



OPINION OF THE EUROPEAN CENTRAL BANK

of 21 June 2024

on a proposal for a regulation of the European Parliament and of the Council as regards certain reporting requirements in the fields of financial services and investment support (CON/2024/21)

Introduction and legal basis

On 17 October 2023, the European Commission adopted a proposal for a regulation of the European Parliament and of the Council amending Regulations (EU) No 1092/2010, (EU) No 1093/2010, (EU) No 1094/2010, (EU) No 1095/2010 and (EU) 2021/523 as regards certain reporting requirements in the fields of financial services and investment support¹ (hereinafter the ‘proposed regulation’). On 12 March 2024, the European Parliament adopted a report on the proposed regulation (hereinafter the ‘EP report’)².

The European Central Bank (ECB) considers that the proposed regulation falls within its scope of competence, and has therefore decided to exercise its right, as provided for in Article 127(4), second sentence, and Article 282(5) of the Treaty on the Functioning of the European Union, to deliver an own initiative opinion.

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 contains provisions affecting the ECB’s tasks concerning the collection of statistical information pursuant to Article 5 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the ‘Statute of the ESCB’) and the specific tasks conferred upon the ECB concerning policies relating to 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.

1. General observations

1.1 The proposed regulation introduces amendments to Regulation (EU) No 1092/2010 of the European Parliament and of the Council³, Regulation (EU) No 1093/2010 of the European Parliament and of

¹ COM(2023) 593 final.

² Report on the proposal for a regulation of the European Parliament and of the Council amending Regulations (EU) No 1092/2010, (EU) No 1093/2010, (EU) No 1094/2010, (EU) No 1095/2010 and (EU) 2021/523 as regards certain reporting requirements in the fields of financial services and investment support (A9-0026/2024).

³ Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).

the Council⁴, Regulation (EU) No 1094/2010 of the European Parliament and of the Council⁵, Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁶ (hereinafter collectively the ‘ESA regulations’) and Regulation (EU) 2021/523 of the European Parliament and of the Council⁷. The ECB welcomes the aim of the proposed regulation to streamline reporting requirements, avoid double reporting of supervisory data and reduce the administrative burden on financial institutions, notably by enhancing information sharing between the European Supervisory Authorities (ESAs) and the European Systemic Risk Board (ESRB), and the competent authorities, which may include the ECB in its supervisory function. In general, the ECB supports the initiative of better supervisory data sharing, putting in place a system that delivers accurate, consistent, and timely data to supervisory authorities at Union and national level, while minimising the aggregate reporting burden on financial institutions. In addition, the ECB sees the benefits that arise from the proposed regulation in avoiding duplicative reporting requests where multiple authorities have the power to collect the same supervisory data from financial institutions on a regular basis but lack an explicit legal basis to share it among themselves.

- 1.2 The ECB has over the years developed various tools and fora for sharing information with several authorities addressed by the proposed regulation and the EP report, including the creation of common data dictionaries. For example, the most recent initiatives have been conducted under the auspices of the Joint Banking Reporting Committee (JBRC), for which a memorandum of understanding was signed in March 2024 between the ECB and the European Banking Authority (EBA), in line with Article 430c(2), point (c), of Regulation (EU) No 575/2013 of the European Parliament and of the Council⁸, which envisages the establishment of a joint committee, including as a minimum the EBA and the European System of Central Banks (ESCB), for the development and implementation of an integrated reporting system⁹. Another possible example is the work being undertaken by the ECB towards the establishment of the Integrated Reporting Framework in order to integrate statistical reporting requirements for banks, as a first step towards a broader integration of statistical, supervisory and resolution data¹⁰.

⁴ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

⁵ Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

⁶ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

⁷ Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU Programme and amending Regulation (EU) 2015/1017 (OJ L 107, 26.3.2021, p. 30).

⁸ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

⁹ Once established, the JBRC should foster collaboration among European institutions and bodies – including national authorities – that prepare and issue legislation on supervisory, resolution and/or statistical reporting in the area of banking. See recital 4 of the Memorandum of Understanding on the establishment of the Joint Bank Reporting Committee between the European Central Bank and the European Banking Authority, available on the ECB’s website at www.ecb.europa.eu.

¹⁰ See press release, ‘ECB moves towards harmonising statistical reporting to ease burden on banks and improve analysis’, 17 December 2021, available on the ECB’s website at www.ecb.europa.eu.

- 1.3 Furthermore, the ECB is also willing to carry out this kind of sharing with other authorities in the future, in order to facilitate a more efficient flow of information. As a monetary and supervisory authority, the ECB benefits significantly from access to data collected by European authorities, for example in the context of Regulation (EU) No 648/2012 of the European Parliament and of the Council¹¹. In parallel, the ECB should also benefit from access to supervisory data collected by supervisory authorities on investment funds, insurance corporations and pension funds, which would significantly reduce the reporting burden on those supervised entities.
- 1.4 In the field of anti-money laundering (AML) and countering the financing of terrorism (CFT), the ECB made concrete proposals to increase the level and efficiency of information sharing between authorities and to minimise reporting burdens in its opinion¹² on a proposal for a regulation establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism¹³ (AMLAR), some of which the co-legislators decided to include in the final Regulation. The specific amendments to AMLAR proposed by the ECB in this respect aimed at ensuring effective information exchanges between AML/CFT supervisors and authorities responsible for the prudential supervision of credit institutions, including, inter alia, the requirement for the Anti-Money Laundering and Countering the Financing of Terrorism Authority (AMLA) to provide information from the central AML/CFT database to AML/CFT and non-AML/CFT supervisors also on its own initiative. Moreover, the ECB proposed that a general duty should be added for AMLA to ensure a proportionate and efficient use of cooperation tools to facilitate information exchanges between AML/CFT and prudential supervisors. The ECB will continue to support the development of regulatory instruments for effective cooperation between AML/CFT and prudential authorities based on comprehensive, simplified, timely and efficient information exchanges.
- 1.5 Against this background, several provisions of the proposed regulation should be further clarified to allow it to achieve its objectives. In particular, the proposed regulation would benefit from clarifications regarding its scope. It should also be discussed whether the proposed regulation provides for adequate tools to attain these objectives, as its provisions may have the unintended consequence of threatening the efficacy of the supervisory toolkit.
- 1.6 The ECB notes that the EP report further expands the scope of the proposed regulation with respect to (1) the information to be shared¹⁴, (2) the participating authorities¹⁵ and (3) the creation of a Single Integrated Reporting System (SIRS) within three years from the date of entry into force of the

¹¹ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

¹² Opinion CON/2022/4 of the European Central Bank of 16 February 2022 on a proposal for a regulation establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism (OJ C 210, 25.5.2022, p. 5).

¹³ COM(2021) 421 final.

¹⁴ See, for example, Article 1, point (1a), of the EP report which introduces a replacement of Article 15, paragraph 1, of Regulation (EU) No 1092/2010: 'The ESAs, the European System of Central Banks (ESCB), the Commission, the national supervisory authorities and national statistics authorities shall cooperate closely with the ESRB by sharing the **information and analysis** necessary for the achievement of their tasks...' [emphasis added].

¹⁵ See, for example, Article 3, point (4), of the EP report, which inserts a new Article 35a(1b) in Regulation (EU) No 1094/2010, covering AMLA, the Single Resolution Board and all respective competent, supervisory and resolution authorities in the Member States.

proposed regulation¹⁶. The ECB will take the opportunity afforded by this opinion to offer some additional observations on these aspects of the EP report.

2. Observations on the proposed regulation

2.1 *Scope of the information covered by the proposed regulation*

2.1.1 The scope of the information to be shared is not defined in the proposed regulation. It is therefore unclear whether it would be limited to regular reporting, as suggested by the explanatory memorandum accompanying the proposed regulation, or whether it would also cover vertical, decentralised and unstructured information received by the ECB's supervisory function from banks on an ad hoc basis. Specifically, while the explanatory memorandum speaks of collection of 'data' from financial institutions on the basis of 'reporting obligations'¹⁷, the provisions of the proposed regulation refer to 'information... obtained from financial institutions' in general¹⁸. This divergence in terminology could allow for a broader interpretation than potentially intended, covering any supervisory activity in the context of the ECB's supervisory tasks. This broader approach also appears to be envisaged in the EP report¹⁹.

2.1.2 A large scope of application, including small or one-off supervisory data requests made to supervised entities, as well as the contents of meetings and any documents, would be difficult and costly to implement. From an operational perspective, including such ad hoc supervisory data requests would also adversely affect supervisory efficiency, as further explained below.

2.1.3 The scope of the information to be shared under the proposed regulation should therefore be further specified, for instance by limiting its scope to structured, regular supervisory reporting using standard reporting templates²⁰, thus excluding ad hoc supervisory information requests and analysis and processed data. This would also make it clear that the proposed regulation is without prejudice to other regulatory regimes that govern access by supervisory authorities to sources of information other than supervisory reporting, such as statistical information collected by the ESCB or the European Statistical System.

2.2 *Requirements for collecting and sharing information*

2.2.1 The proposed regulation may have an impact on supervisory effectiveness. First, the requirement to check whether given information is already available to other authorities before seeking information

¹⁶ See, for example, Article 2, point (4a), of the EP report, which inserts a new Article 35b(1) in Regulation (EU) 1093/2010.

¹⁷ See, in particular, paragraph 1 ('Context of the proposal') of the explanatory memorandum.

¹⁸ See, for example, Article 2, point (4), of the proposed regulation, which inserts a new Article 35a(1) in Regulation (EU) 1093/2010.

¹⁹ See, for example, Article 2, point (4), of the proposed regulation, which inserts a new Article 35a in Regulation (EU) 1093/2010. This provision envisages the competent authorities sharing with other authorities, on a case-by-case or regular basis, information they obtained from financial institutions or other competent authorities in carrying out their duties.

²⁰ This would be in line with the scope of the fitness check of EU supervisory reporting requirements, which clearly includes 'repetitive' reporting under level 1 and level 2 legislation and excludes 'ad hoc' reporting requests by supervisors to seek new or more detailed data to gather information about specific risks. See SWD(2019) 403 final, p. 11.

from financial institutions, as explicitly provided for in the EP report²¹, would be difficult to implement on a case-by-case basis. While the ECB does not question the relevance of this requirement in order to achieve the objective of the proposed regulation, this requirement could jeopardise the ECB's ability to identify risks on a timely basis and prevent it from taking immediate action where needed in order to fulfil its prudential supervisory tasks, as the ECB would be required to await a reply from various Union and national authorities before obtaining information from the relevant supervised entity. Equivalent considerations apply with respect to the potential impact of such a requirement on the supervisory activities carried out by national competent authorities (NCAs) within the Single Supervisory Mechanism (SSM), whose overall functioning may be negatively affected by this new requirement. This would concern in particular requests for information of a time-sensitive nature, for example in emergency situations. Thus, an exemption from this requirement for time-sensitive requests should be included in the proposed regulation.

2.2.2 Second, as mentioned in paragraph 2.1.3, the need to assess whether other authorities are also entitled to request information from financial institutions or other competent authorities before sharing such information with them²² will require additional and time-consuming operational effort, which may further delay the ECB's, as well as the NCAs', ability to act in a timely manner²³. This is the case for Union authorities and in particular national authorities, requiring an assessment of the national legal framework applicable to the recipient authority.

2.2.3 Third, the requirement to inform supervised entities whenever information is shared with other authorities²⁴ is expected to increase the ECB's, as well as the NCAs', operational burden and could negatively affect their ability to exchange information confidentially with other authorities regarding ongoing investigations without alerting the investigated entities. In particular, if the scope of information to be shared under the proposed regulation is not limited to regular regulatory reporting from standard reporting templates, the ECB regards a requirement to inform supervised entities of onward sharing of their information as being counterproductive, especially where such information relates to the prevention of money laundering and terrorism financing. With reference to the subsequent reporting obligations in the event of information sharing between two authorities, any obligation on the part of the sharing authority to inform the 'other competent authority' of such sharing should only be in relation to the competent authority from which the information transmitted by the sharing authority to a third authority originated.

21 See, for example, Article 3, point (4), of the EP report, which inserts a new Article 35a(1a) in Regulation (EU) No 1094/2010. It is noted that the draft amendments to Regulation (EU) 1093/2010 omit Article 35(1a) and (1b), as included in the other Regulations, which appears to be a redactional error.

22 See Article 2, point (4), of the proposed regulation, which inserts a new Article 35a(1) in Regulation (EU) 1093/2010; Article 3, point (4), of the proposed regulation, which inserts a new Article 35a(1) in Regulation (EU) 1094/2010; and Article 4, point (4), of the proposed regulation, which inserts a new Article 35a(1) in Regulation (EU) 1095/2010.

23 Conversely, the obligation for a sharing authority to provide the ECB with information, where the ECB is entitled to obtain that information from financial institutions or other competent authorities, would require an assessment by the sharing authority of the scope of the ECB's entitlement to receive such information. In view of the broad wording of Article 10 of 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) (hereinafter the 'SSM Regulation'), which states that the ECB may require legal and natural persons 'to provide all information that is necessary in order to carry out its supervisory tasks', meeting this obligation can be a complex and time-consuming task.

24 See Article 2, point (4), of the proposed regulation, which inserts a new Article 35a(2) in Regulation (EU) 1093/2010; Article 3, point (4), of the proposed regulation, which inserts a new Article 35a(2) in Regulation (EU) 1094/2010; and Article 4, point (4), of the proposed regulation, which inserts a new Article 35a(2) in Regulation (EU) 1095/2010.

2.3 *Legal certainty*

2.3.1 The proposed regulation provides that where provisions conflict with provisions in other Union legislation that regulate the exchange of information between authorities, the provisions in such other Union legislation are to prevail²⁵.

2.3.2 The ECB notes that the proposed regulation introduces amendments to the ESA regulations that conflict with the existing provisions on professional secrecy and exchange of information with other authorities²⁶. In particular, the proposed regulation would overlap with the current discretion of authorities to share information with other authorities ('may'), since it would provide for an obligation ('shall'). In addition, the ECB notes that the prevalence clause is not applied consistently in the regulations to be amended (e.g. in the amendments to Regulation (EU) No 1092/2010 set out in the EP report²⁷). The meaning of the reference to the prevalence of conflicting Union legislation accordingly remains opaque, and thus leaves room for uncertainty.

2.4 *Information to be shared with the ESRB*

2.4.1 It is not clear from the wording of the EP report whether the obligation to share the ECB's information and analysis applies for the purposes of the ESRB's tasks, or whether it also applies in respect of the other authorities' tasks²⁸. Similarly, the proposed amendments to the ESA regulations²⁹ seem not to limit the sharing obligation in the context of the ESRB's tasks, but to extend it to the ESAs' tasks. On the other hand, the proposed Article 15(2) of Regulation (EU) No 1092/2010 set out in the EP report refers again only to the obligation to share information and analysis for the achievement of 'its' (i.e. the ESRB's) mission, objectives and tasks³⁰. The ECB therefore calls for clear and harmonised cross-references to be set out in the proposed regulation.

2.4.2 The ECB notes that the EP report appears to significantly facilitate the sharing of supervisory information and analysis between ESAs and the ESRB³¹. However, the provisions governing information exchange with the ESRB are ambiguous as to the requirements for the regular sharing

²⁵ See, for example, Article 2, point (4), of the proposed regulation, which inserts a new Article 35a(5) in Regulation (EU) No 1093/2010.

²⁶ See, in particular, Article 53 et seq. of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338) and Article 27 of the SSM Regulation.

²⁷ Article 1, point (2), of the EP report adds a new paragraph 12 (prevalence clause) to Article 15 of Regulation (EU) No 1092/2010, which does not apply to the sharing of information in accordance with Article 15(1) to (4), but only to Article 15(7) to (9). Article 1, point (1a), of the EP report introduces a replacement of Article 15(1) of Regulation (EU) No 1092/2010 which states as follows: '**Notwithstanding other provisions** on the sharing of supervisory and statistical information in this Article, and in other Union legislative acts, the ESAs and the ECB shall share **all relevant information** without undue delay after it becomes available, **including supervisory and statistical information**, as well as the results of their analysis of such information, with the ESRB, necessary for the achievement of its **mission, objectives and tasks**' [emphasis added].

²⁸ See Article 1, point (1a), of the EP report, which introduces a replacement of Article 15(1) of Regulation (EU) No 1092/2010: 'The ESAs, the European System of Central Banks (ESCB), the Commission, the national supervisory authorities and national statistics authorities shall cooperate closely with the ESRB by sharing the information and analysis necessary for the achievement of **their tasks**...' [emphasis added].

²⁹ See Articles 2 and 3 and Article 4, point (4b), of the EP report, which introduce a replacement of Article 36(2) of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010 respectively, which again makes reference to 'their', rather than 'its', tasks.

³⁰ See footnote 27.

³¹ See Article 1, point (2), of the EP report, which adds a new paragraph 8a to Article 15 of Regulation (EU) No 1092/2010.

of such confidential information necessary for the ESRB's tasks and for sharing confidential information upon ESRB request, which should be clarified.

2.4.3 Moreover, the proposed amendment regarding the obligation to provide statistical information and analysis from the ESCB to the ESRB may lead to concerns³². In fact, the current wording of Regulation (EU) No 1092/2010³³ already provides for an obligation for the ESCB to provide the ESRB with all information necessary for the fulfilment of its tasks, including statistical information, but only 'in accordance with Union legislation'. Council Regulation (EC) No 2533/98³⁴ applies in respect of confidential statistical information, and its current wording only provides for the possibility, rather than an obligation, for the ESCB to transmit confidential statistical information ('may transmit') to authorities responsible for supervision or for the stability of the financial system, and under strict conditions³⁵. The proposed amendments to Regulation (EU) No 1092/2010, aimed at facilitating the sharing of supervisory data, should not change the way in which the sharing of confidential statistical information is regulated by other legislation (as may be the case, for example, under the proposed Article 15(2) of Regulation (EU) No 1092/2010 set out in the EP report, which introduces a limitation in the wording 'notwithstanding other provisions...').

2.4.4 Furthermore, as mentioned in paragraph 2.3.2, the prevalence clause contained in the EP report³⁶ seems not to apply to certain provisions of Regulation (EU) No 1092/2010.

2.5 *The SIRS as proposed in the EP report*

2.5.1 The EP report proposes to amend the proposed regulation with a view to the establishment of the SIRS³⁷. In particular, the ECB understands that the EP report seeks to impose an obligation on, inter alia, the ESRB and the ECB³⁸, in coordination with the other authorities. This obligation aims to establish, within two years after application of the proposed regulation, a report and roadmap for the technical details of the SIRS, including a common data dictionary to ensure consistency and clarity of reporting requirements and data standardisation; a joint repository of reporting and disclosure requirements; a central data space including the technical design for collecting and exchanging information; and a permanent single contact point for entities to indicate instances of double reporting, and redundant or obsolete reporting or disclosure requirements. Furthermore, the EP report envisages the establishment of the SIRS within three years from the date of entry into force of the proposed regulation³⁹.

32 See Article 1, point (1a), of the EP report, which introduces a replacement of Article 15(1) of Regulation (EU) No 1092/2010.

33 See Article 15(2) of Regulation (EU) No 1092/2010.

34 Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank (OJ L 318, 27.11.1998, p. 8).

35 See Article 8 of Regulation (EC) No 2533/98.

36 See footnote 27.

37 See Article 1, point (2a), of the EP report, which inserts a new Article 15a in Regulation (EU) No 1092/2010; Article 2, point (4a), of the EP report, which inserts a new Article 35b in Regulation (EU) No 1093/2010; Article 3, point (4a), of the EP report, which inserts a new Article 35b in Regulation (EU) No 1094/2010; and Article 4(4a) of the EP report, which inserts a new Article 35b in Regulation (EU) No 1095/2010.

38 See, for example, Article 1(2) of the EP report, which adds a new Article 15(8b) in Regulation (EU) No 1092/2010.

39 See Article 1(2a) of the EP report, which inserts a new Article 15a in Regulation (EU) No 1092/2010; Article 2(4a) of the EP report, which inserts a new Article 35b in Regulation (EU) No 1093/2010; Article 3(4a) of the EP report, which inserts a new Article 35b in Regulation (EU) No 1094/2010; and Article 4, point (4a), of the EP report, which inserts a new Article 35b in Regulation (EU) No 1095/2010.

- 2.5.2 The ECB understands the general goal of the establishment of the SIRS as forming part of the long-term project of developing a centralised data collection tool, including data sharing and data integration features. Nevertheless, the ECB recommends consolidating the projects and tools that are already ongoing within the Union, including the proposed regulation, before expanding efforts on new initiatives that may potentially prove very costly. This coordination model is also envisaged by the Commission's strategy on supervisory data in Union financial services⁴⁰, which could potentially overlap with the SIRS.
- 2.5.3 The ECB considers that additional challenges regarding the proposed establishment of the SIRS relate to its scope and to the ambitious timeline envisaged for its establishment, at the latest three years from the date of entry into force of the proposed regulation, which coincides with the timeline envisaged to ensure the necessary financial, human and IT resources for its establishment⁴¹.
- 2.5.4 It should be clarified that the scope of application of the SIRS is limited to supervisory information and does not encompass the statistical information collected by the ECB on the basis of Article 5 of the Statute of the ESCB and shared with the ESRB under Council Regulation (EU) No 1096/2010⁴². Due to the legal basis indicated for the adoption of this regulation and the legislative procedure linked to it, the EP report does not contain proposals for its amendment. The modalities of the analytical, statistical, administrative and logistical support provided by the ECB to the ESRB are set out in Regulation (EU) No 1096/2010, and the confidentiality regime applicable to confidential statistical information is set out in Regulation (EU) No 2533/98, neither of which can be amended pursuant to an EP position under the ordinary legislative procedure.
- 2.6 *The EP report's proposal for the initiation of a Commission proposal to amend the SSM Regulation*
- 2.6.1 The EP report proposes that the Commission should, by three months from the date of entry into force of the proposed regulation, where appropriate, submit to the Council a legislative proposal to align the amendments to Regulations (EU) No 1092/2010, (EU) No 1093/2010, (EU) No 1094/2010, (EU) No 1095/2010, (EU) No 806/2014 and the future AMLAR, with the SSM Regulation⁴³.
- 2.6.2 The procedure for amending the SSM Regulation is set out in Article 127(6) of the Treaty, not Article 114 of the Treaty (on which the proposed regulation is based). According to settled case-law of the Court of Justice of the European Union⁴⁴, these two legal bases cannot be combined as the legal basis for the proposed regulation, in view of the different procedures involved. In particular, the measures adopted under Article 114 of the Treaty are adopted by the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, and after consulting the Economic and Financial Committee (and, if relevant, the ECB in accordance with Articles 127(4) and 282(5) of the Treaty). By contrast, the regulations adopted under Article 127(6) of the Treaty are

40 COM(2021) 798 final.

41 See, for example, Article 2, point (4a), of the EP report, which inserts a new Article 35b in Regulation (EU) No 1093/2010.

42 Council Regulation (EU) No 1096/2010 of 17 November 2010 conferring specific tasks upon the European Central Bank concerning the functioning of the European Systemic Risk Board (OJ L 331, 15.12.2010, p. 162).

43 See Article 5a of the EP report.

44 Judgment of 29 April 2004, *Commission v Council*, C-338/01, EU:C:2004:253, paragraphs 57 and 58; Judgment of 10 January 2006, *Commission v Parliament and Council*, C-178/03, EU:C:2006:4, paragraphs 43 to 60.

adopted by the Council alone, in a special legislative procedure in which the Council acts unanimously, after consulting the European Parliament and the ECB.

2.6.3 The EP report does not set out what the Commission proposal to amend the SSM Regulation is intended to include. However, the ECB understands that the underlying intention is that the SSM Regulation should be aligned with the contents of the proposed regulation. The ECB further understands that this amendment is pursued in order to oblige the ECB in its supervisory function to meet the same requirements as the other institutions and agencies referred to in the EP report. However, this approach risks predetermining the possible amendments to the SSM Regulation, which appears difficult to reconcile with the differing legislative procedure for amendments to the SSM Regulation. Further, any amendment to the SSM Regulation could only have a legal effect on the ECB in its prudential supervisory function, and not on the ECB's central banking functions.

Where the ECB recommends that the proposed regulation is amended, specific drafting proposals are set out in a separate technical working document accompanied by an explanatory text to this effect. The technical working document is available in English on EUR-Lex.

Done at Frankfurt am Main, 21 June 2024.

[signed]

The President of the ECB

Christine LAGARDE



Technical working document

produced in connection with ECB Opinion CON/2024/21 on a proposal for a regulation of the European Parliament and of the Council as regards certain reporting requirements in the fields of financial services and investment support¹

Drafting proposals

Text proposed by the Commission	Amendments proposed by the ECB ²
<p>Amendment 1</p> <p>Citations of the proposed regulation</p>	
<p>‘Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114, Article 173 and Article 175, third paragraph, thereof,</p> <p>Having regard to the proposal from the European Commission,</p> <p>After transmission of the draft legislative act to the national parliaments,</p> <p>Having regard to the opinion of the European Economic and Social Committee ⁸,</p> <p>Having regard to the opinion of the Committee of the Regions ⁹,</p> <p>Acting in accordance with the ordinary legislative procedure,’</p>	<p>‘Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114, Article 173 and Article 175, third paragraph, thereof,</p> <p>Having regard to the proposal from the European Commission,</p> <p>After transmission of the draft legislative act to the national parliaments,</p> <p>Having regard to the opinion of the European Central Bank*,</p> <p>Having regard to the opinion of the European Economic and Social Committee ⁸,</p> <p>Having regard to the opinion of the Committee of the Regions ⁹,</p> <p>Acting in accordance with the ordinary legislative procedure,</p> <p>* OJ C [...], [...], ELI: [...].’</p>
<p><u>Explanation</u></p> <p><i>As the proposed regulation contains provisions affecting the ECB’s tasks concerning the collection of statistical information pursuant to Article 5 of the Statute of the ESCB and the specific tasks conferred</i></p>	

1 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 on EUR-Lex alongside the opinion itself.

2 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 ²
<p><i>upon the ECB concerning policies relating to the prudential supervision of credit institutions, as referred to in Article 127(6) of the Treaty, the ECB opinion to be issued on the proposed regulation should be referred to in the citations.</i></p> <p><i>See the first, second and third paragraphs of the ECB Opinion (Introduction and legal basis).</i></p>	
<p style="text-align: center;">Amendment 2</p> <p style="text-align: center;">Article 2, point (4), of the proposed regulation (Article 35a(1) of Regulation (EU) No 1093/2010 (new))</p>	
<p>'4. the following Article 35a is inserted:</p> <p>"Article 35a</p> <p>Information exchange between authorities and with other entities</p> <p>1. The Authority and the competent authorities shall share with other authorities, on a case-by-case or regular basis, information they obtained from financial institutions or other competent authorities in carrying out their duties, when requested by the other European Supervisory Authorities, the ESRB or competent authorities as defined in Article 4, point (2), of this Regulation, in Article 4, point (2), of Regulation (EU) No 1094/2010 or in Article 4, point (3) of Regulation (EU) No 1095/2010, or the authorities defined in Article 2, point (1), of Directive (EU) .../... of the European Parliament and of the Council¹⁸, provided that the authority requesting that information is, pursuant to Union law, entitled to obtain that same information from financial institutions or other competent authorities. For the purposes of this Article, 'financial institution' means a 'financial institution' as defined in Article 2, point (a), of Regulation (EU) No 1092/2010.</p> <p>[...]"'</p>	<p>'4. the following Article 35a is inserted:</p> <p>"Article 35a</p> <p>Information exchange between authorities and with other entities</p> <p>1. The Authority and the competent authorities shall share with other authorities, on a case-by-case or regular basis, information data reported to them by the they obtained from financial institutions in compliance with their reporting obligations or received from other competent authorities in carrying out their duties, when requested by the other European Supervisory Authorities, the ESRB or competent authorities as defined in Article 4, point (2), of this Regulation, in Article 4, point (2), of Regulation (EU) No 1094/2010 or in Article 4, point (3) of Regulation (EU) No 1095/2010, or the authorities defined in Article 2, point (1), of Directive (EU) .../... of the European Parliament and of the Council¹⁸, provided that the authority requesting that information is, pursuant to Union law, entitled to obtain that same information from financial institutions or other competent authorities. For the purposes of this Article, 'financial institution' means a 'financial institution' as defined in Article 2, point (a), of Regulation (EU) No 1092/2010.</p> <p>[...]"'</p>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>The scope of the information to be shared is not defined in the proposed regulation. The ECB proposes to limit the scope of the information to be shared to data obtained from financial institutions on the basis</i></p>	

Text proposed by the Commission	Amendments proposed by the ECB ²
<p><i>regulatory reporting obligations. This would be in line with the objective of the proposed regulation and would reduce the operational burden on the sharing authority.</i></p> <p><i>See paragraphs 2.1.1, 2.1.2 and 2.1.3 of the ECB Opinion.</i></p>	
<p style="text-align: center;">Amendment 3</p> <p style="text-align: center;">Article 3, point (4), of the proposed regulation (Article 35a(1) of Regulation (EU) No 1094/2010 (new))</p>	
<p>'4. the following Article 35a is inserted:</p> <p>"Article 35a</p> <p>Information exchange between authorities and with other entities</p> <p>1. The Authority and the competent authorities shall share with other authorities, on a case-by-case or regular basis, information they obtained from financial institutions or other competent authorities in carrying out their duties, when requested by the other European Supervisory Authorities, the ESRB or competent authorities as defined in Article 4, point (2) of this Regulation, in Article 4, point (2), of Regulation (EU) No 1093/2010 or in Article 4, point (3), of Regulation (EU) No 1095/2010, or the authorities defined in Article 2, point (1), of Directive (EU) .../... of the European Parliament and of the Council ²⁰, provided that the authority requesting that information is, pursuant to Union law, entitled to obtain that same information from financial institutions or other competent authorities. For the purposes of this Article, 'financial institution' means a 'financial institution' as defined in Article 2, point (a), of Regulation (EU) No 1092/2010.</p> <p>[...];'</p>	<p>'4. the following Article 35a is inserted:</p> <p>"Article 35a</p> <p>Information exchange between authorities and with other entities</p> <p>1. The Authority and the competent authorities shall share with other authorities, on a case-by-case or regular basis, information data reported to them by they obtained from financial institutions in compliance with their reporting obligations or received from other competent authorities in carrying out their duties, when requested by the other European Supervisory Authorities, the ESRB or competent authorities as defined in Article 4, point (2) of this Regulation, in Article 4, point (2), of Regulation (EU) No 1093/2010 or in Article 4, point (3), of Regulation (EU) No 1095/2010, or the authorities defined in Article 2, point (1), of Directive (EU) .../... of the European Parliament and of the Council ²⁰, provided that the authority requesting that information is, pursuant to Union law, entitled to obtain that same information from financial institutions or other competent authorities. For the purposes of this Article, 'financial institution' means a 'financial institution' as defined in Article 2, point (a), of Regulation (EU) No 1092/2010.</p> <p>[...];'</p>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>See explanation for Amendment 2.</i></p>	

Text proposed by the Commission	Amendments proposed by the ECB ²
Amendment 4 Article 4, point (4), of the proposed regulation (Article 35a(1) of Regulation (EU) No 1095/2010 (new))	
<p>'4. the following Article 35a is inserted:</p> <p>"Article 35a</p> <p>Information exchange between authorities and with other entities</p> <p>1. The Authority and the competent authorities shall share with other authorities, on a case-by-case or regular basis, information they obtained from financial institutions or other competent authorities in carrying out their duties, when requested by the other European Supervisory Authorities, the ESRB or competent authorities as defined in Article 4, point (3) of this Regulation, in Article 4, point (2), of Regulation (EU) No 1093/2010 or in Article 4, point (2), of Regulation (EU) No 1094/2010, or the authorities defined in Article 2, point (1), of Directive (EU) .../... of the European Parliament and of the Council ²², provided that the authority requesting that information is, pursuant to Union law, entitled to obtain that same information from financial institutions or other competent authorities. For the purposes of this Article, 'financial institution' means a 'financial institution' as defined in Article 2, point (a), of Regulation (EU) No 1092/2010.</p> <p>[...];'</p>	<p>'4. the following Article 35a is inserted:</p> <p>"Article 35a</p> <p>Information exchange between authorities and with other entities</p> <p>1. The Authority and the competent authorities shall share with other authorities, on a case-by-case or regular basis, information data reported to them by they obtained from financial institutions in compliance with their reporting obligations or received from other competent authorities in carrying out their duties, when requested by the other European Supervisory Authorities, the ESRB or competent authorities as defined in Article 4, point (3) of this Regulation, in Article 4, point (2), of Regulation (EU) No 1093/2010 or in Article 4, point (2), of Regulation (EU) No 1094/2010, or the authorities defined in Article 2, point (1), of Directive (EU) .../... of the European Parliament and of the Council ²², provided that the authority requesting that information is, pursuant to Union law, entitled to obtain that same information from financial institutions or other competent authorities. For the purposes of this Article, 'financial institution' means a 'financial institution' as defined in Article 2, point (a), of Regulation (EU) No 1092/2010.</p> <p>[...];'</p>
<p><u>Explanation</u></p> <p>See explanation for Amendment 2.</p>	

Text proposed by the Commission	Amendments proposed by the ECB ²
<p style="text-align: center;">Amendment 5</p> <p>Article 2, point (3), of the proposed regulation (Article 35(4) of Regulation (EU) No 1093/2010) Article 3, point (3), of the proposed regulation (Article 35(4) of Regulation (EU) No 1094/2010) Article 4, point (3), of the proposed regulation (Article 35(4) of Regulation (EU) No 1095/2010)</p>	
<p>'3. in Article 35, paragraph 4 is replaced by the following:</p> <p>"4. Before requesting information in accordance with this Article and in order to avoid the duplication of reporting obligations, the Authority shall take account of information collected by other authorities referred to in Article 35a(1) and any relevant existing statistics produced and disseminated by the European Statistical System and the European System of Central Banks.";</p>	<p>'3. in Article 35, paragraph 4 is replaced by the following:</p> <p>"4. Before requesting information in accordance with this Article and in order to avoid the duplication of reporting obligations, the Authority shall take account of information collected by other authorities referred to in Article 35a(1) and any relevant existing statistics produced and disseminated by the European Statistical System and the European System of Central Banks, except in the case of time-sensitive requests.";</p>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>The obligation to check whether given information is already available to other authorities before seeking information from financial institutions could jeopardise the ECB's ability to identify risks on a timely basis and prevent it from taking immediate action where needed in order to fulfil its prudential supervisory tasks, as the ECB would be required to await a reply from various Union and national authorities before obtaining information from the relevant supervised entity. This would concern in particular requests for information of a time-sensitive nature, for example in emergency situations. Thus, an exemption from this obligation for time-sensitive requests should be included in the proposed regulation.</i></p> <p><i>See paragraph 2.2.1 of the ECB Opinion.</i></p>	