews of some or all of the activities of competent authorities, to further strengthen consistency in supervisory outcomes. To that end, the Authority shall develop methods to allow for objective assessment and comparison between the competent authorities reviewed. When conducting reviews, existing information and evaluations already made with regard to the competent authority concerned, including all information</p>

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<p>provided to the Authority in accordance with Article 35, and any information from stakeholders shall be taken into account.</p> <p>1a. For the purposes of this Article, the Authority shall establish a review committee, exclusively composed of staff from the Authority. The Authority may delegate certain tasks or decisions to the review committee.</p> <p>2. The review shall include an assessment of, but shall not be limited to:</p> <p>(a) the adequacy of resources, the degree of independence, and governance arrangements of the competent authority, with particular regard to the effective application of the Union acts referred to in Article 1(2) and the capacity to respond to market developments;</p> <p>(b) the degree of convergence reached in the application of Union law and in supervisory practice, including regulatory technical standards and implementing technical standards, guidelines and recommendations adopted pursuant to Articles 10 to 16, and the extent to which the supervisory practice achieves the objectives set out in Union law;</p> <p>(c) best practices developed by some competent authorities which might be of benefit for other competent authorities to adopt;</p> <p>(d) the effectiveness and the degree of convergence reached with regard to the enforcement of the provisions adopted in the implementation of Union law, including the administrative measures and sanctions imposed against persons responsible where those provisions have not been complied with.</p>	<p>provided to the Authority in accordance with Article 35, and any information from stakeholders shall be taken into account.</p> <p><del>1a. For the purposes of this Article, the Authority shall establish a review committee, exclusively composed of staff from the Authority. The Authority may delegate certain tasks or decisions to the review committee.</del></p> <p>2. The <b>peer</b> review shall include an assessment of, but shall not be limited to:</p> <p>(a) the adequacy of resources, the degree of independence, and governance arrangements of the competent authority, with particular regard to the effective application <b>of the regulatory technical standards and implementing technical standards referred to in Articles 10 to 15</b> and of the Union acts referred to in Article 1(2) and the capacity to respond to market developments;</p> <p>(b) the degree of convergence reached in the application of Union law and in supervisory practice, including regulatory technical standards and implementing technical standards, guidelines and recommendations adopted pursuant to Articles 10 to 16, and the extent to which the supervisory practice achieves the objectives set out in Union law;</p> <p>(c) best practices developed by some competent authorities which might be of benefit for other competent authorities to adopt;</p> <p>(d) the effectiveness and the degree of convergence reached with regard to the enforcement of the provisions adopted in the implementation of Union law, including the administrative measures and sanctions imposed against persons responsible where those provisions have not been complied with.</p>

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<p>3. The Authority shall produce a report setting out the results of the review. That report shall explain and indicate the follow-up measures that are foreseen as a result of the review. Those follow-up measures may be adopted in the form of guidelines and recommendations pursuant to Article 16 and opinions pursuant to Article 29(1)(a). In accordance with Article 16(3), the competent authorities shall make every effort to comply with any guidelines and recommendations issued. Where competent authorities do not take action to address the follow-up measures indicated in the report, the Authority shall issue a follow-up report.</p> <p>When developing draft regulatory technical standards or draft implementing technical standards in accordance with Articles 10 to 15, or guidelines or recommendations in accordance with Article 16, the Authority shall take into account the outcome of the review, along with any other information acquired by the Authority in carrying out its tasks, in order to ensure convergence of the highest quality supervisory practices.</p> <p>3a. The Authority shall submit an opinion to the Commission where, having regard to the outcome of the review or to any other information acquired by the Authority in carrying out its tasks, it considers that further harmonisation of the rules applicable to financial institutions or competent authorities would be necessary.</p> <p>4. The Authority shall publish the reports referred to in paragraph 3 including any follow-up report,</p>	<p><del>3. The Authority shall produce a report setting out the results of the review. That report shall explain and indicate the follow-up measures that are foreseen as a result of the review. Those follow-up measures may be adopted in the form of guidelines and recommendations pursuant to Article 16 and opinions pursuant to Article 29(1)(a). In accordance with Article 16(3), the competent authorities shall make every effort to comply with any guidelines and recommendations issued. Where competent authorities do not take action to address the follow-up measures indicated in the report, the Authority shall issue a follow-up report.</del></p> <p><b>3. On the basis of a peer review, the Authority may issue guidelines and recommendations pursuant to Article 16. In accordance with Article 16(3), the competent authorities shall make every effort to comply with those guidelines and recommendations.</b></p> <p>When developing draft regulatory technical standards or draft implementing technical standards in accordance with Articles 10 to 15, or guidelines or recommendations in accordance with Article 16, the Authority shall take into account the outcome of the <b>peer</b> review, along with any other information acquired by the Authority in carrying out its tasks, in order to ensure convergence of the highest quality supervisory practices.</p> <p>3a. The Authority shall submit an opinion to the Commission where, having regard to the outcome of the <b>peer</b> review or to any other information acquired by the Authority in carrying out its tasks, it considers that further harmonisation of the rules applicable to financial institutions or competent authorities would be necessary.</p> <p>4. The Authority shall publish the reports referred to in paragraph 3 including any follow-up report,</p>

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<p>unless publication would involve risks to the stability of the financial system. The competent authority that is subject to the review shall be invited to comment before the publication of any report. Those comments shall be made publicly available unless publication would involve risks to the stability of the financial system.'</p>	<p>unless publication would involve risks to the stability of the financial system. The competent authority that is subject to the review shall be invited to comment before the publication of any <b>the</b> report. <del>Those comments shall be made publicly available unless publication would involve risks to the stability of the financial system.</del></p>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>This proposed amendment reflects the ECB's view that the existing peer review process has been a valuable and successful mechanism in furthering supervisory convergence in the Union by enabling the sharing of best practices between competent authorities. Therefore, independent reviews are not considered necessary to attain the objectives envisaged in the proposed regulation. See paragraph 2.4.2 of this opinion.</i></p>	
<p style="text-align: center;">Amendment 5</p> <p style="text-align: center;">Article 1(15) of the proposed regulation (new) Article 31a of Regulation (EU) No 1093/2010)</p>	
<p><i>'Article 31a</i></p> <p><b>Coordination on delegation and outsourcing of activities as well as of risk transfers</b></p> <p>1. The Authority shall on an ongoing basis coordinate supervisory actions of competent authorities with a view to promoting supervisory convergence in the fields of delegation and outsourcing of activities by financial institutions as well as in relation to risk transfers conducted by them, in accordance with paragraphs 2, 3, and 4 and 5.</p> <p>2. The competent authorities shall notify the Authority where they intend to carry out an authorisation or registration related to a financial institution which is under supervision of the competent authority concerned in accordance with the acts referred to in Article 1(2) and where the business plan of the financial institution entails the</p>	<p><del><i>'Article 31a</i></del></p> <p><del><b>Coordination on delegation and outsourcing of activities as well as of risk transfers</b></del></p> <p><del>1. The Authority shall on an ongoing basis coordinate supervisory actions of competent authorities with a view to promoting supervisory convergence in the fields of delegation and outsourcing of activities by financial institutions as well as in relation to risk transfers conducted by them, in accordance with paragraphs 2, 3, and 4 and 5.</del></p> <p><del>2. The competent authorities shall notify the Authority where they intend to carry out an authorisation or registration related to a financial institution which is under supervision of the competent authority concerned in accordance with the acts referred to in Article 1(2) and where the business plan of the financial institution entails the</del></p>

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<p>outsourcing or delegation of a material part of its activities or any of the key functions or the risk transfer of a material part of its activities into third countries, to benefit from the EU passport while essentially performing substantial activities or functions outside the Union. The notification to the Authority shall be sufficiently detailed to allow for a proper assessment. by the Authority.</p> <p>Where the Authority considers it necessary to issue an opinion to a competent authority regarding the non-compliance of an authorisation or registration notified pursuant to the first subparagraph with Union law or guidelines, recommendations or opinions adopted by the Authority, the Authority shall inform that competent authority thereof within 20 working days of the receipt of the notification by that competent authority. In that case the competent authority concerned shall await the opinion of the Authority before carrying out the registration or authorisation.</p> <p>At the request of the Authority, the competent authority shall within 15 working days of the receipt of such a request provide information related to its decisions to authorise or register a financial institution which is under its supervision in accordance with the acts referred to in Article 1(2).</p> <p>The Authority shall issue the opinion, without prejudice to any time limits set out in Union law, at the latest within 2 months of the receipt of the notification pursuant to the first subparagraph.</p> <p>3. A financial institution shall notify the competent authority of the outsourcing or delegation of a material part of its activities or any of its key functions, and the risk transfer of a material part of its activities, to another entity or its own branch established in a third country. The competent authority concerned shall inform the Authority of such notifications on a semi-annual basis.</p>	<p><del>outsourcing or delegation of a material part of its activities or any of the key functions or the risk transfer of a material part of its activities into third countries, to benefit from the EU passport while essentially performing substantial activities or functions outside the Union. The notification to the Authority shall be sufficiently detailed to allow for a proper assessment. by the Authority.</del></p> <p><del>Where the Authority considers it necessary to issue an opinion to a competent authority regarding the non-compliance of an authorisation or registration notified pursuant to the first subparagraph with Union law or guidelines, recommendations or opinions adopted by the Authority, the Authority shall inform that competent authority thereof within 20 working days of the receipt of the notification by that competent authority. In that case the competent authority concerned shall await the opinion of the Authority before carrying out the registration or authorisation.</del></p> <p><del>At the request of the Authority, the competent authority shall within 15 working days of the receipt of such a request provide information related to its decisions to authorise or register a financial institution which is under its supervision in accordance with the acts referred to in Article 1(2).</del></p> <p><del>The Authority shall issue the opinion, without prejudice to any time limits set out in Union law, at the latest within 2 months of the receipt of the notification pursuant to the first subparagraph.</del></p> <p><del>3. A financial institution shall notify the competent authority of the outsourcing or delegation of a material part of its activities or any of its key functions, and the risk transfer of a material part of its activities, to another entity or its own branch established in a third country. The competent authority concerned shall inform the Authority of such notifications on a semi-annual basis.</del></p>

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<p>Without prejudice to Article 35, at the request of the Authority, the competent authority shall provide information in relation to the outsourcing, delegation or risk transfer arrangements by financial institutions.</p> <p>The Authority shall monitor whether the competent authorities concerned verify that outsourcing, delegation or risk transfer arrangements referred to in the first subparagraph are concluded in accordance with Union law, comply with guidelines, recommendations or opinions from the Authority and do not prevent effective supervision by the competent authorities and enforcement in a third country.</p> <p>4. The Authority may issue recommendations to the competent authority concerned, including recommendations to review a decision or to withdraw an authorisation. Where the competent authority concerned does not follow the recommendations of the Authority within 15 working days, the competent authority shall state the reasons and the Authority shall make its recommendation public together with those reasons.'</p>	<p><del>Without prejudice to Article 35, at the request of the Authority, the competent authority shall provide information in relation to the outsourcing, delegation or risk transfer arrangements by financial institutions.</del></p> <p><del>The Authority shall monitor whether the competent authorities concerned verify that outsourcing, delegation or risk transfer arrangements referred to in the first subparagraph are concluded in accordance with Union law, comply with guidelines, recommendations or opinions from the Authority and do not prevent effective supervision by the competent authorities and enforcement in a third country.</del></p> <p>4. The Authority may issue recommendations to the competent authority concerned, including recommendations to review a decision or to withdraw an authorisation. Where the competent authority concerned does not follow the recommendations of the Authority within 15 working days, the competent authority shall state the reasons and the Authority shall make its recommendation public together with those reasons.'</p>
<p><u>Explanation</u></p> <p><i>The proposed amendment suggests maintaining the current legislative framework in the areas of delegation and outsourcing activities as well as risk transfers. The ECB considers that transferring powers from competent authorities to the EBA in the areas of delegation and outsourcing activities as well as risk transfers, as suggested by the Commission, could overlap with its microprudential supervisory tasks in the context of the Single Supervisory Mechanism and could add unnecessary administrative burden to the supervisory process. See paragraph 2.5 of this opinion.</i></p>	
<p>Amendment 6</p> <p>Point (c) of Article 1(17)(b) of the proposed regulation (new) Article 33(2c) of Regulation (EU) No 1093/2010</p>	
' ...	' ...

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<p>2c. The competent authorities shall inform the Authority in advance of their intentions to conclude any administrative arrangements with third-country supervisory authorities in any of the areas governed by the acts referred to in Article 1(2), including in relation to branches of third country entities. They shall provide simultaneously to the Authority a draft of such planned arrangements.</p> <p>The Authority may develop model administrative arrangements, with a view to establishing consistent, efficient and effective supervisory practices within the Union and to strengthening international supervisory coordination. In accordance with Article 16(3), the competent authorities shall make every effort to follow such model arrangements.</p> <p>In the report referred to in Article 43(5), the Authority shall include information on the administrative arrangements agreed upon with supervisory authorities, international organisations or administrations in third countries, the assistance provided by the Authority to the Commission in preparing equivalence decisions and the monitoring activity pursued by the Authority in accordance with paragraph 2a.'</p>	<p>2c. The competent authorities shall inform the Authority <b>of the administrative arrangements agreed upon with supervisory authorities, international organisations or administrations in third countries.</b> <del>in advance of their intentions to conclude any administrative arrangements with third-country supervisory authorities in any of the areas governed by the acts referred to in Article 1(2), including in relation to branches of third country entities. They shall provide simultaneously to the Authority a draft of such planned arrangements.</del></p> <p>The Authority may <b>cooperate with the competent authorities to</b> develop model administrative arrangements, with a view to establishing consistent, efficient and effective supervisory practices within the Union and to strengthening international supervisory coordination. <del>In accordance with Article 16(3),</del> <del>the competent authorities shall make every effort to follow such model arrangements</del> <b>as closely as possible.</b></p> <p>In the report referred to in Article 43(5), the Authority shall include information on the administrative arrangements agreed upon with supervisory authorities, international organisations or administrations in third countries, the assistance provided by the Authority to the Commission in preparing equivalence decisions and the monitoring activity pursued by the Authority in accordance with paragraph 2a.'</p>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>The proposed amendments aim to limit the complexities associated with the negotiation process for memoranda of understanding (MoUs), and, at the same time, to safeguard the EBA's right to be informed about the progress of the competent authorities in improving their international cooperation with foreign supervisors regarding administrative arrangements. Furthermore, it could be beneficial for the EBA to develop an MoU template jointly with the competent authorities, which already have expertise in developing templates as well as templates currently in use. A shared administrative arrangement is more likely to be widely and effectively enforced as long as relying upon such administrative arrangements is</i></p>	

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<p><i>not mandatory, and expectations of the supervisory authorities are managed regarding the amount of harmonisation that can actually be achieved. See paragraph 2.6.4 of this opinion.</i></p>	
<p style="text-align: center;">Amendment 7 Article 1(20) of the proposed regulation (new) Article 35b of Regulation (EU) No 1093/2010</p>	
<p><i>Article 35b</i></p> <p><b>Request for information to financial institutions, holding companies or branches of relevant financial institutions and non-regulated operational entities within a financial group or conglomerate</b></p> <p>1. Where information requested under paragraph 1 or paragraph 5 of Article 35 is not available or is not made available within the time limit set by the Authority, it may by simple request or by decision require the following institutions and entities to provide all necessary information to enable the Authority to carry out its duties under this Regulation:</p> <p>(a) relevant financial institutions;</p> <p>(b) holding companies or branches of a relevant financial institution;</p> <p>(c) non-regulated operational entities within a financial group or conglomerate that are significant to the financial activities of the relevant financial institutions.</p> <p>2. Any simple request for information referred to in paragraph 1 shall:</p> <p>(a) refer to this Article as the legal base of that request;</p> <p>(b) state the purpose of the request;</p> <p>(c) specify the information required;</p> <p>(d) include a time limit within which the information is to be provided;</p>	<p><i>Article 35b</i></p> <p><b>Request for information to financial institutions, holding companies or branches of relevant financial institutions and non-regulated operational entities within a financial group or conglomerate</b></p> <p>1. Where information requested under paragraph 1 or paragraph 5 of Article 35 is not available or is not made available within the time limit set by the Authority, it may by simple request or by decision require the following institutions and entities to provide all necessary information to enable the Authority to carry out its duties under this Regulation:</p> <p>(a) relevant financial institutions;</p> <p>(b) holding companies or branches of a relevant financial institution;</p> <p>(c) non-regulated operational entities within a financial group or conglomerate that are significant to the financial activities of the relevant financial institutions.</p> <p>2. Any simple request for information referred to in paragraph 1 shall:</p> <p>(a) refer to this Article as the legal base of that request;</p> <p>(b) state the purpose of the request;</p> <p>(c) specify the information required;</p> <p>(d) include a time limit within which the information is to be provided;</p>

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<p>(e) include a statement that there is no obligation on the person from whom the information is requested to provide that information but that in case of a voluntary reply to the request, the information provided must not be incorrect or misleading;</p> <p>(f) indicate the amount of the fine to be issued in accordance with Article 35c where the information provided is incorrect or misleading information.</p> <p>3. When requesting information by decision, the Authority shall:</p> <p>(a) refer to this Article as the legal base of that request;</p> <p>(b) state the purpose of the request;</p> <p>(c) specify the information required;</p> <p>(d) set a time limit within which the information is to be provided;</p> <p>(e) indicate the periodic penalty payments provided for in Article 35d where the production of the required information is incomplete;</p> <p>(f) indicate the fine provided for in Article 35c where the answers to the questions are incorrect or misleading information;</p> <p>(g) indicate the right to appeal the decision before the Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union in accordance with Articles 60 and 61.</p>	<p>(e) include a statement that there is no obligation on the person from whom the information is requested to provide that information but that in case of a voluntary reply to the request, the information provided must not be incorrect or misleading;</p> <p><b>(f) confirm that the requested information is not available from competent authorities or other authorities, or has not been made available by such authorities within the applicable time limit;</b></p> <p><del>(f)</del> indicate the amount of the fine to be issued in accordance with Article 35c where the information provided is incorrect or misleading information.</p> <p>3. When requesting information by decision, the Authority shall:</p> <p>(a) refer to this Article as the legal base of that request;</p> <p>(b) state the purpose of the request;</p> <p>(c) specify the information required;</p> <p>(d) set a time limit within which the information is to be provided;</p> <p><b>(e) confirm that the requested information is not available from competent authorities or other authorities, or has not been made available by such authorities within the applicable time limit;</b></p> <p><del>(f)</del> indicate the periodic penalty payments provided for in Article 35d where the production of the required information is incomplete;</p> <p><del>(f)</del> indicate the fine provided for in Article 35c where the answers to the questions are incorrect or misleading information;</p> <p><del>(g)</del> indicate the right to appeal the decision before the Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union in accordance with Articles 60 and 61.</p>

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<p>4. The relevant institutions and entities listed in paragraph 1 or their representatives and, in the case of legal persons or associations having no legal personality, the persons authorised to represent them by law or by their constitution shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.</p> <p>5. The Authority shall send, without delay, a copy of the simple request or of its decision to the competent authority of the Member State where the relevant entity listed in paragraph 1 concerned by the request for information is domiciled or established.</p> <p>6. The Authority may use confidential information received in accordance with this Article only for the purposes of carrying out the tasks assigned to it by this Regulation.'</p>	<p>4. The relevant institutions and entities listed in paragraph 1 or their representatives and, in the case of legal persons or associations having no legal personality, the persons authorised to represent them by law or by their constitution shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.</p> <p>5. The authority shall send, without delay, a copy of the simple request or of its decision to the competent authority of the Member State where the relevant entity listed in paragraph 1 concerned by the request for information is domiciled or established. <b>With respect to supervisory and financial reporting data* as well as data on funding plans**, information shall always be collected by the competent authority, which shall then forward the information to the Authority.</b></p> <p>6. The Authority may use confidential information received in accordance with this Article only for the purposes of carrying out the tasks assigned to it by this Regulation.'</p> <p>*Commission Implementing Regulation No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 191, 28.6.2014, p. 1)</p> <p>**Guidelines EBA/GL/2014/04 of the European Banking Authority of 19 June 2014 on harmonised definition and templates for funding plans of credit institutions under Recommendation A4 of ESRB/2012/02</p>

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<p style="text-align: center;"><u>Explanation</u></p> <p><i>The proposed amendment aims to clarify that, as a precondition to making information requests to financial institutions, the EBA should first confirm that the requested information is not available from the competent authorities or other authorities, or has not been made available within the applicable time limit. The ECB considers that such confirmation is warranted to avoid an overlap of requests for information by the competent authority and the EBA. Moreover, the proposed amendment seeks to ensure the so-called 'sequential approach' regarding the collection of supervisory and financial reporting data, which the competent authorities receive from institutions in accordance with the relevant provisions of Commission Implementing Regulation No 680/2014, and data on funding plans received from institutions in compliance with Guidelines EBA/GL/2014/04, according to which competent authorities collect the information and then forward it to the EBA.</i></p>	
<p style="text-align: center;">Amendment 8</p> <p style="text-align: center;">Article 1(20) of the proposed regulation</p> <p style="text-align: center;">((new) Article 35d(1) of Regulation (EU) No 1093/2010)</p>	
<p>'1. The Authority shall adopt a decision to impose a fine where it finds that an institution or entity listed in Article 35b(1) has, intentionally or negligently, failed to provide information in response to a decision requiring information pursuant to Article 35b(3) or has provided incomplete, incorrect or misleading information in response to a simple request for information or a decision pursuant to Article 35b(2).'</p>	<p>'1. The Authority shall adopt a decision to impose a fine where it finds that an institution or entity listed in Article 35b(1) has, intentionally or negligently, failed to provide information in response to a decision requiring information pursuant to Article 35b(3) or has provided incomplete, incorrect or misleading information in response to a simple request for information or a decision pursuant to Article 35b(2).</p> <p><b>This shall be without prejudice to the ability of the competent authorities to exercise powers available to them in response to a failure by an institution or entity listed in Article 35b(1) to comply accurately, completely or in a timely manner with requests for information addressed to them by those competent authorities.'</b></p>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>The proposed amendment aims to clarify that the EBA's adoption of a decision that imposes a fine or a periodic penalty payment will be without prejudice to the ability of the competent authorities to exercise powers available to them after they have requested information from a relevant institution or entity that</i></p>	

Text proposed by the Commission	Amendments proposed by the ECB <sup>2</sup>
<i>fails to timely, accurately or completely respond to the request. See paragraph 2.7 of this opinion.</i>	
<p style="text-align: center;">Amendment 9</p> <p style="text-align: center;">Article 1(20) of the proposed regulation (new) Article 35e(1) of Regulation (EU) No 1093/2010</p>	
<p>'1. The Authority shall adopt decisions to impose a periodic penalty payment in order to compel institutions or entities referred to in Article 35b(1) to provide information requested by decision in accordance with Article 35b(3)..'</p>	<p>'1. The Authority shall adopt decisions to impose a periodic penalty payment in order to compel institutions or entities referred to in Article 35b(1) to provide information requested by decision in accordance with Article 35b(3).-</p> <p><b>This shall be without prejudice to the ability of the competent authorities to exercise powers available to them in response to a failure by an institution or entity listed in Article 35b(1) to comply accurately, completely or in a timely manner with requests for information addressed to them by those competent authorities.'</b></p>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>The proposed amendment aims to clarify that the EBA's adoption of a decision that imposes a fine or a periodic penalty payment will be without prejudice to the ability of the competent authorities to exercise powers available to them after they have requested information from a relevant institution or entity that fails to timely, accurately or completely respond to the request. See paragraph 2.7 of this opinion.</i></p>	
<p style="text-align: center;">Amendment 10</p> <p style="text-align: center;">Article 1(27) of the proposed regulation (Article 43(1) of Regulation (EU) No 1093/2010)</p>	
<p>'1. The Board of Supervisors shall give guidance to the work of the Authority. Save as otherwise provided in this Regulation the Board of Supervisors shall adopt the opinions, recommendations, guidelines and decisions of the Authority, and issue the advice referred to in Chapter II, based on a proposal from the Executive Board.'</p>	<p>'1. The Board of Supervisors shall give guidance to the work of the Authority. <del>Save as otherwise provided in this Regulation</del>the Board of Supervisors shall adopt the opinions, recommendations, guidelines and decisions of the Authority, and issue the advice referred to in Chapter II,<del> based on a proposal from the Executive Board.</del></p>

Text proposed by the Commission	Amendments proposed by the ECB <sup>2</sup>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>The proposed amendment aims to reflect that the Board of Supervisors should remain the principal decision-making body in the EBA and that the Executive Board is to focus on administrative tasks. Therefore, the Executive Board should not have a general right of initiative for regulatory acts to be adopted by the Board of Supervisors. See paragraph 2.1.2 of the opinion.</i></p>	
<p style="text-align: center;">Amendment 11</p> <p style="text-align: center;">Article 1(31) of the proposed regulation ((new) Article 45a(2) of Regulation (EU) No 1093/2010)</p>	
<p>'2. The representative of the Commission shall participate in meetings of the Executive Board without the right to vote save in respect of matters referred to in Article 63.'</p>	<p>'2. The representative of the Commission shall participate in meetings of the Executive Board without the right to vote save in respect of matters referred to in Article 63. <b>A representative of the ECB shall participate in meetings of the Executive Board without the right to vote.'</b></p>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>This proposed amendment aims to reflect, in the EBA's governance structure, the close cooperation between the ECB and the EBA with regard to their joint workload. It is currently not foreseen that the ECB will be granted membership or observer status on the proposed EBA Executive Board, despite it being a Union institution and responsible for the supervision of significant credit institutions in the euro area. See paragraph 2.1.4 of this opinion.</i></p>	
<p style="text-align: center;">Amendment 12</p> <p style="text-align: center;">Article 1(34) of the proposed regulation (Articles 47(3) and Article 47(3a) of Regulation (EU) No 1093/2010)</p>	
<p>'3. The Executive Board shall exercise its budgetary powers in accordance with Articles 63 and 64.</p> <p>For the purposes of Articles 17, 19, 22, 29a, 30, 31a, 32 and 35b to 35h, the Executive Board shall be competent to act and to take decisions. The Executive Board shall keep the Board of Supervisors informed of the decisions it takes.</p> <p>3a. The Executive Board shall examine, give an opinion and make proposals on all matters to be decided by the Board of Supervisors.'</p>	<p>'3. The Executive Board shall exercise its budgetary powers in accordance with Articles 63 and 64.'</p> <p><del>For the purposes of Articles 17, 19, 22, 29a, 30, 31a, 32 and 35b to 35h, the Executive Board shall be competent to act and to take decisions. The Executive Board shall keep the Board of Supervisors informed of the decisions it takes.</del></p> <p><del>3a. The Executive Board shall examine, give an opinion and make proposals on all matters to be decided by the Board of Supervisors.'</del></p>

<b>Text proposed by the Commission</b>	<b>Amendments proposed by the ECB<sup>2</sup></b>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>The proposed amendments aim to clarify that the Executive Board should be focused on carrying out administrative tasks and not be involved in decisions relating to the supervision of credit institutions, which are to be made by the Board of Supervisors. See paragraph 2.1.2 of this opinion.</i></p>	