



Council of the European Union
General Secretariat

Brussels, 27 September 2024

**Interinstitutional files:
2023/0363 (COD)**

WK 12028/2024 INIT

LIMITE

**EF
ECOFIN
CODEC**

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WORKING DOCUMENT

From: General Secretariat of the Council

To: Working Party on Financial Services and the Banking Union (Reporting Requirements)
Financial Services Attachés

Subject: Presidency note for the Council Working Party – 2 October 2024
- Proposal regarding certain reporting requirements in the fields of financial services and investment support



Working Party on Financial Services and the Banking Union

(Reporting requirements)

Brussels

2 October 2024

PRESIDENCY NOTE IN PREPARATION OF THE FIRST POLITICAL TRILOGUE

Introductory remarks

On 17 October 2023, the European Commission put forward its proposal to amend (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 (proposal), which aims to facilitate data sharing between European Supervisory Authorities (ESAs) and other financial sector authorities and restraining new reporting requirements. The proposal also reduces the frequency of reporting for InvestEU implementing partners from every 6 months to once a year.

On 14 June 2024, the COREPER adopted a negotiating mandate of the Council on the Proposal. The European Parliament (EP) adopted its first reading position on the proposal on 12 March 2024. The rapporteur of the EP, Mr Othmar KARAS (AT, EPP), was not re-elected in the current parliamentary cycle, so a new rapporteur still needs to be nominated before the trilogues can start.

In the forthcoming Council Working Party, the Presidency intends to present the main differences identified between the Council's negotiating mandate and the EP's position and to invite Member States to express their views on these differences as well as on any red lines and concerns.

All the issue mentioned below are considered the main differences between the Council's and the Parliament's positions. The Presidency considers the following issues to be of high priority: creation of a Single Integrated Reporting System (SIRS), the role of the national competent authorities (NCAs), the inclusion of the Anti-Money Laundering Authority (AMLA) amongst authorities falling within the scope of the proposal.

Please note that all references to line numbers below refer to the four column-table (4CT) as created by the GSC on behalf of the Presidency in its version of 24 June and shared with the delegations on 27 June 2024.

I. Scope

National Competent Authorities (NCAs)

One of the Commission's objectives in the amending proposal is to explore the possibility of introducing a legal framework to facilitate the sharing of information amongst different supervisory authorities in the EU. The Parliament proposed that NCAs participate on a mandatory basis in the aforementioned data flow as a data receiver and also as a data sharer (Article 35a). The mandatory basis is deleted in the Council's mandate for the NCAs and only the Authority (ESRB and ESAs) would be the data sharer. The Council clarifies in the recitals that the exchange of information between NCAs is on a voluntary basis (line 15d).

AMLA

The inclusion of the AMLA in the Parliament's text goes beyond the Council's position, it also includes this authority in the scope of the proposal from the date of entry into force and dedicates amendments to the founding AMLA Regulation (lines 111a-111c). However, the Council introduced a review clause on the inclusion of AMLA in the scope of the proposal, stating that the AMLA should provide the Commission with a cost-benefit analysis on its future inclusion within two years from the date of entry into force (line 114e).

ESRB

The Parliament proposed amendments to Article 15 (lines 25a-25g) of the ESRB founding regulation, which deals with the collection and exchange of information. The Parliament deletes the current Article 15 paragraph (1) and in line 25b deletes the part "... in accordance with Union legislation" from paragraph (2). The rationale behind the deletion by the Parliament in line 25b is not clear, as the ESRB is a body established under Union law and therefore national legislation cannot delegate any form of tasks to it, and therefore a part clarifying this could be useful. In line 25c, the Parliament proposes a new paragraph (2) stating that the ESAs and the ECB shall (without prejudice to other provisions on the exchange of supervisory and statistical information) immediately share with the ESRB all relevant information necessary for the achievement of its mission, objectives and tasks. In line 25e, the Parliament adds the term "not sufficient" to the current paragraph (5), which implies that the ESRB may request information from national central banks or national statistical authorities, or even from a Member State, not only if the information is not available or not made available in a timely manner, but also if the information made available is not sufficient, according to the new paragraph (3). It means that the Parliament proposes to completely leave out the current wording of Article 15 paragraph (3). The wording of paragraph 25f follows the current paragraph (6), while the wording of paragraph 25g follows the current paragraph (7). The EP's position would result in a paradigm shift from aggregate data as the rule to granular data as the rule, and from ex-post (upon request) to ex-ante (by default).

The ESRB highlighted in their opinion (doc ref. 12798/24) that they emphasise the need for clarification regarding the scope of the data to be shared by default between

the ESAs and the ESRB. The ESRB also mentioned that the ex-post framework impairs its ability to monitor and identify risk to financial stability in a continuous, pre-emptive manner. In the ESRB's view, enhancing data sharing between the ESAs and the ESRB is increasingly important for the ESRB to continue fulfilling its mandate. The ESRB considers that it should, by default, have access to detailed, granular data collected by the ESAs within a structured, regular supervisory reporting framework on a continuous and timely basis. For this reason, the General Board of the ESRB supports the EP's proposal to introduce the principle of data sharing by default between all the ESAs, as it introduces an ex-ante data sharing framework between ESAs and the ESRB. In their view, the shortcomings in the ESRB's access to data do not fall within the scope of the European Commission's proposal and, as such, are not tackled here.

Other authorities

The Commission and both co-legislators introduce the possibility for the authorities within the scope of the proposal to share the information obtained with other authorities, provided that they have the right of access to that information. Despite the common purpose of information sharing, the texts define the scope of other authorities differently, both Council and EP consider that an explicit list, as opposed to one defined by cross-references as in the Commission's proposal, should be introduced.

The Council text includes the EBA, EIOPA, ESMA, ESRB and the competent authorities defined in their founding regulations, as well as the SSM and the SRB (lines 27-b-27j, 48a-48i, 73b-73j and 98b-98j). While the Parliament's text (lines 27p-27y, 73p-73y, 98p-98z, 111l-111v and 111bp-111bz) includes the ESAs, the ESRB, the competent authorities as defined in their founding regulations, the AMLA and the other authorities as defined in their founding regulations, the SSM, the SRB and the national resolution authorities as defined in Article 3(3) of Regulation (EU) No 806/2014. The Parliament also explicitly nominates the SRB and the National Resolution Authorities, while this introduction only has a clarification nature, as both the SRB and the National Resolution Authorities are in the scope of the Council's and the Commission's text (EBA regulation Article 4 paragraph (2) point (v)).

SRM

The Parliament also introduces amendments to the founding Regulation (EU) No 806/2014 (Single Resolution Mechanism and Single Resolution Fund) (lines 111a-111aq). The proposed amendments go beyond the proposal, which foresees amendments only of the ESRB and ESA founding regulations.

Information eligible for sharing

According to the Council's mandate, the information that can be exchanged between authorities should be limited to that which is part of the reporting obligations set out in Union Law (including national transpositions thereof). In order to avoid any operational complications, national reporting obligations are excluded. The EP mandate seems broader in this respect ("pursuant to its mission, objectives, tasks and powers").

II. Single Integrated Reporting System (SIRS)

The Parliament calls for the creation of a new, streamlined reporting system that would be implemented through a single, unified reporting platform. The EP proposal requires the relevant authorities to issue a report on the technical details two years after the regulation comes into force. This report will focus on the details of setting up the SIRS, a roadmap based on the work of the European Supervisory Authorities on the integration of sectoral reporting, and a comprehensive cost-benefit analysis. In terms of functionality, the SIRS should include a common data dictionary, a common repository of reporting and disclosure requirements, a central data repository (including the establishment of technical conditions for the collection and exchange of information) and the creation of a permanent contact point (where, inter alia, duplicative reporting obligations can be reported). The EP anticipates the establishment of the SIRS three years after the Regulation comes into force.

Substantial improvements by the EP's SIRS (Lines: 36e-36i; 57e-57i; 82e- 82i; 107e-107i; 111aj-111an; 111ck-111co)

These are the EP's new instruments to standardize and improve the reporting and disclosure requirements. Therefore, within two years of the entry into force of the amending Regulation, the ESRB, EIOPA, EBA and ESMA will report on the technical details of the establishment of the SIRS, together with a roadmap based on the work undertaken by the ESAs on the integration of data sharing within their respective sectors. This will include an assessment of the costs and benefits. The ESRB, EIOPA, EBA and ESMA will work closely with other authorities and the ESCB¹ on this. In order to fulfil the requirements of this report, the SIRS will comprise the above-mentioned instruments:

- common data dictionary to ensure consistency and clarity of reporting requirements and data standardization;
- joint repository of reporting and disclosure requirements, of the descriptions of the collected data and of the authorities that hold it;
- 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.

Roadmap of the SIRS's establishment (Lines: 36a-36l; 27a-57l; 82a-82l; 107a-107l; 111ai-111aq; 111cj-111cy)

The milestones and associated deadlines set by the EP in the context of the SIRS seem unduly ambitious and impose unworkable deadlines for compliance for the relevant actors, as well as interfere with or duplicate existing workstreams.

The ESRB and the ESAs shall (one year after the entry into force of this amending Regulation) report to the Commission on any legal obstacles in sectoral legislation that

¹ ESCB: European System of Central Banks

in any way prevent the ESRB and the ESAs from exchanging information with other authorities or bodies. The report may also address immaterial, obsolete, duplicative or otherwise irrelevant reporting requirements.

The EP anticipates that two years after the entry into force of this amending regulation, the ESRB and the ESAs, in close collaboration with the relevant authorities, will present a report on the technical specifications of a unified reporting system, accompanied by a roadmap based on the ESAs' work on integrating reporting within their respective sectors. This will include an assessment of the costs and benefits involved.

The Commission shall, where appropriate, submit to the EP and to the Council a legislative proposal to ensure the necessary financial, human and IT resources for the establishment of the SIRS (3 years from the date of entry into force of this amending Regulation).

III. Report on legal obstacles

The Parliament proposes to introduce a reporting obligation for the authorities within the scope of the proposal (lines 36a, 57a, 82a, 107a, 111ag and 111cg) one year after entry into force, with the involvement of other competent authorities as appropriate. The objective is to report to the Commission any legal obstacles in sectorial rules that in any way prevent the exchange of information with other authorities or other entities. The report shall also address non-essential, outdated, duplicative or irrelevant reporting requirements. The Council's text does not include a section on the means to remove legal barriers and achieve this objective.

IV. Obligatory or optional Memorandum of Understanding

Concerning the exchange of information, the Council and the Parliament have different views on the nature of the Memorandum of Understanding (MoU, lines 30, 51, 76, 101, 111y and 111bf) in relation to the amendments to the Regulations concerned. While the Council clarifies in the recital (line 15e) that the signing of the collaboration agreements and MoUs is encouraged where it appears necessary, so that the possibility remains optional, the Parliament would make the signing of such documents obligatory, with the requirement of a simple and standardised format.

V. Peer review

In the Commission's proposal, national reporting requirements should be subject to peer reviews (lines 42, 67, 92). While the existing peer review powers of the ESAs are extended by the EP and the Commission to the extent of the convergence between the effectiveness of national reporting requirements and the degree of convergence between such requirements and those set out in EU law; the Council removes the national aspect from the inserted powers, allowing only for the examination of reporting obligations derived solely from EU law.

VI. ESA opinions

There is a provision in the ESAs founding regulations in their Article 16a (inserted by Regulation (EU) No 2019/2175) which states that upon request or on its own initiative the ESAs may provide opinions on all issues related to their area of competence. The Parliament, in its text, proposes additions (lines 38b-38g, 63b-63g and 88b-88g) that would allow the opinions to cover not only ongoing legislative proposals but also permit the ESAs to propose amendments to legislative acts in force, including: to remove redundant or obsolete reporting and disclosure requirements in Union law or the national transposition of Union law; to ensure consistent reporting and disclosure requirements sector-specific and cross-sector; to ensure proportionality in reporting and disclosure requirements; and to ensure that the compliance with reporting and disclosure requirements are commensurate with added value. The addition of the Parliament seems to serve clarification purposes as Article 16a in all ESAs regulations uses the phrase "all issues related to its area of competence", and the listed additions could be immanent to those competences.

VII. InvestEU amendments by the EP

The Commission proposes amending the Regulation (EU) 2021/523 (on establishing the InvestEU Programme and amending Regulation (EU) 2015/1017) in Article 5. According to the Commission's text the frequency of the reporting on the InvestEU Programme by implementing partners changes from biannual to annual. The Council accepted the text with unchanged content. In addition to this, the Parliament proposed further modifications (lines 112b-112h). The Parliament's text supplements the principles taken into account during the development of sustainability guidance, referring to the differences in the types of infrastructural projects. The Parliament also sets a stringent deadline for signing contracts between the implementing partner and final recipient (or the financial intermediary or other entity). Finally, the Parliament specifies the content of the guarantee agreement.