



Council of the
European Union

Brussels, 29 March 2019
(OR. en)

Interinstitutional File:
2017/0232(COD)

7940/19
ADD 3

EF 129
ECOFIN 348
SURE 24
CODEC 808

NOTE

From: Presidency

To: Permanent Representatives Committee

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

- Confirmation of the final compromise text with a view to agreement

REGULATION (EU) 2019/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

**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,

¹ OJ C , , p. .

Whereas:

- (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.
- (2a) Recent institutional changes relating to the Banking Union, coupled with efforts to achieve a capital markets union, as well as technological change, have effectively altered the ESRB's operating environment since the time of its inception. The ESRB should contribute to the prevention or mitigation of systemic risks to financial stability in the Union and thereby to achieving the objectives of the internal market. The Union macro-prudential oversight of the financial system is an integral part of the European System of Financial Supervision. These institutional arrangements by effectively identifying and addressing micro and macro-prudential risks can ensure that all stakeholders have sufficient confidence to engage in financial activities, in particular cross-border. By promoting timely and consistent policy responses among the Member States to identified systemic risks, the ESRB should contribute to preventing diverging approaches and improving the functioning of the internal market.

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).

- (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.
- (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. Monetary conditions may have implications for financial stability. While fully respecting the independence of central banks, it falls under the ESRB's macro-prudential oversight mandate to discuss these implications. The ESRB is also expected to monitor and assess risks to financial stability arising from developments that can have an impact on a sectoral level or at the level of the financial system as a whole, including risks and vulnerabilities resulting from technological change or from environmental or social factors. The ESRB is also expected to analyse developments outside the banking sector, including those leading to the completion of the Capital Markets Union.

- (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 visibility of the ESRB, the Chair of the ESRB should be able to delegate tasks, such as tasks related to the external representation of the ESRB to the first Vice Chair or, if the first Vice Chair is unavailable and where appropriate, to the second Vice-Chair or to the head of the ESRB Secretariat. Such delegation should not extend to participation in public hearings and in discussions behind closed doors at the European Parliament.
- (6a) In order to provide for flexibility as regards the selection of the Member with voting rights on 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, where that designated authority has the leading role in financial stability in its area of competence. This flexibility as regards selection of the Member with voting rights has no effect on Member States where the national central bank is a designated authority in accordance with Directive 2013/36 and Regulation (EU) No 575/2013. In order to avoid political influence, no General Board member shall have a function in the central government of a Member State.

- (7) 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.
- (7a) 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 systematically opening 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.

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).***

- (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 should be 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.
- (10) Considering the competences granted to the ECB by Regulation (EU) No 1024/2013, the ECB should be added as a possible addressee of the ESRB warnings and recommendations for the tasks conferred on the ECB in accordance with Articles 4(1), 4(2) and 5(2) of that Regulation. National Resolution Authorities established pursuant to Directive 59/2014 and the Single Resolution Board established by Regulation (EU) No 806/2014 should also be added. 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, 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. Where appropriate, the General Board shall require that an agreement be concluded to ensure confidentiality when confidential or non-public warnings or recommendations are being transmitted.

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).

- (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, including 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, and to do so as widely as possible to ensure an inclusive approach towards all interested parties.
- (11a) When reviewing the mission and organisation of the ESRB, the Commission should in particular consider possible alternative institutional models. 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) In Article 2, point (c) is replaced by the following:

“(c) ‘systemic risk’ means a risk of disruption in the financial system with the potential to have serious negative consequences for the real economy of the Union or of one or more of its Member States and for the functioning of the internal market. All types of financial intermediaries, markets and infrastructure may be potentially systemically important to some degree.”;

(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, impartiality and experience necessary to manage the ESRB Secretariat. The General Board shall inform the European Parliament and the Council in sufficient detail about the assessment and 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, such as tasks related to the external representation of the ESRB, including the presentation of the work program, to the first Vice-Chair, or if the first Vice-Chair is unavailable and where appropriate, to the second Vice-Chair or to the head of the Secretariat. Tasks related to the ESRB’s accountability and reporting obligations laid down in Article 19(1), (4) and (5) may not 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 bank is not a designated authority in accordance with Directive 2013/36/EU or Regulation (EU) No 575/2013 and where that designated authority has the leading role in financial stability in its area of competence may alternatively nominate a high-level representative of a designated authority in accordance with Directive 2013/36/EU or Regulation (EU) No 575/2013.”;

(-ia) point (c) is replaced by the following:

“(c) a representative of the Commission;“;

(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) and in accordance with paragraph 3, one high-level representative per Member State either of the national competent authorities or of a national authority entrusted with the conduct of macroprudential policy or of the national central bank. Where the Governor of the national central bank is not the voting member referred to in point (b) of paragraph 1, a high-level representative of the national central bank shall be the non-voting member.”;

(ia) new points (ba) and (bb) are inserted:

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

(bb) 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) Article 7(1) is replaced by the following:

“1. When participating in the activities of the General Board and of the Steering Committee or when conducting any other activity relating to the ESRB, the members of the ESRB shall perform their duties impartially and solely in the interest of the Union as a whole. They shall not seek nor take instructions from any government, the Union institutions or any other public or private body.”;

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

“3a. No member of the General Board, voting or non-voting, shall have a function in the central government of a Member State.”;

(3c) In Article 8(1), the following subparagraph is added:

“This paragraph is without prejudice to the confidential oral discussions held in accordance with Article 19(5).”;

(3d) 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 to national authorities or to bodies responsible for the stability of the financial system in accordance with Union law or with national arrangements information related to the performance of the tasks entrusted to the ESRB which is necessary for the exercise of statutory tasks of those authorities or bodies, 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. Where information originates from authorities different than those referred to in paragraph 2a, members of the ESRB from national central banks, national competent authorities and national authorities entrusted with the conduct of macroprudential policy shall use that information for the exercise of their statutory tasks only with the explicit agreement of those authorities.”;

(4) Article 9 is amended as follows:

(a) paragraph 4 is replaced by the following:

“4. Where appropriate, high-level representatives from international financial organisations carrying out activities directly related to the tasks of the ESRB set out in Article 3(2) or the President of the European Parliament or its representative on topics related to EU macroprudential legislation may be invited to attend the meetings of the General Board.”;

(b) 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.”;

(c) paragraph 6 is replaced by the following:

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

(5) Article 11 is amended as follows:

(a) paragraph 1 is amended as follows:

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

“(b) the ECB Executive Board Member responsible for Financial Stability and Macroprudential Policy;”;

(i) 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 members of the General Board for a period of 3 years;”;

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

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

(aa) paragraph 2 is amended as follows:

“2. The Chair and first Vice-Chair of the ESRB shall jointly set up the meetings of the Steering Committee at least quarterly, before each meeting of the General Board. The Chair and the first Vice-Chair may also jointly set up ad-hoc meetings.”;

(6) Article 12 is amended as follows:

(-a) paragraph 1 is replaced by the following:

“1. The Advisory Scientific Committee shall be composed of the Chair of the Advisory Technical Committee and 15 experts representing a wide range of skills, experience and knowledge pertaining to all relevant financial markets sectors, proposed by the Steering Committee and approved by the General Board for a four-year, renewable mandate. The nominees shall not be members of the ESAs and shall be chosen on the basis of their general competence and their diverse experience in academic fields or other sectors, in particular in small and medium-sized enterprises or trade-unions, or as providers or consumers of financial services.”;

(-aa) paragraph 2 is replaced by the following:

“2. The Chair and the two Vice-Chairs of the Advisory Scientific Committee shall be appointed by the General Board following a proposal from the Chair of the ESRB and they shall each have a high level of relevant expertise and knowledge, for example by virtue of their relevant academic and professional background in the sectors of banking, securities markets, or insurance and occupational pensions. The chairmanship of the Advisory Scientific Committee should rotate between those three persons.”;

(-ab) paragraph 3 is replaced by the following:

“3. The Advisory Scientific Committee shall provide advice and assistance to the ESRB in accordance with Article 4(5), at the request of the Chair of the ESRB or the General Board.”;

(a) paragraph 5 is replaced by the following:

“5. Where appropriate, the Advisory Scientific Committee shall organise consultations with stakeholders, such as market participants, consumer bodies and academic experts, at an early stage and in an open and transparent manner, while taking into account the requirement of confidentiality. Such consultations shall be conducted as widely as possible to ensure an inclusive approach towards all interested parties and relevant financial sectors and shall allow reasonable time for stakeholders to respond.”;

(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;”;

(aa) paragraph 3 is replaced by the following:

“3. The Advisory Technical Committee shall provide advice and assistance to the ESRB in accordance with Article 4(5) at the request of the Chair of the ESRB or the General Board.”;

(b) the following paragraph is inserted:

“4a. Where appropriate, the Advisory Technical Committee shall organise consultations with stakeholders, such as market participants, consumer bodies and academic experts, at an early stage and in an open and transparent manner, while taking into account the requirement of confidentiality. Such consultations shall be conducted as widely as possible to ensure an inclusive approach towards all interested parties and relevant financial sectors and shall allow reasonable time for stakeholders to respond.”;

(7a) Article 14 is replaced by the following:

“In performing the tasks set out in Article 3(2), the ESRB shall, where appropriate, seek the views of relevant private sector stakeholders. Such consultations shall be conducted as widely as possible to ensure an inclusive approach towards all interested parties and relevant financial sectors and shall allow reasonable time for stakeholders to respond.”;

(7b) Article 15(7) is replaced by the following:

“7. Before each request for information of a supervisory nature 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.”;

(8) Article 16 is amended as follows:

(a) paragraph 2 is replaced by the following:

“2. 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, or to national resolution authorities and the Single Resolution Board. If a warning or a recommendation is addressed to one or more of the national supervisory authorities, the Member State or Member States concerned shall also be informed thereof. Recommendations shall include a specified timeline for the policy response. Recommendations may also be addressed to the Commission in respect of the relevant Union legislation.”;

(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. Where appropriate, the General Board shall require that an agreement be concluded to ensure confidentiality when confidential or non-public warnings or recommendations are being transmitted.”;

(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 one of the addressees listed in Article 16(2), the addressee shall communicate to the European Parliament, the Council, the Commission 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:

- “4. 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.”;

(9b) Article 19 is amended as follows:

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

- “1. At least annually and more frequently in the event of widespread financial distress, the Chair of the ESRB shall be invited to an annual hearing in the European Parliament by the competent committee, marking the publication of the ESRB’s annual report to the European Parliament and the Council. That hearing shall be conducted separately from the monetary dialogue between the European Parliament and the President of the ECB.
2. The annual report referred to in paragraph 1 shall contain the information that the General Board decides to make public in accordance with Article 18. The annual report shall be made available to the public. It shall include giving an account of the resources made available to the ESRB in accordance with Article 3(1) of Regulation (EU) 1096/2010.”;

(b) the following paragraph is added:

- “5a. The ESRB shall reply orally or in writing to questions put to it by the European Parliament or by the Council. It shall reply to those questions in a reasonable time frame without undue delay. When confidential information is transmitted, the European Parliament shall ensure the full confidentiality of that information in accordance with Article 8 and Article 19(5).”;

(10) Article 20 is replaced by the following:

“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
