

European Supervisory Authorities: powers of 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 2003/71/EC and 2009/138/EC in respect of the powers of the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority

The opinion assesses the proposed directive from a financial stability perspective. The observations and drafting proposals contained in this opinion focus on aspects relevant to supervisory architecture reform, the involvement of the ECB, the European System of Central Banks (ESCB) and of the European Systemic Risk Board (ESRB) and cooperation and information-sharing arrangements with the European Supervisory Authorities (ESAs) and national competent authorities. It also pays particular attention to the need to ensure where relevant consistent approaches across financial services sectors with a view to ensuring a level playing field and as a tool for supervisory convergence.

The ECB makes the following observations :

European Single Rulebook in the financial sector: the development of a European single rulebook for all financial institutions in the single market, which the ECB fully supports, requires (i) an appropriate identification of the relevant areas for delegated and implementing acts, (ii) adequate involvement of ESAs in the preparation of these acts taking into account their technical nature and the need to rely on the highly specialised expertise of supervisory authorities; and (iii) a consistent and coordinated approach across sectors in adopting these implementing measures.

ECB's advisory role regarding draft delegated and implementing acts: having regard to the importance of the function to be played by delegated and implementing acts as a substantial component of the single rulebook, the ECB should be consulted in due time on any draft Union acts, including draft delegated and implementing acts, falling within its fields of competence.

Information-sharing arrangements: the ECB stresses the importance of ensuring that appropriate gateways for the exchange of information are included in the relevant legislation applicable to the financial sector. The ECB suggests therefore amending Directive 2009/138/EC consistently with the corresponding provisions of Directive 2006/48/EC according to which competent authorities and EIOPA are not prevented from transmitting information to central banks of the ESCB, including the ECB, where appropriate, to other national authorities responsible for overseeing payment systems and to the ESRB when this information is relevant to their respective tasks. Appropriate information sharing arrangements should also be established for emergency situations.

Convergence across financial services sectors: the ECB is of the view that the Union legislative framework should be consistent, where appropriate, across the financial services sectors, to avoid regulatory arbitrage. For instance, the ECB suggests promoting cross-sectoral convergence in the following:

- ***Treatment of financial holdings in the calculation of own funds:*** when determining own funds, the ECB is of the view that coherence in the treatment of ‘participations’ in the same sector and across financial services sectors could be increased in order to prevent any regulatory arbitrage between legal entities and/or between entities within a financial conglomerate.
- ***Addressing financial stability:*** any pro-cyclicality effects stemming from the implementation of the Solvency II regulatory framework, and, where relevant, the contribution of countercyclical mechanisms to financial stability, including with regard to the illiquidity premium, referred to in the proposed directive, could be further assessed.
- ***Remuneration policies and schemes:*** the ECB generally welcomes the work on remuneration policies and schemes in the context of the Solvency II implementation measures. The internationally agreed high-level principles of remuneration policies developed for banks and corresponding implementation standards should apply to the insurance sector whilst taking into account its specificities, where relevant.
- ***Credit assessments:*** the ECB notes that the eligibility of ECAIs is already addressed in the context of Directive 2006/48/EC and Regulation (EC) No 1060/2009. Against this backdrop and in view of the cross-sectoral nature of these issues, the ECB suggests, prior to any legislative action, carrying out an assessment involving the three ESAs with a view to ensuring consistency and synergies between the relevant Union sectoral legislation, including also possible implementing measures.
- ***Determination of ‘exceptional fall in financial markets’:*** the ECB considers that further clarification should be provided of the interplay between the declarations by EIOPA of events of exceptional fall in financial markets, declarations by the Council of emergency situations within the meaning of the ESAs regulations and also measures taken by supervisory authorities in exceptional circumstances in case of further deterioration of the financial situation of the undertaking concerned.

Transitional provisions: the ECB feels that it might be appropriate to reduce substantially in some instances the 10 year maximum periods foreseen for the adoption of certain transitional provisions to provide the appropriate incentives for timely application of the Solvency II reform.