



EUROPEAN CENTRAL BANK
EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 7 December 2018

on an amended proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) and related legal acts
(CON/2018/55)

Introduction and legal basis

On 11 October and 14 November 2018 the European Central Bank (ECB) received requests from the European Parliament and from the Council of the European Union, respectively, for an opinion on an amended proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority); 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) No 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds; 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; and Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing¹ (hereinafter the 'amended proposal').

On 23 November 2017 the Council of the European Union and the European Parliament consulted the ECB on the original legislative 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 acts² and received an opinion adopted by the ECB on 11 April 2018³. The amended proposal contains new elements for which the European Parliament has re-consulted the ECB.

¹ COM(2018) 646 final.

² COM(2017) 536 final.

³ Opinion CON/2018/19 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 (OJ C 255, 20.7.2018, p. 2). All ECB Opinions are published on the ECB website at www.ecb.europa.eu.

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 concerning the prudential supervision of credit institutions 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.

1. General observations

- 1.1 The amended proposal intends to reinforce the mandate of the European Banking Authority (EBA) in the prevention of the use of the financial system for the purpose of money laundering (ML) and terrorism financing (TF), in order to strengthen confidence in the Banking and Capital Market Unions. The ECB fully supports this goal. The amended proposal will contribute to better identification of ML/TF risks at Union level, and to enhancing and harmonising supervisory practices across the Union.
- 1.2 The task of supervising credit institutions in relation to the prevention of the use of the financial system for the purpose of ML or TF (anti-money laundering and countering the financing of terrorism (AML/CFT) supervision) has not been conferred on the ECB. However, the outcomes of the AML/CFT supervision are important to consider for the discharge of the ECB's tasks concerning the prudential supervision of credit institutions under Article 127(6) of the Treaty and the Council Regulation (EU) No 1024/2013⁴. In particular, the risk of the use of the financial system for ML or TF is relevant for ECB prudential supervisory decisions concerning acquisitions of qualifying holdings in supervised entities (including regarding the process of granting authorisations to credit institutions) and fit and proper assessments of existing or prospective managers of supervised entities, as well as for day-to-day supervision in the context of the supervisory review and evaluation process. Serious breaches of AML/CFT requirements can negatively affect the reputation of a credit institution and lead to significant administrative or criminal sanctions imposed on supervised entities or their staff, and can thus pose a risk for the viability of supervised entities. In certain cases, serious breaches of AML/CFT requirements can directly trigger a need for a credit institution's authorisation to be withdrawn. It is therefore of utmost importance that the ECB, as well as other prudential supervisors, receive from AML/CFT supervisors timely and reliable information about ML/TF risks and breaches of AML/CFT requirements by supervised entities.

⁴ 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).

- 1.3 The Union legal framework for the prevention of the use of the financial system for the purposes of ML or TF has been updated in recent years by several legislative acts⁵ on which the ECB has provided its opinion. The ECB strongly supports a Union regime which ensures that Member States and Union resident institutions have effective tools in the fight against ML and TF, in particular against any misuse of the financial system by money launderers and financiers of terrorism and their accomplices⁶.
- 1.4 Since the ECB has already opined, in Opinion CON/2018/19, on the original legislative proposal, the ECB will focus only on the new elements contained in the amended proposal.

2. Specific observations

2.1 *Information to be collected by the EBA*

- 2.1.1 Under the amended proposal, the EBA would have the task of collecting information from competent authorities relating to weaknesses identified in the processes and procedures, governance arrangements, fit and proper assessments, business models and activities of financial sector operators to prevent ML and TF as well as measures taken by competent authorities⁷. The precise information that needs to be reported to the EBA is not clear. For example, it is not clear how a weakness in a business model to prevent ML and TF should be understood. Furthermore, the amended proposal does not contain any qualification of the weaknesses that should be reported, which implies that even very minor weaknesses would need to be reported. It is suggested that the regulation should: (a) clarify that this new reporting requirement captures any material weaknesses that increase the risk that the financial system could be used for ML or TF; and (b) require the EBA to develop guidance for competent authorities as to what constitutes such material weaknesses. Further, the regulation should specify any additional elements or processes that might be necessary for the efficient functioning of the information exchange procedure. In addition, ML/TF risks relevant for the EBA's new role can be identified in supervisory procedures other than those already listed in the amended proposal, such as in granting authorisations or assessments of acquisitions of qualifying holdings in financial market operators. It is suggested to extend the information collected by the EBA to include this type of information.
- 2.1.2 The amended proposal should further clarify that reporting to the EBA and the subsequent dissemination of information by the EBA does not replace the direct exchange of information among competent authorities. Introducing the EBA as an intermediary in all information exchanges

⁵ See Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (OJ L 156, 19.6.2018, p. 43); Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73); Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (OJ L 141, 5.6.2015, p. 1).

⁶ See ECB Opinion CON/2013/32.

⁷ Proposed new Article 9a(1)(a) of Regulation (EU) No 1093/2010.

would put a lot of pressure on the EBA's resources, while not necessarily improving the efficiency of the information exchange.

- 2.1.3 Where information or documents about material weaknesses are shared between several competent authorities, multiple reporting of the same material weakness by all competent authorities should be avoided. The amended proposal should thus stipulate that only the competent authority that originally collected the information or produced the document should report to the EBA.
- 2.1.4 To limit the additional burden on competent authorities that this new reporting to the EBA will cause, competent authorities should only be required to report information that they have not shared with the EBA through other channels. For example, where the EBA participates in colleges of supervisors and receives information about a relevant material weakness through those colleges, competent authorities should not be required to report it again to the EBA. The EBA should thus utilise already existing information channels to the extent possible. In this respect, the agreement on the practical modalities for exchange of information that is to be concluded by 10 January 2019 under Article 57a(2) of Directive (EU) 2015/849 of the European Parliament and of the Council⁸ between the ECB and the AML/CFT supervisors of all the Member States will be a significant channel for the exchange of information about relevant breaches of AML/CFT and prudential requirements. The EBA should be granted direct access to the information that is exchanged under this agreement. Direct access would be the most efficient way to ensure timely sharing of the relevant information with the EBA. Such a set-up would allow the EBA to receive information without additional delays, while eliminating the need for the competent authorities that are parties to this agreement to report the same information to the EBA.
- 2.1.5 For situations where dedicated reports to the EBA will be necessary, it is suggested that the EBA should also develop guidelines, including templates to facilitate reporting.
- 2.1.6 It is not clear what the EBA should be coordinating with the Financial Intelligence Units (FIUs) under the last sentence of the newly proposed Article 9a(1)(a) in connection with the provision of information to the EBA. It is also not clear whether or how this coordination relates to the collection of information that is regulated in that draft provision. The amended proposal should be further clarified to this end. If the coordination with FIUs relates to the collection of information from prudential supervisors, including the ECB, the amended proposal should specify the rules regarding the FIUs' access to the information that the competent authorities provide to the EBA. If the coordination with FIUs does not relate to the EBA's collection of information, the requirement for coordination between the EBA and the FIUs should be moved to another provision.
- 2.1.7 Based on practical experience with the newly proposed data collection and dissemination procedure described above, it seems appropriate to review this procedure within the regular report prepared by the Commission under Article 81 of Regulation (EU) No 1093/2010. Such a review would verify the efficiency of the procedure and assess whether any changes should be made.

⁸ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

2.2 *Promoting convergence of supervisory processes and risk assessments on competent authorities*

2.2.1 Under the amended proposal, the EBA would have the task of promoting the convergence of supervisory processes referred to in the Directive (EU) 2015/849, including by conducting periodic reviews⁹. The ECB understands that these supervisory processes only concern AML/CFT supervisors and not prudential supervisors. This fact should be explicitly clarified in the amended proposal.

2.2.2 Under the amended proposal, the EBA would have the task of performing risk assessments on the competent authorities that would be mainly, but not exclusively, focused on AML/CFT supervisors¹⁰. It is not clear how these risk assessments would differ from the abovementioned periodic reviews. Both the periodic reviews and the risk assessments seem to cover the identification and addressing of ML/TF risks but, while the draft provision governing periodic reviews refers to all ML/TF risks in general, the draft provision governing risk assessments refers only to the 'most important emerging risks'. Thus, the risk assessments seem to be already incorporated into the periodic reviews. The amended proposal should therefore be rephrased to more clearly distinguish the risk assessments from the periodic reviews. At the same time, the notion of the 'most important emerging risks' should be further clarified.

2.3 *Facilitating cooperation with relevant authorities in third countries*

Under the amended proposal, the EBA would have a leading role in facilitating cooperation between competent authorities in the Union and the relevant authorities in third countries in material cases of ML or TF having a cross-border dimension involving third countries¹¹. The ECB welcomes any support from the EBA that helps competent authorities interact more efficiently with relevant authorities in third countries. The ECB believes, however, that the EBA's coordination should not replace any direct contacts that competent authorities may need to have with relevant authorities in third countries. Where the direct cooperation of those authorities can work well, it does not seem efficient to add an additional level of coordination through the EBA. Introducing the EBA as an additional authority where there is direct cooperation between a competent authority and a relevant authority of a third country could also be problematic from a legal point of view if the competent authority and the relevant authority in a third country cooperate with each other on the basis of a memorandum of understanding to which the EBA is not a party. The amended proposal should therefore grant the EBA the power to assist the competent authorities in cooperating with relevant authorities in third countries where relevant. However, the amended proposal does not need to require the EBA to automatically assume a leading role in facilitating such cooperation. In addition the concept of 'material breaches' should be further specified, so that it is clear in which situations the requirement for EBA support would be triggered. To this end, it seems necessary to specify the criteria that the EBA or national competent authorities should follow in identifying such cases. Additionally, the procedures for interaction between the EBA and national competent authorities in the identification, reporting and treatment of these cases should be set out. It is

⁹ Proposed new Article 9a(3) of Regulation (EU) No 1093/2010.

¹⁰ Proposed new Article 9a(4) of Regulation (EU) No 1093/2010.

¹¹ Proposed new Article 9a(5) of Regulation (EU) No 1093/2010.

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

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, 7 December 2018.

[signed]

The President of the ECB

Mario DRAGHI

Technical working document
produced in connection with ECB Opinion CON/2018/55¹
Drafting proposals

Text proposed by the Commission	Amendments proposed by the ECB²
Amendment 1 Point (6a) of Article 1 of the amended proposal (Article 9a(1) of Regulation (EU) No 1093/2010)	
<p>'1. The Authority shall take a leading role in promoting integrity, transparency and security in the financial system by means of adopting measures to prevent and combat money laundering and terrorist financing, including by:</p> <p>(a) collecting information from competent authorities relating to weaknesses identified in the processes and procedures, governance arrangements, fit and proper assessments, business models and activities of financial sector operators to prevent money-laundering and terrorist financing as well as measures taken by competent authorities. Competent authorities shall provide all such information to the Authority in addition to any obligations under Article 35. The Authority shall coordinate closely with Financial Intelligence Units;</p> <p>(b) developing common standards for combating money-laundering and terrorist financing in the financial sector and promoting their consistent implementation;</p>	<p>'1. The Authority shall take a leading role in promoting integrity, transparency and security in the financial system by means of adopting measures to prevent the use of the financial system for and combat money laundering and terrorist financing, including by:</p> <p>(a) collecting information from competent authorities relating to material weaknesses identified in the processes and procedures, governance arrangements, fit and proper assessments, business models and activities of financial sector operators to prevent that may increase the risk that the financial system might be used for money-laundering and or terrorist financing, as well as measures taken by competent authorities to address such weaknesses and any such risk identified in authorisation procedures, qualifying holding assessments or other relevant supervisory procedures. The competent authority which originally collected or compiled the relevant information shall provide all such information to the Authority in addition to any other obligations under Article 35. The Authority shall issue</p>

¹ 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.

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.

Text proposed by the Commission	Amendments proposed by the ECB ²
<p>(c) monitoring market developments and assessing vulnerabilities to money laundering and terrorist financing in the financial sector.¹</p>	<p>guidelines addressed to the competent authorities in accordance with Article 16 to specify the material weaknesses referred to in this point, the criteria to identify the relevant information to be provided, the frequency of its transmission, and any other elements or processes necessary for the efficient and effective functioning of this procedure, including by establishing templates for provision of information by competent authorities. The Authority shall utilise to the extent possible information that it receives through its participation in colleges of supervisors or other channels for information sharing to minimise the need for dedicated reporting by competent authorities. The Authority shall coordinate closely with Financial Intelligence Units;</p> <p>(b) developing common standards for the prevention of the use of the financial system for combating money-laundering and terrorist financing in the financial sector and promoting their consistent implementation;</p> <p>(c) monitoring market developments and assessing vulnerabilities of the financial system to money laundering and terrorist financing in the financial sector.¹</p>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>Referring to the prevention of the use of the financial system for the purpose of ML and TF seems to be more appropriate than referring to the prevention and combating of ML and TF. The former approach seems to better correspond to the wording of Directive (EU) 2015/849 of the European Parliament and of the Council³, and the legal basis of the amended proposal.</i></p>	

³ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

Text proposed by the Commission	Amendments proposed by the ECB ²
<p><i>The original wording, which refers to collecting information from competent authorities 'relating to weaknesses identified in the processes and procedures, governance arrangements, fit and proper assessments, business models and activities of financial sector operators to prevent money-laundering and terrorist financing as well as measures taken by competent authorities' is not fully clear. The proposed language does not contain any qualification of the kind of weaknesses that should be reported. It is suggested that the regulation should refer to 'material' weaknesses that may increase the risk that the financial system might be used for money-laundering or terrorist financing. It has also been suggested that the European Banking Authority (EBA) should develop guidelines for the competent authorities as to what constitutes such material weaknesses, to further specify any additional elements or processes that might be necessary for the efficient functioning of the information exchange procedure and to establish templates to facilitate reporting. Further, the suggested reformulation aims to avoid multiple reporting of the same information by several authorities, by clarifying that only the competent authority which originally collected or compiled the information should report it to the EBA.</i></p> <p><i>It is suggested to establish a requirement that the EBA should use, to the maximum extent possible, any already existing information exchange structures in which it participates. Such use would limit the additional burden on competent authorities that this new reporting to the EBA would place on them.</i></p> <p><i>In addition, ML/TF risks relevant for the EBA's new role can be identified in other supervisory procedures, such as in granting authorisations or assessments of acquisitions of qualifying holdings in financial market operators. It is suggested to extend the information collected by the EBA to include this type of information.</i></p> <p><i>Furthermore, it is not clear what the EBA should be coordinating with the Financial Intelligence Units (FIUs) under the last sentence of the newly proposed Article 9a(1)(a) in connection with the provision of information to the EBA. It is also not clear whether or how this coordination relates to the collection of information from prudential supervisors, including the ECB, which is regulated in that draft provision. The amended proposal should be further clarified to this end. If the coordination with FIUs relates to the collection of information, the amended proposal should specify the rules that would apply to the FIUs' access to the information that the competent authorities provide to the EBA. If the coordination does not relate to the EBA's collection of information, the requirement for coordination between the EBA and the FIUs should be moved to another provision.</i></p> <p><i>See paragraphs 2.1.1., 2.1.3., 2.1.4, 2.1.5. and 2.1.6. of this Opinion.</i></p>	
<p>Amendment 2</p> <p>Point (6a) of Article 1 of the amended proposal</p> <p>(Article 9a(2) of Regulation (EU) No 1093/2010)</p>	
<p>'2. The Authority shall establish and keep up to date a central database of information collected</p>	<p>'2. The Authority shall establish and keep up to date a central database of information collected</p>

Text proposed by the Commission	Amendments proposed by the ECB ²
pursuant to point (a) in paragraph 1. The Authority shall ensure that information is analysed and made available to competent authorities on a need-to-know and confidential basis.'	pursuant to point (a) in paragraph 1. The Authority shall ensure that information is analysed and made available to competent authorities on a need-to-know and confidential basis. This procedure shall not replace the direct exchange of information among competent authorities.'
<p style="text-align: center;"><u>Explanation</u></p> <p><i>The proposed amendment clarifies that reporting to the EBA and the subsequent dissemination of the information by the EBA does not replace the direct exchange of information among competent authorities. Introducing the EBA as an intermediary in all information exchanges would put a lot of pressure on the EBA's resources, while not necessarily improving the efficiency of the information exchange. See paragraph 2.1.2. of this Opinion.</i></p>	
<p style="text-align: center;">Amendment 3</p> <p style="text-align: center;">New point (187) of Article 9bis of the amended proposal (second subparagraph of Article 57a(2) of Directive (EU) 2015/849)</p>	
No text	<p>'(187) Article 57a is amended as follows:</p> <p>The second subparagraph is replaced by the following:</p> <p>"By 10 January 2019, the competent authorities supervising credit and financial institutions in accordance with this Directive and the ECB, acting pursuant to Article 27(2) of Regulation (EU) No 1024/2013 and point (g) of the first subparagraph of Article 56 of Directive 2013/36/EU of the European Parliament and of the Council^(*), shall conclude, with the support of the European Supervisory Authorities, an agreement on the practical modalities for exchange of information. The EBA shall have access to any information exchanged under this agreement."</p> <p>(*)Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit</p>

Text proposed by the Commission	Amendments proposed by the ECB ²
	institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).'
<p><u>Explanation</u></p> <p><i>A significant part of the information that will be exchanged under the agreement to be concluded between the ECB and the anti-money laundering and countering finance of terrorism (AML/CFT) supervisors in accordance with Article 57a(2) of Directive (EU) 2015/849 will likely overlap with the information which the EBA shall receive under the newly proposed Article 9a(1)(a) of Regulation (EU) 1093/2010. Direct access to the information exchanged under this agreement therefore seems warranted in order to limit the additional burden that the new reporting to the EBA will place on the competent authorities. See paragraph 2.1.4. of this Opinion.</i></p>	
<p>Amendment 4</p> <p>Point (6a) of Article 1 of the amended proposal (Article 9a(3) of Regulation (EU) No 1093/2010)</p>	
<p>'3. The Authority shall promote convergence of supervisory processes referred to in Directive (EU) 2015/849, including by conducting periodic reviews, in accordance with Article 30.</p> <p>Where such a review reveals serious shortcomings in the identification, assessment or addressing of risks of money-laundering and terrorist financing and the competent authority does not take action to address the follow-up measures set out in the report referred to in Article 30(3), the Authority shall inform the European Parliament, the Council and the Commission.'</p>	<p>'3. The Authority shall promote the convergence of supervisory processes referred to in Directive (EU) 2015/849 among the competent authorities referred to in point (ia) of Article 4(2), including by conducting periodic reviews, in accordance with Article 30.</p> <p>Where such a review reveals serious shortcomings in the identification, assessment or addressing of risks of money-laundering and terrorist financing and the competent authority referred to in point (ia) of Article 4(2) does not take action to address the follow-up measures set out in the report referred to in Article 30(3), the Authority shall inform the European Parliament, the Council and the Commission.'</p>
<p><u>Explanation</u></p> <p><i>The ECB understands that the supervisory processes referred to in the proposed new Article 9a(3) of Regulation (EU) No 1093/2010 only concern the AML/CFT supervisors, and not prudential supervisors. A corresponding clarification of the text is therefore suggested. See paragraph 2.2.1. of this Opinion.</i></p>	

Text proposed by the Commission	Amendments proposed by the ECB ²
Amendment 5 Point (6a) of Article 1 of the amended proposal (Article 9a(5) of Regulation (EU) No 1093/2010)	
<p>'5. In material cases of money-laundering or terrorist financing affecting cross border matters with third countries, the Authority shall have a leading role in facilitating cooperation between competent authorities in the Union and the relevant authorities in third countries.'</p>	<p>'5. In material cases involving material breaches of requirements put in place to prevent the use of the financial system for money-laundering or terrorist financing affecting cross border matters with third countries, the Authority shall have a leading role in facilitating shall support, where relevant, cooperation between competent authorities in the Union and the relevant authorities in third countries. The Authority shall issue guidelines addressed to the competent authorities in accordance with Article 16 to specify the material breaches referred to in this paragraph and any other elements or processes necessary for the efficient functioning of this procedure.'</p>
<p><u>Explanation</u></p> <p><i>Coordination by the EBA should not replace the direct contacts that competent authorities may need to have with the relevant authorities in third countries. Where the direct cooperation of those authorities can work well, it does not seem efficient to add an additional level of coordination through the EBA. Introducing the EBA as an additional authority where there is direct cooperation between a competent authority with a relevant authority of a third country could also be problematic from a legal point of view if the competent authority and the relevant authority of a third country cooperate with each other on the basis of a memorandum of understanding, to which the EBA is not a party. The amended proposal should therefore grant the EBA the power to assist competent authorities in cooperation with relevant authorities in third countries where relevant, but should not require the EBA to automatically assume a leading role in facilitating such cooperation.</i></p> <p><i>In addition the concept of 'material breaches' should be clarified, so that it is clear in which situations the requirement for EBA support would be triggered. To this end, it seems necessary to specify the criteria that the EBA or national competent authorities should follow in identifying such cases. Additionally, the procedures for interaction between the EBA and national competent authorities in the identification, reporting and treatment of these cases should be set out.</i></p> <p><i>See paragraph 2.3. of this Opinion.</i></p>	

Text proposed by the Commission	Amendments proposed by the ECB ²
Amendment 6 New point (58) of Article 1 of the amended proposal New letter (i) in Article 81(2) of Regulation (EU) No 1093/2010	
No text	<p>'(58) new point (i) in Article 81(2) is added:</p> <p>"2. The report referred to in paragraph 1 shall also examine whether:</p> <p>(a) it is appropriate to continue separate supervision of banking, insurance, occupational pensions, securities and financial markets;</p> <p>(b) it is appropriate to undertake prudential supervision and supervise the conduct of business separately or by the same supervisor;</p> <p>(c) it is appropriate to simplify and reinforce the architecture of the ESFS in order to increase the coherence between the macro and the micro levels and between the ESAs;</p> <p>(d) the evolution of the ESFS is consistent with that of the global evolution;</p> <p>(e) there is sufficient diversity and excellence within the ESFS;</p> <p>(f) accountability and transparency in relation to publication requirements are adequate;</p> <p>(g) the resources of the Authority are adequate to carry out its responsibilities;</p> <p>(h) it is appropriate for the seat of the Authority to be maintained or to move the ESAs to a single seat to enhance better coordination between them-;</p> <p>(i) the information collection and dissemination procedure under Article 9a(1)(a) and 9a(2) is proportionate, appropriate and efficient.'</p>
<p><u>Explanation</u></p> <p><i>The data collection and dissemination procedure newly proposed in Article 9a(1)(a) and Article 9a(2) of Regulation (EU) 1093/2010 should be reviewed on the basis of practical experience, with a view to ensuring its efficiency and proportionality. The most appropriate vehicle for such an assessment seems to be the regular three-year review performed by the Commission under Article 81 of Regulation (EU)</i></p>	

Text proposed by the Commission	Amendments proposed by the ECB²
<i>1093/2010. See paragraph 2.1.7. of this Opinion.</i>	