

# EUROPEAN SYSTEMIC RISK BOARD

## DECISION OF THE EUROPEAN SYSTEMIC RISK BOARD

of 3 June 2011

### on public access to European Systemic Risk Board documents

(ESRB/2011/5)

(2011/C 176/03)

THE GENERAL BOARD OF THE EUROPEAN SYSTEMIC RISK BOARD,

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 Articles 4(2), 8(3) and 16(3) thereof,

Having regard to 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 <sup>(2)</sup>, and in particular Article 6(1) and Article 7 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>(3)</sup>, and in particular Articles 5(5), 10(5), 12(5) and 13(10) thereof,

Having regard to Decision ECB/2004/3 of 4 March 2004 on public access to European Central Bank documents <sup>(4)</sup>,

Whereas it is necessary to adopt practical arrangements for the application of Decision ECB/2004/3 to European Systemic Risk Board (ESRB) documents. Such arrangements should: (i) safeguard the effectiveness and confidentiality of the ESRB's proceedings, activities and discussions, as well as its warnings and recommendations; (ii) specify the procedure for handling applications for access to ESRB documents directed at the parties represented in the General Board of the ESRB; and (iii) ensure a two-stage procedure, aligned with good administrative practice,

HAS ADOPTED THIS DECISION:

#### Article 1

##### Purpose

This Decision sets out the practical arrangements for the application of Decision ECB/2004/3 to ESRB documents. The rules specified in Decision ECB/2004/3 applying to the granting by the European Central Bank (ECB) of access to ECB documents

shall apply *mutatis mutandis* to the granting by the ESRB of access to ESRB documents, subject to the adaptations specified in this Decision.

#### Article 2

##### Definitions

For the purpose of this Decision:

- (a) 'document' and 'ESRB document' mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) drawn up or held by the ESRB and relating to its policies, activities or decisions;
- (b) 'third party' means any natural or legal person, or any entity outside the ESRB;
- (c) 'ESRB member' means a third party institution or body from which the General Board of the ESRB draws its members according to Article 6(1) and (2) of Regulation (EU) No 1092/2010.

#### Article 3

##### Exceptions

1. As regards exceptions to access to ESRB documents, the rules specified in Article 4 of Decision ECB/2004/3 shall apply, subject to the adaptations specified in this Article.
2. The ESRB shall refuse access to an ESRB document on any of the grounds specified in Article 4 of Decision ECB/2004/3, and in particular where disclosure would undermine the protection of the public interest in the confidentiality or effectiveness of its proceedings, activities, discussions, warnings or recommendations.
3. As regards third-party documents, the ESRB shall consult the third party concerned with a view to assessing whether an exception is applicable, unless it is clear that the document shall or shall not be disclosed. The ESRB may refer requests to access documents drawn up by ESRB members to the ESRB member concerned.
4. The General Board of the ESRB shall perform the functions assigned in Article 4(6) of Decision ECB/2004/3 to the ECB's Governing Council.

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

<sup>(2)</sup> OJ L 331, 15.12.2010, p. 162.

<sup>(3)</sup> OJ C 58, 24.2.2011, p. 4.

<sup>(4)</sup> OJ L 80, 18.3.2004, p. 42.

*Article 4***Documents held by ESRB members**

Documents that are in the possession of an ESRB member and have been drawn up by the ESRB may be disclosed by an ESRB member only subject to prior consultation of the General Board of the ESRB, unless it is clear that the document shall or shall not be disclosed. Alternatively the ESRB member may refer the request to the General Board of the ESRB.

*Article 5***Processing of applications**

1. The ESRB shall process the applications for access to ESRB documents in accordance with Articles 6 to 8 of Decision ECB/2004/3, subject to the adaptations specified in this Article.

2. Applications and confirmatory applications for access to ESRB documents shall be made to the ESRB Secretariat <sup>(1)</sup>.

3. The Head of the ESRB Secretariat shall perform the functions assigned in Article 7(1) of Decision ECB/2004/3 to the Director General Secretariat and Language Services of the ECB.

4. The General Board of the ESRB shall perform the functions assigned in Articles 7(2) and 8(1) of Decision ECB/2004/3 to the ECB's Executive Board. The Steering Committee of the ESRB shall assist the General Board of the ESRB by reviewing the confirmatory applications and presenting its assessments.

*Article 6***Entry into force**

This Decision shall enter into force on 18 June 2011.

Done at Frankfurt am Main, 3 June 2011.

*The Chair of the ESRB*

Jean-Claude TRICHET

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