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NOTE

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Subject: 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
- Presidency compromise proposal

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C , , p. .

- (1) In accordance with Article 20 of Regulation (EU) No 1092/2010² (ESRB Regulation), the European Parliament and the Council, on the basis of a report³ from the Commission, have examined the ESRB Regulation to determine whether the mission and organisation of the ESRB needed to be reviewed. The modalities for the designation of the Chair of the ESRB have also been reviewed.
- (2) The 2017 Commission report on the mission and organisation of the ESRB⁴ concludes that, while the ESRB is generally well-functioning, improvements on certain specific points are necessary.
- (3) The broad membership of the General Board of the ESRB is a major asset. Recent developments in the financial supervisory architecture of the Union, and in particular the set-up of a Banking Union, are however not reflected in the composition of that General Board. For that reason, the Chair of the Supervisory Board of the ECB and the Chair of the Single Resolution Board should become members without voting rights of the General Board of the ESRB. Corresponding adjustments should also be made to the Advisory Technical Committee.
- (4) The ECB President has chaired the ESRB for the first 5 years of its existence, after which the ECB President has continued to chair the ESRB on an interim basis. During that period, the ECB President has conferred authority and credibility to the ESRB and ensured that the ESRB can effectively build and rely on the expertise of the ECB in the area of financial stability. It is therefore appropriate that the ECB President chairs the ESRB on a permanent basis.

² 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).

³ Report from the Commission to the European Parliament and to the Council on the mission and organisation of the European Systemic Risk Board, COM(2014) 508 final.

⁴ Commission Staff Working Document, Effect Analysis, Amendments to ESRB Regulation, COM(2017).

- (4a) The ESRB is responsible for the macro-prudential oversight of the financial system within the Union and contributes to the prevention or mitigation of systemic risks in the Union or parts thereof. As such, the ESRB is expected to identify and discuss financial stability risks regardless of their origin. Standard and non-standard policies implemented by central banks may have implications for financial stability. While respecting the independence of central banks, it falls under the ESRB's macro-prudential oversight mandate to discuss these implications.
- (4b) Achieving the mission, objectives and tasks of the ESRB is a collective responsibility of General Board members. All members are expected to shape the ESRB's agenda and work programme and to actively contribute to its regular work. In particular, members are expected to bring relevant topics to the attention of the other General Board members.
- (5) To strengthen the work and visibility of the ESRB, the Chair of the ESRB should be able to delegate tasks to the first Vice-Chair. These delegated tasks could relate among others to the external representation of the ESRB.
- (7) In order to provide for flexibility as regards the voting rights of the General Board, Member States should be able to choose their voting representative between the Governor of the national central bank and a high level representative of a designated authority according to Directive 2013/36/EU and Regulation (EU) No. 575/2013, if the national central bank is not entrusted with these tasks. This voting right flexibility has no effect on Member States where the national central banks are responsible for the application of measures in accordance with Directive 2013/36 and Regulation (EU) No 575/2013. In avoidance of political influence, no General Board member shall have a function in the central government of a Member State.

- 7a) In accordance with Article 5(2) of Regulation (EU) No 1092/2010, the first Vice-Chair of the ESRB has up until now been elected by and from the members of the General Council of the ECB, with regard to the need for a balanced representation of Member States overall and between those whose currency is the euro and those whose currency is not the euro. Following the creation of the Banking Union, it is appropriate to replace the reference to Member State whose currency is the euro and those whose currency is not the euro with a reference to Member States that do participate in the Banking Union and those who do not. The first Vice-Chair shall be elected by and from the national voting members of the General Board, reflecting the greater flexibility as regards General Board membership.
- (7b) Article 3(2) of Council Regulation (EU) No 1096/2010⁵ provides that the head of the Secretariat of the ESRB is to be appointed by the ECB, in consultation with the General Board of the ESRB. To raise the profile of the head of Secretariat of the ESRB, the General Board of the ESRB should assess, in an open and transparent procedure, whether the shortlisted candidates for the position of head of Secretariat of the ESRB possess the qualities and experience necessary to manage the ESRB Secretariat. The ECB should consider to systematically open the selection procedure to external candidates. The General Board should inform the European Parliament and the Council about the assessment procedure. Furthermore, the tasks of the head of the ESRB Secretariat should be clarified.
- (8) Given the amendments to the Agreement on the European Economic Area (EEA)⁶, and in particular the adoption of Regulation (EU) No 1092/2010 by the EEA Member States, Article 9(5) of that Regulation is amended.
- (9) To decrease costs and to enhance procedural efficiency, the number of representatives of the Commission in the Advisory Technical Committee of the ESRB should be reduced from the current two representatives to one representative.

⁵ 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).

⁶ Decision of the EEA Joint Committee No 198/2016 of 30 September 2016 amending Annex IX (Financial services) to the EEA Agreement [2017/275] (OJ L 46, 23.2.2017, p. 1).

- (10) Article 16(3) of Regulation (EU) No 1092/2010 requires that the ESRB warnings and recommendations are transmitted to the Council and the Commission and, where addressed to one or more national supervisory authorities or to the ECB for the tasks conferred to the ECB in accordance with Articles 4(1), 4(2) and 5(2) of Regulation (EU) No 1024/2013, or to the ESAs. To strengthen democratic control and transparency, those warnings and recommendations should also be transmitted to the European Parliament and to the ESAs. An arrangement shall be concluded to ensure confidentiality when confidential or non-public warnings or recommendations are being transmitted to the European Parliament.
- (10a) Members of the ESRB from national central banks, national competent authorities, national authorities entrusted with the conduct of macroprudential policy should be able to use the information they receive from the ESRB in the course of their duties and in relation to the tasks of the ESRB set out in Article 3 (2), also for the exercise of their statutory tasks.
- (10b) The ESRB should facilitate the sharing of information among national authorities or bodies responsible for the stability of the financial system and Union bodies related to measures designed to address systemic risk across the Union's financial system.
- (11) To ensure the quality and relevance of the ESRB opinions, recommendations, warnings and decisions, the Advisory Technical Committee and Advisory Scientific Committee are expected to consult stakeholders, where appropriate, at an early stage and in an open and transparent manner.
- (11a) When reviewing the mission and organisation of the ESRB, the Commission, should in particular consider possible alternative institutional settings. It should also consider whether the balance between Member States participating in the Banking Union and those that are not, in the organisation of the ESRB remains appropriate.
- (12) Regulation (EU) No 1092/2010 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 1092/2010 is amended as follows:

(1) Article 4 is amended as follows:

(a) the following paragraph 2a is inserted:

“2a. When consulted on the appointment of the head of Secretariat of the ESRB in accordance with Article 3(2) of Council Regulation (EU) No 1096/2010*, the General Board, following an open and transparent procedure, shall assess whether the shortlisted candidates for the position of head of Secretariat of the ESRB possess the qualities and experience necessary to manage the ESRB Secretariat. The General Board shall inform the European Parliament and the Council about the consultation procedure.

* 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).”;

(b) the following paragraph 3a is inserted:

“3a. When giving directions to the head of Secretariat of the ESRB in accordance with Article 4(1) of Council Regulation (EU) No 1096/2010, the ESRB Chair and the Steering Committee may address the following:

- (a) the day-to-day management of the ESRB Secretariat;
- (b) any administrative and budgetary issues related to the ESRB Secretariat;
- (c) the coordination and preparation of the work and the decision making of the General Board;

- (d) the preparation of the annual ESRB programme proposal and its implementation;
- (e) the preparation of the annual report on the ESRB activities and the reporting to the General Board on the implementation of the annual programme”;

(2) Article 5 is amended as follows:

- (a) paragraphs 1 and 2 are replaced by the following:

“1. The ESRB shall be chaired by the President of the ECB.

2. The first Vice-Chair shall be elected by and from the national voting members of the General Board for a term of 5 years, with regard to the need for a balanced representation of Member States between those which are participating Member States as defined in Article 2(1) of Council Regulation (EU) No 1024/2013**, and those which are not.

The first Vice-Chair may be re-elected once.

** 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).”;

- (b) paragraph 8 is replaced by the following:

“8. The Chair shall represent the ESRB externally. The Chair may delegate tasks to the first Vice-Chair, such as tasks related to the external representation of the ESRB including the presentation of the work program. Tasks related to the ESRB’s accountability and reporting obligations laid down in Article 19(1), (4) and (5) cannot be delegated. ”;

(3) Article 6 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (b) is replaced by the following:

“(b) “The Governors of the national central banks. Member States where the national central banks are not a designated authority according to Directive 2013/36/EU and Regulation (EU) No 575/2013 may alternatively choose a high-level representative of a designated authority according to Directive 2013/36/EU and Regulation (EU) No 575/2013.

(ii) point (c) is replaced by the following:

“(c) a representative of the Commission”;

“(g) the Chair of the Advisory Scientific Committee;”;

(b) paragraph 2 is amended as follows:

(i) point (a) is replaced by the following:

“(a) “Subject to the decision of each Member State in accordance with paragraph 1(b), one high-level representative per Member State either of the national competent authorities or of the national authority entrusted with the conduct of macroprudential policy in accordance with paragraph 3, or of the national central banks. Where the Governor of the national central bank is not selected as voting member under paragraph 1(b), a high-level representative of the respective national central bank shall be the non-voting member.”;

(ii) new points (c) and (d) are inserted:

“(c) the Chair of the Supervisory Board of the ECB;

(d) the Chair of the Single Resolution Board.”

(c) paragraph 3 is replaced by the following:

“3. With regard to the representation of the national authorities referred to under paragraph 2(a), the respective high-level representatives shall rotate depending on the item discussed, unless the national authorities of a particular Member State have agreed on a common representative.”;

(3a) In Article 7 the following paragraph 4 is inserted:

“4. No member of the General Board, voting or non-voting, shall have a function in the central government of a Member State.”

(3b) Article 8 is amended as follows:

(a) the following paragraph 2a is inserted:

“2a The members of the ESRB from national central banks, national competent authorities and national authorities entrusted with the conduct of macroprudential policy may, in their capacity as members of the ESRB, provide national authorities or bodies responsible for the stability of the financial system in accordance with Union law or national arrangements with information related to the performance of the tasks entrusted to the ESRB necessary for the exercise of their statutory tasks, provided that sufficient safeguards are established to ensure full respect of relevant Union law and national arrangements.

(b) the following paragraph 2b is inserted:

“2b In accordance with paragraph 2 and where the information originates from authorities different than those referred to in paragraph 2a, it shall be used by members of the ESRB from national central banks, national competent authorities and national authorities entrusted with the conduct of macroprudential policy for the exercise of their statutory tasks only with the explicit agreement of those authorities”;

(4) in Article 9, paragraph 5 is replaced by the following:

“5. Participation in the work of the ESRB may be open to high-level representatives of the relevant authorities from third countries when relevant to the Union. Arrangements may be made by the ESRB specifying, in particular, the nature, scope and procedural aspects of the involvement of those third countries in the work of the ESRB. Such arrangements may provide for representation, on an ad-hoc basis, as an observer, on the General Board and should concern only items of relevance to the Union, excluding any case where the situation of individual financial institutions or Member States may be discussed.”

(4a) in Article 9, paragraph 6 is replaced by the following:

“(6) The proceedings of the meetings shall be confidential. The General Board may decide to render an account of its deliberation public in due time, subject to applicable confidentiality requirements and in a manner that does not allow for the identification of individual members of the General Board or individual institutions. The General Board may also decide to hold press conferences after its regular meetings.

(5) Article 11 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (b) is replaced by “the ECB Executive Board Member responsible for Financial Stability and Macroprudential Policy”

(ii) point (c) is replaced by the following:

“(c) four national voting members of the General Board with regard to the need for a balanced representation of Member States between those which are participating Member States as defined in Article 2(1) Regulation (EU) No 1024/2013 and those which are not.

They shall be elected by and from among the members of the General Board for a period of 3 years;”;

(iii) point (d) is replaced by the following:

“(d) a representative of the Commission”;

(aa) paragraph 2 is amended as follows:

“The Chair and first Vice-Chair shall set up quarterly or ad hoc meetings of the Steering Committee in close cooperation with each other.”

(6) Article 12 is amended as follows:

(a) paragraph 5 is replaced by the following:

“5. Where appropriate, the Advisory Scientific Committee shall organise consultations with stakeholders at an early stage and in an open and transparent manner, while taking into account the requirement of confidentiality.”;

(7) Article 13 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (f) is replaced by the following:

“(f) a representative of the Commission;”;

(ii) the following points (fa) and (fb) are inserted:

“(fa) a representative of the Supervisory Board of the ECB;

(fb) a representative of the Single Resolution Board;”;

(b) the following paragraph 4a is inserted:

“4a. Where appropriate, the Advisory Technical Committee shall organise consultations with stakeholders at an early stage and in an open and transparent manner, while taking into account the requirement of confidentiality.”;

(8) Article 16 is amended as follows:

(a) in paragraph 2, the first sentence is replaced by the following:

“Warnings or recommendations issued by the ESRB in accordance with points (c) and (d) of Article 3(2) may be of either a general or a specific nature and shall be addressed in particular to the Union, to one or more Member States, to one or more of the ESAs, to one or more of the national competent authorities, to one or more national authorities designated for the application of measures aimed at addressing systemic or macro-prudential risk, or to the ECB for the tasks conferred to the ECB in accordance with Articles 4(1), 4(2) and 5(2) of Regulation (EU) No 1024/2013.”;

(b) paragraph 3 is replaced by the following:

“3. At the same time as they are transmitted to the addressees in accordance with paragraph 2, the warnings or recommendations shall be transmitted, in accordance with strict rules of confidentiality, to the Council, the European Parliament, the Commission and to the ESAs. An agreement shall be concluded to ensure confidentiality when confidential or non-public warnings or recommendations are being transmitted to the European Parliament.”;

(9) in Article 17, paragraphs 1 and 2 are replaced by the following:

“1. If a recommendation referred to in Article 3(2)(d) is addressed to the Commission, to one or more Member States, to one or more ESAs, to one or more national competent authorities, to one or more national authorities designated for the application of measures aimed at addressing systemic or macro-prudential risk or to the ECB for the tasks conferred to the ECB in accordance with Articles 4(1), 4(2) and 5(2) of Regulation (EU) No 1024/2013, the addressees shall communicate to the European Parliament, the Council and to the ESRB the actions undertaken in response to the recommendation and shall substantiate any inaction. Where relevant, the ESRB shall, subject to strict rules of confidentiality, inform the ESAs of the answers received without delay.”;

2. If the ESRB decides that its recommendation has not been followed or that the addressees have failed to provide adequate justification for their inaction, the ESRB shall, subject to strict rules of confidentiality, inform the addressees, the European Parliament, the Council and the relevant ESAs thereof.”;

(9a) in Article 18, paragraph 4 is amended as follows:

“Where the General Board decides not to make a warning or a recommendation public, the addressees, and where appropriate, the Council, the European Parliament and the ESAs shall take all the measures necessary for the protection of their confidential nature.”

(11) Article 20 is replaced by the following:²² .

Within 5 years after the entering into force of this regulation the Commission shall, after having consulted ESRB members, report to the European Parliament and the Council whether the mission or organisation of the ESRB needs to be reviewed, also considering possible alternative models to the current one.

Article 2

This Regulation shall enter into force on the [...] day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament

For the Council

The President

The President
