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

Subject: OPINION OF THE EUROPEAN CENTRAL BANK of 11 May 2018 on a
proposal for a regulation of the European Parliament and of the Council
amending Regulation (EU) No 1095/2010 establishing a European
Supervisory Authority (European Securities and Markets Authority) and
related legal acts; and on a proposal for a directive of the European
Parliament and of the Council amending Directive 2014/65/EU on markets
in financial instruments and Directive 2009/138/EC on the taking-up and
pursuit of the business of Insurance and Reinsurance (Solvency II)
(CON/2018/26)

Delegations will find below the above mentioned document.



OPINION OF THE EUROPEAN CENTRAL BANK

of 11 May 2018

on a proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority) and related legal acts; and on a proposal for a directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments and Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)
(CON/2018/26)

Introduction and legal basis

On 23 November 2017 the European Central Bank (ECB) received a request from the Council of the European Union and the European Parliament, respectively, for an opinion 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); 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) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds; and Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market¹ (hereinafter the 'proposed regulation').

On 20 November 2017 the ECB received a request from the Council of the European Union and the European Parliament, respectively, for an opinion on a proposal for a directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments and Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)² (hereinafter the 'proposed directive').

1 COM(2017) 536 final.

2 COM(2017) 537 final.

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 and directive contain provisions affecting the basic tasks of the European System of Central Banks (ESCB) to define and implement monetary policy and to promote the smooth operation of payment systems pursuant to the first and fourth indents of Article 127(2) of the Treaty, and the specific tasks conferred on the ECB concerning the prudential supervision of credit institutions, as referred to in 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.

The proposed regulation and directive form part of a comprehensive package of proposals to reform the European System of Financial Supervision, consisting of the three European Supervisory Authorities (ESAs) and the European Systemic Risk Board³. Since the package relates to different tasks carried out by the ESCB and the ECB, the ECB is to adopt three separate opinions. This opinion must, therefore, be read in conjunction with Opinion CON/2018/12 of 2 March 2018 on a proposal for a regulation amending Regulation (EU) No 1092/2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board⁴ and Opinion CON/2018/19 of 11 April 2018 on a proposal for a regulation amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) and related legal acts⁵.

General observations

The ECB will restrict its comments to those parts of the Commission's proposal which are relevant for the implementation of monetary policy pursuant to the first indent of Article 127(2) of the Treaty, the promotion of the smooth operation of payment systems pursuant the fourth indent of Article 127(2) of the Treaty, and for the specific tasks conferred on the ECB concerning the prudential supervision of credit institutions, as referred to in Article 127(6) of the Treaty.

The ECB would like to recall that safe and efficient financial market infrastructures, in particular clearing systems for financial instruments, are essential for the fulfilment of the basic tasks of the ESCB under Article 127(2) of the Treaty, and the pursuit of its primary objective of maintaining price stability under Article 127(1) of the Treaty⁶.

³ COM(2017) 542 final.

⁴ Opinion CON/2018/12 of the European Central Bank of 2 March 2018 on a proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1092/2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ C 120, 6.4.2018, p. 2). All ECB opinions are available on the ECB's website at www.ecb.europa.eu.

⁵ 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, not yet published in the Official Journal. All ECB opinions are available on the ECB's website at www.ecb.europa.eu.

⁶ See paragraph 4.1 of Opinion CON/2017/39 of the European Central Bank of 4 October 2017 on a proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Security and Markets Authority) and amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third country CCPs (OJ C 385, 15.11.2017, p. 3).

Consideration could also be given to the role of the ECB as supervisor of credit institutions pursuant to Article 127(6) TFEU in conjunction with Regulation (EU) No 1024/2013⁷. In this respect it is recalled that the ECB strongly welcomed the fact that the EMIR II proposal attaches two separate votes in the supervisory colleges to the ECB for its functions as a central bank of issue and as the prudential supervisor of credit institutions that are significant CCP clearing members, respectively⁸.

The ECB generally supports the proposed regulation's objective of contributing to the further development and deepening of the Capital Markets Union (CMU)⁹. To attain the long-term goal of deepening and integrating EU capital markets, the ECB considers that single supervision of, at least, specific market segments needs to be envisaged. This is particularly important for pan-European entities and activities in order to ensure consistency and equal enforcement across the EU, thus ensuring no leakages by moving activities across borders¹⁰. As proposed by the Commission, single supervision could also be warranted for data service reporting providers as well as administrators of critical benchmarks under a fully-fledged CMU¹¹.

Specific observations

1. The role of the central bank of issue in CCP matters

- 1.1 The ECB supports the need to revise ESMA's governance structure. It also considers it vital to include one representative of the ECB, under the monetary policy mandate, as a permanent non-voting member of the Board of Supervisors. This would ensure effective cooperation, coordination and exchange of information between supervisory authorities and the ECB as central bank of issue responsible for the euro, which is of key importance considering the proposed enhancements to the role of the central bank of issue under the EMIR II proposal¹². The ECB welcomes the proposed amendments set out in the EMIR II proposal, which clarify the tasks conferred on the CCP Executive Session, of which the relevant central bank of issue is a permanent, non-voting member¹³.
- 1.2 These changes are necessary to clearly delineate the CCP Executive Session's exclusive decision-making powers in CCP matters from powers assigned to the ESMA Executive Board in non-CCP matters. Given the ECB's representation in the CCP Executive Session as the central

⁷ 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).

⁸ See paragraph 1.1 of Opinion CON/2017/39.

⁹ See pages 1 and 18 of the Eurosystem's contribution to the Commission's Green Paper 'Building a Capital Markets Union', February 2015 (hereinafter the 'Eurosystem contribution to the Green Paper on CMU'), available on the ECB's website.

¹⁰ See page 18 of the Eurosystem contribution to the Green Paper on CMU.

¹¹ See page 18 of the Eurosystem contribution to the Green Paper on CMU.

¹² See paragraph 7 of Opinion CON/2017/39. Also see the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivatives contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories, COM(2017) 208 final.

¹³ See Amendment of pending proposal for a regulation amending Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority) and amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs (EMIR II Commission's proposal), COM(2017) 539/F1, available on the Commission's website at www.ec.europa.eu.

bank of issue, the ECB considers that this clarification will enable the ESCB members to have meaningful and effective involvement in decision-making and information-sharing on matters of direct relevance to the fulfilment of the ESCB's basic tasks, and the achievement of its primary objective of maintaining price stability¹⁴.

Done at Frankfurt am Main, 11 May 2018.



The President of the ECB

Mario DRAGHI

¹⁴ See paragraph 2.1 of Opinion CON/2017/39.