EUROPEAN CENTRAL BANK

EUROSYSTEM

[redacted]

ECB- CONFIDENTIAL

<Reference number>

To: The Executive Board

Via: [redacted]

From: [redacted]

Cc:

Date: 11 March 2016

Subject: Note: Political, economic and financial dynamics in the run-up to the UK referendum

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2.2 Impact on the future development of banking supervision and financial legislation

Relevant parts of the Decision: Article 2 of Section A of the Decision states that '*Union law on the Banking Union conferring upon the ECB, the SRB or Union bodies exercising similar functions, authority over credit institutions is applicable only to credit institutions located in [euro area Member States or Member States participating in the SSM] in accordance with relevant EU rules and subject to the requirements of group and consolidated supervision and resolution.'* Article 2 goes on to clarify that substantive Union law to be applied by the ECB, SRB or Union bodies, *'may need to be conceived in a more uniform manner than corresponding rules to be applied by national authorities of Member States that do not take part in the Banking Union. To this end, specific provisions within the single rulebook and other relevant instruments may be necessary, while preserving the level-playing field and contributing to financial stability.'*

The accompanying statement on Section A includes a draft Council decision which seeks to provide safeguards to the UK with regard to the adoption of legal acts in the area of financial stability[1]. The statement provides that if one Member State that is not participating in the Banking Union indicates its reasoned **opposition to legislation** that would be adopted in accordance with **QMV**, the Council must do all in its power to reach within a reasonable time a satisfactory solution to address the concerns. This can include referring the matter for discussion in the European Council. In practice it should however be noted that **the QMV has not been changed**, and it includes an embedded majority for euro area MSs. The

[1] This supplements the existing Council Decision 2009/857/EC relating to the implementation of Article 16(4) TEU and Article 238(2) TFEU (Ioannina compromise), whose wording is to a large extent used also in this Council decision.

draft Council Decision indeed specifies that "while taking due account of the possible urgency of the matter and based on the reasons for opposing as indicated under paragraph 1, a request for a discussion in the European Council on the issue, before it returns to the Council for decision, may constitute such an initiative. **Any such referral** is without prejudice to the normal operation of the legislative procedure of the Union and **cannot result in a situation which would amount to allowing a Member State a veto**".

Other relevant aspects of the Decision could also **indirectly** impact the development of banking supervision and financial legislation. These include: (i) Section C of the Decision, where Member States in the Council commit to discontinue the consideration of a draft legislative act (and amend it to accommodate concerns) if a certain majority of national parliaments adopt a reasoned opinion that it does not comply with the principle of subsidiarity[2]; (ii) the *European Council Declaration on Competitiveness*; and the *Declaration of the European Commission on a subsidiarity implementation mechanism and a burden reduction implementation mechanism*, both of which aim at reviewing EU legislation for compliance with the principle of subsidiarity and proportionality, making EU law simpler, and reducing the regulatory burden for SMEs.

Assessment: [redacted]

[redacted]

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[2] See Assessment of the proposal for a 'New Settlement' for the UK within the EU (SEC/GovC/X/16/144.R) for a short description of the provision and the existing orange card procedure.

[3] The assessment of the UK Government of 22 February 2016 states that: *'the Eurozone may need more uniform rules on financial stability for the single currency and for firms that operate within the Eurozone, beyond what is appropriate for the Single Market. In these cases it is important that this necessary uniformity for the Eurozone is not extended to the UK, where it could reduce the ability of [the UK] authorities to address the particular risks [the UK] face[s].'*

[4] The assessment of the UK government even goes so far as to acknowledge that the euro area may need to pursue the proposals put forward in the Five President's Report.

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