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#### COVER NOTE

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From:	Mr Francesco Mazzaferro, Head of the ESRB Secretariat
date of receipt:	18 December 2017
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	Amendment to the ESRB Recommendation on the assessment of cross-border effects of and voluntary reciprocity for macroprudential policy measures (ESRB/2015/2)
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Delegations will find attached the above mentioned document.

EUROPEAN SYSTEMIC RISK BOARD

RECOMMENDATION OF THE EUROPEAN SYSTEMIC RISK BOARD

of 20 October 2017

amending Recommendation ESRB/2015/2 on the assessment of cross-border effects of and voluntary reciprocity for macroprudential policy measures

(ESRB/2017/4)

THE GENERAL BOARD OF THE EUROPEAN SYSTEMIC RISK BOARD,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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<sup>1</sup>, and in particular Article 3 and Articles 16 to 18 thereof,

Having regard to Decision ESRB/2011/1 of the European Systemic Risk Board of 20 January 2011 adopting the Rules of Procedure of the European Systemic Risk Board<sup>2</sup>, and in particular Article 15(3)(e) and Articles 18 to 20 thereof,

Whereas:

- (1) The framework on voluntary reciprocity for macroprudential policy measures set out in Recommendation ESRB/2015/2<sup>3</sup> of the European Systemic Risk Board should ensure that all exposure-based macroprudential policy measures activated in one Member State are reciprocated in the other Member States to the greatest possible extent.
- (2) Relevant authorities in Member States may exempt an individual financial service provider with non-material exposure from the application of the reciprocating measure (*de minimis* principle).
- (3) The current framework on voluntary reciprocity of the European Systemic Risk Board (ESRB) does not provide guidance on the threshold to be used by the relevant authorities to determine the materiality of exposure. Where a relevant authority exempts an individual financial service provider with non-material exposure, the authority currently may adopt the threshold it deems appropriate, creating potential divergences in the application of the *de minimis* principle.

<sup>1</sup> OJ L 331, 15.12.2010, p. 1.

<sup>2</sup> OJ C 58, 24.2.2011, p. 4.

<sup>3</sup> Recommendation ESRB/2015/2 of the European Systemic Risk Board of 15 December 2015 on the assessment of cross-border effects of and voluntary reciprocity for macroprudential policy measures (OJ C 97, 12.3.2016, p. 9).

- (4) To avoid such potential divergences, the relevant activating authority should propose a maximum materiality threshold at the financial service provider level when requesting reciprocation. The permanent Assessment Team of the ESRB, established under Decision ESRB/2015/4 of the European Systemic Risk Board<sup>4</sup>, may recommend a different threshold if deemed necessary.
- (5) Therefore, Recommendation ESRB/2015/2 should be amended accordingly,

HAS ADOPTED THIS RECOMMENDATION:

#### Amendments

Recommendation ESRB/2015/2 is amended as follows:

1. in Section 1, sub-recommendation B(2) is replaced by the following:
  2. If reciprocation by other Member States is deemed necessary to ensure the effective functioning of the relevant measures, the relevant activating authorities are recommended to submit a request for reciprocation to the ESRB, together with the notification of the measure. The request should include a proposed materiality threshold.;
2. in paragraph 1 of Section 2, the following point is added:
  - (i) "materiality threshold" means a quantitative threshold below which an individual financial service provider's exposure to the identified macroprudential risk in the jurisdiction where the macroprudential policy measure is applied by the activating authority can be considered non-material.;
3. in Section 2, paragraph 2(1) is replaced by the following:
  1. The relevant authorities may exempt an individual financial service provider under their jurisdiction from applying a particular reciprocating macroprudential policy measure, if this financial service provider has non-material exposure to the identified macroprudential risk in the jurisdiction, where the relevant activating authority is applying the macroprudential policy measure in question (*de minimis* principle). The relevant authorities are requested to report to the ESRB on such exemptions, using the template for notifying reciprocating measures as published on the ESRB's website.
 

For the purpose of applying the *de minimis* principle, the ESRB recommends a materiality threshold based on that proposed by the relevant activating authority pursuant to Section 1, sub-recommendation B(2). The threshold calibration should follow the best practices as established by the ESRB. The materiality threshold is a recommended maximum threshold level. Reciprocating relevant authorities may apply the recommended threshold, set a lower threshold for their jurisdiction where appropriate, or reciprocate the measure without any materiality threshold. When applying the *de minimis* principle, authorities should monitor

<sup>4</sup> Decision ESRB/2015/4 of the European Systemic Risk Board of 16 December 2015 on a coordination framework for the notification of national macroprudential policy measures by relevant authorities, the issuing of opinions and recommendations by the ESRB, and repealing Decision ESRB/2014/2 (OJ C 97, 12.3.2016, p. 28).

whether leakages and regulatory arbitrage materialise and close the regulatory loophole where necessary.';

4. Section 2, paragraph 4 is replaced by the following:

**4. Amendments to the Recommendation**

The General Board will decide when this Recommendation needs to be amended. Such amendments include in particular any additional or modified macroprudential policy measures to be reciprocated as set out in Recommendation C and the related annexes containing measure-specific information, including the materiality threshold provided by the ESRB. The General Board may also extend the deadlines set forth in the previous paragraphs where legislative initiatives are necessary to comply with one or more recommendations. In particular, the General Board may decide to amend this Recommendation following the European Commission's review of the mandatory recognition framework under Union law or on the basis of experience gained with the operation of the voluntary reciprocity arrangement established by this Recommendation.'.

Done at Frankfurt am Main, 20 October 2017.



Francesco MAZZAFERRO,

Head of the ESRB Secretariat, on behalf of the General Board of the ESRB