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From: General Secretariat of the Council
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Subject: OPINION 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 (CON/2018/12)

Delegations will find below the opinion of the European Central Bank 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 (CON/2018/12)

OPINION 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

(CON/2018/12)

Introduction and legal basis

On 27 November 2017, the European Central Bank (ECB) received a request from the Council of the European Union for an opinion 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 Board¹ (hereinafter the ‘proposed regulation’).

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 contribution of the European System of Central Banks (ESCB) to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system, pursuant to Article 127(5) of the Treaty, and the specific tasks conferred upon the ECB concerning the prudential supervision of credit institutions and the functioning of the European Systemic Risk Board (ESRB), pursuant to 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 COM(2017) 538 final.

General observations

The proposed regulation is part of a comprehensive package of proposals to strengthen the European System of Financial Supervision (ESFS), consisting of the three European supervisory authorities (ESAs) and the ESRB. The ECB is of the view that the ESRB has played a central and successful role since its inception with regard to preventing or mitigating systemic risks to financial stability in the Union that may arise within the financial system².

Therefore, the ECB supports the limited number of targeted changes to the ESRB's governance and operational framework proposed by the European Commission, which aim to further strengthen the ESRB's efficiency and effectiveness and enable the ESRB to better fulfil its mandate. More specifically, the ECB considers the proposed changes to Regulation (EU) No 1092/2010 of the European Parliament and of the Council³ necessary to properly reflect the establishment of the Single Supervisory Mechanism (SSM)⁴ and to ensure that the ESRB is able to perform macroprudential oversight of the entire financial system given the increasing importance of market-based financing, in particular as a result of the establishment of the capital markets union. The ECB and the ESRB are of the view that the ECB is well placed to continue to provide analytical, statistical, financial and administrative support to the ESRB in line with the existing arrangements⁵. Moreover, the ECB will also continue to support the ESRB to avoid duplicating work, thus taking advantage of the benefits arising from the ECB's risk assessment role and analysis of the banking sector in the Member States participating in the SSM.

² Opinion of the European Central Bank of 4 February 2015 on the review of the mission and organisation of the European Systemic Risk Board (CON/2015/4) (OJ C 192, 10.6.2015, p. 1). All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

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).

⁴ See the 'ECB contribution to the European Commission's consultation on the review of the EU macroprudential policy framework', December 2016 (hereinafter the 'ECB contribution'), available on the ECB's website at www.ecb.europa.eu. See also page 4 of the 'ESRB response to the European Commission's Consultation Document on the "Review of the EU Macro-prudential Policy Framework"', 24 October 2016 (hereinafter the 'ESRB response'), available on the ESRB's website at www.esrb.europa.eu.

⁵ See pages 9 and 10 of the ECB contribution and page 3 of the ESRB response.

In addition, the ECB notes that Regulation (EU) No 1092/2010 requires the ESRB to provide the ESAs with the information necessary for the achievement of their tasks, but does not regulate the exchange of information between the ESRB and macroprudential authorities in Member States that have been established after its adoption in 2010. Against this backdrop, the ECB would welcome a legislative proposal aiming to revise the current information sharing regime laid down in Regulation (EU) No 1092/2010. A revision of the current information sharing regime should allow the ESRB to provide national macroprudential authorities with relevant supervisory data necessary for the fulfilment of their mandates under national law, provided that sufficient safeguards are established to ensure conformity with relevant Union law. Moreover, a corresponding clarification may be warranted to enable ESRB members from the ESCB and the supervisory authorities to use information received from the ESRB for the exercise of their statutory tasks.

Specific observations

1. The Chair of the ESRB

The proposed regulation provides for the ECB President to chair the ESRB, thereby creating a permanent link between the ECB President and the ESRB Chair⁶. While the ESRB remains autonomous, it has also greatly benefited from the visibility, independence and reputation of the ECB⁷. As previously noted⁸, central banks play an important role in macroprudential policy, given their responsibility for contributing to financial stability and their analytical expertise on the real economy, financial markets and market infrastructure. In this regard, the ECB provides analytical, statistical, administrative and logistical support to the ESRB. Furthermore, close cooperation at the technical level between the ECB and ESRB is ensured by cross-representation on the ESRB's Advisory Technical Committee (ATC) and the ECB's Financial Stability Committee. Against this background, the attribution of the ESRB Chair to the President of the ECB under Article 5(1) of Regulation (EU) No 1092/2010 underlines the importance of the central banks' role in the functioning of the ESRB⁹. Therefore, the ECB supports the Commission's proposal to link the ESRB Chair and the ECB Presidency.

⁶ See Article 1(2)(a) of the proposed regulation.

⁷ See page 3 of the ESRB response.

⁸ See page 9 of the ECB contribution.

⁹ See paragraph 1.2 of Opinion CON/2015/4.

2. ESRB organisation

2.1 *Appointment procedure for the Head of the ESRB Secretariat*

The proposed regulation stipulates that, when consulted on the appointment of the Head of the ESRB Secretariat, following an open and transparent procedure, the General Board assesses the suitability of the candidates for the position of Head of the ESRB Secretariat and also informs the European Parliament and the Council about the consultation procedure¹⁰. The ECB generally supports the proposal to raise the profile of the Head of the ESRB Secretariat, and would like to make a few specific comments regarding the ECB's role in supporting the ESRB Secretariat and its current role in the appointment procedure for the Head of the ESRB Secretariat. The ESRB Secretariat is ensured by the ECB and, to this effect, the ECB should provide sufficient human and financial resources¹¹. The Head of the ESRB Secretariat is appointed by the ECB, with the General Board of the ESRB acting in a consultative capacity¹². Against this background, the ECB considers that this procedure, which tasks the General Board of the ESRB, when consulted on the appointment of the Head of the ESRB Secretariat, with assessing the suitability of the candidates, should be without prejudice to the ECB's ultimate responsibility to appoint the Head of the ESRB Secretariat, whilst fully respecting the consultation procedure laid down in Article 3(2) of Regulation (EU) No 1096/2010.

¹⁰ See Article 1(1)(a) of the proposed regulation.

¹¹ See recital 8 and Article 2 of 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).

¹² See Article 3(2) of Regulation (EU) No 1096/2010.

2.2 *The tasks of the Head of the ESRB Secretariat*

The proposed regulation provides that the ESRB Chair and the Steering Committee may entrust the Head of the ESRB Secretariat with specific tasks. These include, *inter alia*, the day-to-day management of the ESRB Secretariat, the coordination and preparation of the work and the decision-making of the General Board, and the preparation of the annual ESRB programme proposal and its implementation¹³. The ECB welcomes this clarification of the tasks that the Head of the ESRB Secretariat may exercise. From a practical perspective, the Head of the ESRB Secretariat already carries out the majority of the tasks listed in the proposed regulation. With respect to the preparation of the annual ESRB programme proposal, the ECB considers that the ESRB should remain able to respond flexibly to address potential vulnerabilities in the financial system, which may require a temporary and exceptional deviation from the annual work programme, depending on the specific circumstances of the situation.

2.3 *The external representation of the ESRB by the Head of the ESRB Secretariat*

The proposed regulation includes the possibility for the Chair of the ESRB to delegate his or her tasks related to the external representation of the ESRB to the Head of the ESRB Secretariat¹⁴. The ECB generally supports the Commission's objective of raising the profile of the Head of the ESRB Secretariat by providing for the delegation of certain tasks. However, the ECB considers that the proposed regulation should clarify whether the Head of the ESRB Secretariat may also represent the ESRB in relation to tasks laid down in Article 19(1), (4) and (5) of Regulation (EU) No 1092/2010 regarding accountability and reporting obligations¹⁵. Given the importance of ensuring the ESRB's accountability, the ECB is of the view that the Chair of the ESRB should continue to represent the ESRB externally with respect to the tasks set out in Article 19(1), (4) and (5) of Regulation (EU) No 1092/2010 and may only delegate such external representation to the Vice-Chair of the ESRB.

¹³ See Article 1(1)(b) of the proposed regulation.

¹⁴ See Article 1(2)(b) of the proposed regulation.

¹⁵ See, for example, Article 19(1) of Regulation (EU) No 1092/2010.

2.4 *Changes related to the establishment of the SSM*

In order to take into account the creation of the Banking Union in general, and the establishment of the SSM in particular, the proposed regulation includes the Chair of the Supervisory Board of the ECB among the members of the General Board with voting rights¹⁶, in the Steering Committee¹⁷, and his/her representative in the ATC¹⁸. The establishment of the Banking Union and the related changes in the institutional framework for the prudential supervision of credit institutions following the establishment of the SSM are of relevance to the ESRB's tasks and functions. Therefore, the ECB welcomes the changes proposed by the Commission, which are generally in line with previous recommendations made by the ECB on enhancing the ESRB's governance¹⁹. The ECB notes that the proposed regulation attributes voting rights to the Chair of the Supervisory Board on the ESRB General Board, and ensures that the Chair of the Supervisory Board is represented on the ESRB Steering Committee. In addressing these specific aspects, due consideration could be given to weighing up the European dimension of the SSM with the need to ensure an appropriate institutional balance between the voting and non-voting rights of the banking supervisory representatives of those Member States participating in Banking Union and of the non-participating Member States.

¹⁶ See Article 1(3)(a)(i) of the proposed regulation.

¹⁷ See Article 1(5)(a)(i) of the proposed regulation.

¹⁸ See Article 1(7)(a)(ii) of the proposed regulation.

¹⁹ See paragraphs 2.1, 2.2 and 5.1 of Opinion CON/2015/4; see also page 10 of the ECB contribution.

The Commission proposes deleting the provision under Regulation (EU) No 1092/2010 whereby participation in the work of the ESRB may be open to high-level representatives of relevant authorities from third countries, in particular from countries in the European Economic Area. Their participation is strictly limited to issues of particular relevance to those countries²⁰. This provision serves as the legal basis for the ESRB General Board to invite high-level representatives of relevant authorities from third countries and enables the ESRB to make arrangements specifying the nature, scope and procedural aspects of the involvement of those third countries in the work of the ESRB²¹. The ECB suggests maintaining this provision in order to preserve the necessary flexibility for the ESRB to continue to include, where relevant, such high-level representatives from the relevant third-country authorities in the ESRB's work.

3. ESRB warnings and recommendations

3.1 *The ECB as an addressee of ESRB warnings and recommendations*

The proposed regulation amends Regulation (EU) No 1092/2010 to, *inter alia*, provide that warnings or recommendations by the ESRB may also be addressed to the ECB, as a competent or designated authority in Member States participating in the SSM, for tasks conferred on the ECB in accordance with Articles 4(1), 4(2) and 5(2) of Regulation (EU) No 1024/2013. The ECB welcomes the clarification of the list of potential addressees of ESRB warnings and recommendations, which duly recognise the establishment of the Banking Union and the related changes in the institutional set-up in the regulatory framework for macroprudential policy²².

²⁰ See Article 1(4) of the proposed regulation.

²¹ See Article 9(5) of Regulation (EU) No 1092/2010.

²² See page 2 of the ECB contribution.

3.2 *The transmission of ESRB warnings and recommendations to the European Parliament*

The ECB generally supports the proposal to transmit ESRB warnings and recommendations to the European Parliament²³. However, the ECB would like to emphasise that all bodies must ensure strict confidentiality and professional secrecy in order to mitigate potential risks stemming from a premature or undue disclosure of market sensitive information that may compromise financial stability in the Union. Any addition to the number of recipients of ESRB warnings and recommendations must take full account of such risks, which arise before these warnings and recommendations have been communicated to the wider public.

4. **Collection and exchange of information**

4.1 *The involvement of the ESAs in respect of requests of disaggregated information from ESCB central banks*

The ECB considers that the proposed regulation would benefit from clarifying the scope of Article 15(7) of Regulation (EU) No 1092/2010. At the current juncture, it is not entirely clear from the drafting of this provision whether the ESAs must also be consulted when the ESRB requests disaggregated information from ESCB central banks. The ECB sees no reason why the ESAs should be involved in assessing whether the ESRB's request for non-supervisory information is justified and appropriate. Therefore, it suggests clarifying that the ESAs must only be consulted if ESRB requests pertain to disaggregated supervisory information.

²³ See Article 1(8)(b) of the proposed regulation.

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 the ECB's website.

Done at Frankfurt am Main, 2 March 2018.

The President of the ECB

Mario DRAGHI

Technical working document

produced in connection with ECB Opinion [CON/2018/12]²⁴

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

Drafting proposals

Text proposed by the Commission	Amendments proposed by the ECB²⁵
<p>Amendment 1</p> <p>Article 1(2)(b) of the proposed regulation</p> <p>(Article 5(8) of Regulation (EU) No 1092/2010)</p>	
<p>‘8. The Chair shall represent the ESRB externally. The Chair may delegate tasks related to the external representation of the ESRB to the head of the Secretariat.’</p>	<p>‘8. The Chair shall represent the ESRB externally. The Chair may delegate tasks related to the external representation of the ESRB to the Head of the ESRB Secretariat, except for tasks related to the ESRB’s accountability and reporting obligations laid down in Article 19(1), (4) and (5) of Regulation (EU) No 1092/2010.’</p>

Explanation

The proposed amendment aims to ensure that it will always be the Chair or the Vice-Chair, rather than a representative, who represents the ESRB before the European Parliament and the Council when discharging the ESRB’s accountability and reporting obligations. See paragraph 2.3 of the opinion.

²⁴ 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 in the Legal framework section of the ECB’s website alongside the opinion itself.

²⁵ 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.

Amendment 2
Article 1(4) of the proposed regulation
(Article 9(5) of Regulation (EU) No 1092/2010)

‘(4) in Article 9, paragraph 5 is deleted:

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

“5. Participation in the work of the ESRB may be open to high-level representatives of the relevant authorities from third countries, in particular from **European Economic Area** countries, strictly limited to issues of particular relevance to those countries. 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 those countries, excluding any case where the situation of individual financial institutions or Member States may be discussed.”

Explanation

The proposed changes seek to ensure that high-level representatives of the relevant third-country authorities may continue to participate in meetings of the ESRB General Board by retaining the current provision to this effect in Regulation (EU) No 1092/2010. See paragraph 2.5 of the opinion.

Amendment 3

(Article 15(7) of Regulation (EU) No 1092/2010)

‘7. Before each request for information which is not in summary or aggregate form, the ESRB shall duly consult the relevant European Supervisory Authority in order to ensure that the request is justified and proportionate. If the relevant European Supervisory Authority does not consider the request to be justified and proportionate, it shall, without delay, send the request back to the ESRB and ask for additional justification. After the ESRB has provided the relevant European Supervisory Authority with such additional justification, the requested information shall be transmitted to the ESRB by the addressees of the request, provided

that they have legal access to the relevant information.’.

‘7. Before each request for **supervisory** information which is not in summary or aggregate form, the ESRB shall duly consult the relevant European Supervisory Authority in order to ensure that the request is justified and proportionate. If the relevant European Supervisory Authority does not consider the request to be justified and proportionate, it shall, without delay, send the request back to the ESRB and ask for additional justification. After the ESRB has provided the relevant European Supervisory Authority with such additional justification, the requested information shall be transmitted to the ESRB by the addressees of the request, provided that they have legal access to the relevant information.’.

Explanation

The proposed change seeks to clarify that the ESRB only consults the European Supervisory Authorities in relation to requests that pertain to disaggregated supervisory information. See paragraph 4.1 of the opinion.