European Securities and Markets Authority (ESMA)

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OPINION OF THE EUROPEAN CENTRAL BANK on three proposals for regulations of the European Parliament and of the Council establishing a European Banking Authority (EBA), a European Insurance and Occupational Pensions Authority (EIOPA) and a European Securities and Markets Authority (ESMA).

The ECB notes that the observations contained in its opinion must be read in conjunction with ECB Opinion CON/2009/88 of 26 October 2009 on a proposal for a regulation of the European Parliament and of the Council on Community macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (ESRB) and a proposal for a Council decision entrusting the European Central Bank with specific tasks concerning the functioning of the ESRB; these two proposals form part of the legislative package adopted by the Commission on 23 September 2009 in view of the reform of European financial supervision.

The ECB makes the following general observations:

The proposed European Union institutional framework for supervision: the proposals are part of a comprehensive review of the EU institutional framework for supervision, which includes both the enhancement of micro-prudential supervision through the establishment of the ESAs, (European Supervisory Authorities) and the designation of the ESRB (European Systemic Risk Board). As a new independent body, responsible for safeguarding financial stability by conducting macro-prudential supervision at the European level. The ECB broadly welcomes the proposed institutional framework.

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

The ECB makes the following specific observations:

Relation between the ESAs and the ESRB: the ECB strongly supports efficient institutional arrangements for cooperation between the ESAs and the ESRB. This requires effective information sharing procedures in order to ensure a smooth interaction of supervision at the macro-prudential and micro-prudential levels and the timely access of the ESRB to all relevant information required to perform its duties, including micro-prudential information relevant for macro-prudential analysis. The ECB notes in this respect that one of the main tasks of the ESAs will concern cooperation with the ESRB, in particular by providing the latter with the information necessary for the achievement of its tasks. While the ECB welcomes the fact that the proposed regulations provide for the close involvement of the ESRB within the new micro-prudential institutional framework, it suggests an amendment with a view to

ensuring that any obstacles to smooth flows of information between the ESRB and the ESFS are removed. These rules on exchange of confidential information under the regulations will complement the other relevant EU rules on these matters, including the ESRB regulation.

Relation between the ESAs and the ESCB: the ECB and the national central banks (NCBs) of the ESCB are closely involved, given their competences and technical expertise, in the current EU financial architecture. The proposed regulations should also ensure an adequate institutional involvement and participation of the ECB and, where appropriate, of the NCBs of the ESCB, as regards the ESAs and newly established committees.

More specifically, the ESCB's involvement in payment, clearing and settlement systems reflects the task assigned to it by the Treaty of promoting the smooth operation of payment systems. Safe and efficient post-trading infrastructures for securities markets are a critical component of the financial system and any malfunctioning of securities clearing and settlement systems can have serious systemic repercussions for the smooth functioning of payments systems, as well as for financial stability. In the light of the central banks' oversight tasks concerning payment, clearing and settlement systems, effective cooperation between central banks in their oversight capacity and supervisory authorities is required Recent events have confirmed that central banks may be extensively involved in the context of a crisis situation as suppliers of liquidity to the banking system. This is particularly the case when a crisis materialises through an event relating to the liquidity conditions in the money markets and/or to the functioning of payment or securities settlement systems. Against this backdrop, central bank access to supervisory information on financial institutions may be relevant to the conduct of macro-prudential monitoring, the oversight of payment, clearing and settlement systems and the safeguarding of financial stability in general. While gateways for information sharing already exist in the context of EU financial sector legislation between competent authorities and central banks, it should be ensured for both substantive and consistency reasons that the proposed regulations provide for equivalent arrangements as regards the exchange of information between the ESAs and the ESCB when conducting their respective tasks.

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