

EUROPEAN SYSTEMIC RISK BOARD

DECISION OF THE EUROPEAN SYSTEMIC RISK BOARD

of 27 January 2014

on a coordination framework regarding the notification of national macro-prudential policy measures by competent or designated authorities and the provision of opinions and the issuing of recommendations by the ESRB

(ESRB/2014/2)

(2014/C 98/03)

THE GENERAL BOARD OF THE EUROPEAN SYSTEMIC RISK BOARD,

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012⁽¹⁾, and in particular Article 458 thereof,

Having regard to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC⁽²⁾, and in particular Article 133 thereof,

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⁽³⁾, and in particular Article 3(2)(j) thereof,

Having regard to Recommendation ESRB/2011/3 of the European Systemic Risk Board of 22 December 2011 on the macro-prudential mandate of national authorities⁽⁴⁾,

Having regard to Recommendation ESRB/2013/1 of the European Systemic Risk Board of 4 April 2013 on intermediate objectives and instruments of macro-prudential policy⁽⁵⁾,

Whereas:

- (1) The European Systemic Risk Board (ESRB) is responsible for conducting macro-prudential oversight in the Union in order to contribute to the prevention or mitigation of systemic risks to financial stability in the Union. The ESRB identifies systemic risks, including those that, in its opinion, should be addressed by macro-prudential policy measures. The ESRB may encourage relevant action and thus contribute (a) to ensuring that the ultimate objective of macro-prudential policy is met and (b) to counteracting potential inaction bias, including both the activation and de-activation of macro-prudential measures, that may be present in macro-prudential policy in some circumstances.
- (2) The ESRB's overarching objective is to ensure that macro-prudential policies pursued by competent or designated authorities prevent or mitigate systemic risks in both a timely and effective manner and are at the same time compatible with and conducive to the smooth functioning of the Union's internal market.
- (3) The ESRB should contribute to achieving the objectives of the internal market and specifically contribute to an integrated Union supervisory structure which is necessary to promote timely and consistent policy responses among the Member States. This should prevent diverging approaches and should improve the functioning of the internal market. To this end, the ESRB may encourage mutual recognition of macro-prudential measures by competent or designated authorities, particularly in cases where mutual recognition is provided for under Union legislation. With an enhanced understanding of macro-prudential policies the ESRB may recommend mutual recognition also in other cases in the future.

⁽¹⁾ OJ L 176, 27.6.2013, p. 1.

⁽²⁾ OJ L 176, 27.6.2013, p. 338.

⁽³⁾ OJ L 331, 15.12.2010, p. 1.

⁽⁴⁾ OJ C 41, 14.2.2012, p. 1.

⁽⁵⁾ OJ C 170, 15.6.2013, p. 1.

- (4) In accordance with its mandate, the ESRB will liaise with international financial organisations and macro-prudential authorities in third countries and will assess the need for Union-wide macro-prudential policy responses to systemic risks and macro-prudential policies in third countries.
- (5) The new Union banking regulatory framework contains two separate legislative instruments: Directive 2013/36/EU (hereinafter the 'Capital Requirements Directive' (CRD)) and Regulation (EU) No 575/2013 (hereinafter the 'Capital Requirements Regulation' (CRR)). The provisions of the CRD are less prescriptive than those of the CRR. Therefore, Member States have a high degree of flexibility to apply macro-prudential instruments based on the CRD, for example, the various capital buffers. By contrast, the macro-prudential instruments provided for in Article 458 of the CRR do not offer the same degree of flexibility. Their use by national authorities is subject to a particular procedure, which at the same time sets out the scope of application.
- (6) The CRD and the CRR lay down several notification requirements that competent or designated authorities need to observe in relation to the ESRB in the context of macro-prudential supervision, in particular in the following provisions: Articles 129(2), 130(2), 131(7), 131(12), 133, 134(2), 136(7) and 160 of the CRD as well as Article 99(7) and Article 458 of the CRR.
- (7) Pursuant to Article 133 of the CRD and Article 458 of the CRR, the ESRB is required to provide opinions or issue recommendations on specific macro-prudential measures within one month of receiving notification of such measures. For the purpose of delivering such opinions and recommendations, the ESRB will assess the appropriateness of the intended measures from a macro-prudential perspective based on the notification received from the respective authority and on its own analysis.
- (8) As stated in Article 458 of the CRR, the legal basis for providing such opinions requires a justification of why other prudential instruments specified in the CRD and the CRR cannot adequately address the identified systemic risk, taking into account the relative effectiveness of those measures. For this purpose, the ESRB will assess from a macro-prudential perspective the underlying rationale as well as the merit of the measures notified in terms of justification, effectiveness, efficiency and proportionality.
- (9) In its assessment, the ESRB will also consider the potential cross-border implications of notified measures, and, if deemed necessary, may suggest certain amendments to the measures notified in order to mitigate potential negative spillover effects within the context of the Union internal market. However, the ESRB will focus on the overall net benefits of macro-prudential measures from a financial stability perspective.
- (10) The ESRB will also contribute to the coordination and the development over time of coherent and consistent macro-prudential policy responses to systemic risks in the Union, thus fostering a better understanding of and promoting best practices in macro-prudential policy.
- (11) Since the ESRB shall deliver its opinions or recommendations within one month of receiving a notification, in accordance with Article 133 of the CRD and Article 458 of the CRR, a smooth and efficient process for assessing notified measures and delivering opinions or recommendations has to be ensured.
- (12) As important elements of such a smooth and efficient process, notifying authorities are asked to provide notifications of measures in English using the templates published by the ESRB on its website and write the notification as precisely and concisely as possible.
- (13) In addition, to allow the ESRB Secretariat to make the necessary administrative and organisational arrangements in good time, notifying authorities are asked to inform the ESRB Secretariat informally of an imminent notification, whenever possible five ECB working days prior to submitting the notification.

- (14) This Decision establishes commonly accepted efficient procedures by the members of the ESRB's General Board. By virtue of the publication of this Decision in the *Official Journal of the European Union*, national macro-prudential authorities and other relevant national bodies not represented on the ESRB's General Board are informed on the procedures by which the ESRB will provide opinions or issue recommendations on macro-prudential policy measures adopted by competent or designated authorities. However, this Decision does not create any legally binding obligation beyond those pursuant to legal acts of the Union,

HAS ADOPTED THIS DECISION:

Article 1

Subject matter

This Decision establishes a common procedural framework regarding the provision of opinions and issuing of recommendations by the ESRB in accordance with the CRD and the CRR. Such opinions and recommendations shall be produced in accordance with this Decision.

Article 2

Definitions

For the purposes of this Decision, the following definitions shall apply:

- (1) 'notification' means any notification to the ESRB by competent or designated authorities, including the ECB pursuant to Article 9 of Council Regulation (EU) No 1024/2013⁽¹⁾, in accordance with Article 133 of the CRD and Article 458 of the CRR;
- (2) 'opinion' means any opinion to be provided by the ESRB within one month in accordance with Article 133 of the CRD and Article 458 of the CRR;
- (3) 'recommendation' means any recommendation to be issued by the ESRB within one month in accordance with Article 133(14) of the CRD;
- (4) 'macro-prudential policy measure' means any decision regarding measures by competent or designated authorities, which shall be notified to the ESRB in accordance with Article 133 of the CRD and Article 458 of the CRR, on which the ESRB shall provide an opinion or issue a recommendation in accordance with points (1) to (3).

Article 3

Notification to the ESRB

1. Article 3 shall apply to any notification within the meaning of Article 2(1). It shall not create any legally binding obligation beyond those pursuant to legal acts of the Union.
2. To ensure a smooth and efficient process, the notifying authorities are asked to submit notifications in English. Where the ESRB has published a notification template, the notifying authorities are requested to use such template when making a notification. The ESRB shall publish such templates on its website.
3. The notification shall contain all relevant information in accordance with the respective requirements under the CRD and the CRR. It should be written as precisely and concisely as possible.
4. Unless non-publication is specifically requested by the notifying authority or otherwise deemed necessary by the ESRB for reasons of financial stability, notifications shall be made public by the ESRB three months after the day of receipt.

Article 4

ESRB opinions and recommendations

1. Article 4 shall apply to all opinions and recommendations within the meaning of Article 2(2) and (3).

⁽¹⁾ 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).

2. If, despite a request by the ESRB to the notifying authorities for further information, the notification and information received in case of further clarification do not contain all relevant information needed to assess the appropriateness of the intended measure, including its compliance with the respective requirements under the CRD and the CRR, the ESRB may provide an opinion stating that it is not possible to assess conformity with the CRD and CRR requirements. The ESRB may also provide a negative opinion or issue a negative recommendation, as the case may be.
3. Once a notification is received pursuant to Article 133 of the CRD or Article 458 of the CRR, the ESRB Secretariat shall immediately submit it to all Members of the General Board and to all members of the Assessment Team as defined in Article 5 via Darwin using the confidentiality procedure.
4. Within five ECB working days following the day of receipt of a notification in accordance with paragraph 3, each Member of the General Board may raise with the ESRB material concerns regarding negative externalities in the sense of adverse cross-border spillover effects of the macro-prudential policy measure notified. To ensure a smooth and efficient process, Members are asked to raise such material concerns in English. Members shall provide all relevant information needed to assess the appropriateness of such material concerns as part of the assessment pursuant to paragraph 5 as precisely and concisely as possible.
5. Within 12 ECB working days following the day of receipt of a notification in accordance with paragraph 3, the Assessment Team shall prepare an assessment of and a draft opinion or recommendation on the macro-prudential policy measure regarding its appropriateness in accordance with the respective requirements under CRD and CRR from a macro-prudential and financial stability perspective. The Assessment Team shall take due account of appropriate material concerns raised with the ESRB pursuant to paragraph 4.
6. As soon as it is finalised by the Assessment Team, the ESRB Secretariat shall immediately submit the draft opinion or recommendation, via Darwin using the confidentiality procedure, to all Members of the General Board for consideration under the written procedure. Within four ECB working days following the day of submission Members of the General Board may provide comments on the draft opinion or recommendation prior to taking a General Board decision.
7. Within two ECB working days following the day by which comments of Members of the General Board were due, the Assessment Team will consider whether the draft opinion or recommendation should be revised in light of those comments and will submit, via the ESRB Secretariat, the final draft opinion or recommendation to the General Board.
8. Based on the assessment and draft prepared by the Assessment Team, the General Board shall take a decision on the draft opinion or draft recommendation. Unless a General Board meeting is convened in accordance with the Rules of Procedure of the ESRB, the decision by the General Board shall be taken by way of written procedure, in which case the Members of the General Board shall be given at least five ECB working days to cast their vote. The decision by the General Board shall be taken, at the latest, at least one ECB working day prior to the expiry of the one-month period specified in Article 133 of the CRD or Article 458 of the CRR.
9. Unless non-publication is specifically requested by the notifying authority or otherwise deemed necessary by the ESRB for reasons of financial stability, the ESRB opinion or recommendation shall be made public by the ESRB three months after approval or rejection of the macro-prudential policy measure in accordance with the provisions of the CRD and the CRR. Until the expiry of this three-month period, such opinion or recommendation shall be non-public and confidential.

Article 5

Assessment Team

1. An Assessment Team shall be established as a permanent sub-structure under the Advisory Technical Committee. It shall prepare assessments of and draft opinions or recommendations on macro-prudential policy measures. Members and observers of the Assessment Team shall have a sufficient level of seniority, both from a technical and a policy perspective.
2. Permanent members of the Assessment Team shall comprise two representatives from the ESRB Secretariat, one representative from the ECB, one representative from the Single Supervisory Mechanism (SSM) and nine representatives each representing a national central bank (NCB) of a Member State (hereinafter the 'nine representatives') as provided for in paragraph 8.

3. Permanent observers on the Assessment Team shall comprise two representatives from the European Commission and one representative from the European Banking Authority.
4. Non-permanent observers on the Assessment Team shall comprise two representatives, one from the NCB and one from the national competent or designated authority, as appropriate, from each Member State that has notified a macro-prudential policy measure, and one representative from each institution, which is represented by a Member of the ESRB General Board, that has raised material concerns in accordance with Article 4(4).
5. Where, pursuant to Article 5(2) of Regulation (EU) No 1024/2013, the ECB, instead of national authorities, notifies a macro-prudential policy measure at national level, the ECB shall be represented by one non-permanent observer and each Member State concerned shall be represented by two non-permanent observers designated in accordance with paragraph 4.
6. The role of non-permanent observers in the Assessment Team is to provide information and explanations to the permanent members regarding macro-prudential measures notified or material concerns raised.
7. The Chair of the Assessment Team shall be a representative of the ESRB Secretariat.
8. Based on nominations by the NCBs of Member States, the General Board shall appoint nine representatives, each representing an NCB of a Member State, to the Assessment Team. The nine representatives shall be subject to a rotation mechanism. Initially, for the first term, four of the nine representatives shall be appointed for a period of two years and five of the nine representatives shall be appointed for a period of three years and their term shall not be immediately renewable. Thereafter, the term of each of the nine representatives shall be limited to two years and shall not be immediately renewable. The composition of the nine representatives shall ensure a balanced representation of NCBs both from Member States participating in the SSM and from those not participating in the SSM.
9. To avoid conflicts of interest in the assessment of macro-prudential policy measures, the status of permanent member shall temporarily cease, without replacement, for representatives of NCBs or the representative of the ECB in all cases where authorities of the respective Member State or the ECB have notified a macro-prudential policy measure or raised material concerns regarding the macro-prudential policy measure to be assessed by the Assessment Team. Paragraphs 4 and 5 shall continue to apply.
10. The permanent members of the Assessment Team shall prepare draft opinions or recommendations in accordance with Article 4(5) on which the General Board can take a vote. The Assessment Team shall strive towards consensus among its permanent members. Where circumstances require, it may provide a majority and a minority view in its assessment submitted to the General Board.

Article 6

Entry into force

This Decision shall enter into force on 28 January 2014.

Done at Frankfurt am Main, 27 January 2014.

The Chair of the ESRB

Mario DRAGHI
