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From: Mr Mario DRAGHI, President of the European Central Bank  
date of receipt: 12 April 2018  
To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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Subject: 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)

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Delegations will find below the addendum to the above mention document.

**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>
Amendment 1 Point (c) of Article 1(7) of the proposed regulation (Article 16(2) of Regulation (EU) No 1093/2010)	
<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.</p> <p>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.</del></p> <p><del>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</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</del></p>

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<p>by the competent authority submitting 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.</p> <p>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 out in</p>	<p><del>practices and behaviours and financial markets to be examined by the competent authority submitting 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.</del></p> <p><del>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>

Text proposed by the Commission	Amendments proposed by the ECB <sup>2</sup>
<p>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>5. The Authority shall assess the implementation reports of the competent authorities. Where there are material risks of not attaining the priorities set 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>'Article 30</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</p>	<p>'Article 30</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</p>

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<p>information and evaluations already made with regard to the competent authority concerned, including all information 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</p>	<p>reviews, existing information and evaluations already made with regard to the competent authority concerned, including all information 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</p>

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<p>where those provisions have not been complied with.</p> <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</p>	<p>sanctions imposed against persons responsible where those provisions have not been complied with.</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</p>



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<p>be necessary.</p> <p>4. The Authority shall publish the reports referred to in paragraph 3 including any follow-up report, 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>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, 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 <del>any</del> <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><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>Amendment 5</p> <p>Article 1(15) of the proposed regulation</p> <p>((new) Article 31a of Regulation (EU) No 1093/2010)</p>	
<p>'Article 31a</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</p>	<p><del>'Article 31a</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</del></p>

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<p>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 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</p>	<p><del>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 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</del></p>

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<p>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>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>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> <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</i></p>	

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<i>supervisory process. See paragraph 2.5 of this opinion.</i>	
Amendment 6  Point (c) of Article 1(17)(b) of the proposed regulation  ((new) Article 33(2c) of Regulation (EU) No 1093/2010)	
<p>‘ ...</p> <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>‘ ...</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</del> follow such model arrangements <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>

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<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 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</p> <p style="text-align: center;">Article 1(20) of the proposed regulation</p> <p style="text-align: center;">((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><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 t</p>

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<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>(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>he 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>(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>

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<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>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>(ef) indicate the periodic penalty payments provided for or in Article 35d where the production of the required information is incomplete;</p> <p>(fg) indicate the fine provided for in Article 35c where the answers to the questions are incorrect or misleading information;</p> <p>(gh) 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>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</p>

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	<p>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>
<p><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>Amendment 8</p> <p>Article 1(20) of the proposed regulation</p> <p>((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>



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	<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 9</p> <p style="text-align: center;">Article 1(20) of the proposed regulation</p> <p style="text-align: center;">((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>	

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<p style="text-align: center;">Amendment 10</p> <p style="text-align: center;">Article 1(27) of the proposed regulation</p> <p style="text-align: center;">(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>
<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>	

Text proposed by the Commission	Amendments proposed by the ECB <sup>2</sup>
Amendment 12	
Article 1(34) of the proposed regulation (Articles 47(3) and Article 47(3a) of Regulation (EU) No 1093/2010)	
<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>
<p><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>	