

Financial supervision: powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority

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OPINION OF THE EUROPEAN CENTRAL BANK on a proposal for a Directive of the European Parliament and of the Council amending Directives 1998/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC, and 2009/65/EC in respect of the powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority.

General observations: the ECB supports the objective of the proposed directive, which introduces in 11 financial sector directives amendments that are necessary to ensure the proper functioning of the European Supervisory Authorities (ESAs) and of the European Systemic Risk Board (ESRB).

Adoption of technical standards: the proposed ESAs regulation provide for a uniform procedure for the adoption of technical standards. The draft technical standards will be developed by each of the ESAs and endorsed by the Commission. In this context, the proposed directive provides for several amendments to sectoral legislation, identifying the areas in which technical standards should be developed. The ECB fully supports the establishment of a European single rulebook applicable to all financial institutions in the single market and therefore the need for an effective instrument to establish harmonised binding technical standards in financial services.

As regards the **implementing powers conferred on the Commission**, the Treaty establishes a distinction between delegated acts and implementing acts. As a result, regulations and decisions adopted by the Commission to endorse draft technical standards will fall under one of these two categories. In the context of EU financial services legislation, a common understanding should be reached among the Union institutions involved in the legislative process on an appropriate methodology to be adopted to incorporate the Commission legal acts endorsing such draft technical standards within the more general framework within which delegated and implementing powers operate under the Treaty.

To the extent that draft technical standards qualify as ‘proposed Union acts’ and fall within the ECB’s fields of competence, the ECB should be consulted on the proposed delegated or implementing acts endorsing the draft technical standards.

Specific observations

Directive 2003/71/EC: the publication of all prospectuses in electronic form and their availability either directly on the future European Securities and Markets Authority (ESMA) website or through a hyperlink to the relevant websites will enhance transparency. In this respect, the ECB strongly supports the idea of improving the availability and comparability of certain key information in the prospectuses, through the creation of a standard for reference data on securities and issuers, with the aim of making such data available to policymakers, regulators and the financial markets through an international public infrastructure. The ECB stands ready to cooperate with the ESMA in contributing to the design and set-up of an electronic repository and related processes.

Directive 2006/48/EC: a number of amendments to sectoral directives under the proposed directive aim at further improving information gateways between relevant authorities at the Union and national level. The ECB welcomes these proposed amendments and more particularly those introduced to take account of the establishment of the ESRB. In addition, the ECB would suggest the two following amendments.

- the proposed directive clarifies that competent authorities are entitled to share information with the European Banking Authority (EBA). The ECB recommends introducing an amendment to one provision of Directive 2006/48/EC with a view to removing any possible legal obstacle to the exchange of information between the EBA and the ESRB. The introduction of such an amendment would clarify that the EBA, in accordance with Directive 2006/48/EC and the relevant provisions of the proposed EBA regulation, is entitled to transmit to the ESRB all the information received from national authorities necessary for the fulfilment of the ESRB's tasks without prejudice to other applicable European rules;
- Directive 2006/48/EC entrusts colleges of supervisors with the exercise of certain tasks (including in terms of exchange of information) and, in this context, the applicable confidentiality requirements must not prevent competent authorities from exchanging confidential information within colleges of supervisors. In view of the potential importance of the information accessible within supervisory colleges, the ECB would recommend explicitly specifying that the ESAs may share confidential information related to the activities of the colleges of supervisors with the ESRB, when this information is relevant for the fulfilment of its tasks and based on reasoned requests from the ESRB.