I

(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN SYSTEMIC RISK BOARD

RECOMMENDATION OF THE EUROPEAN SYSTEMIC RISK BOARD

of 22 December 2011

on the macro-prudential mandate of national authorities

(ESRB/2011/3)

(2012/C 41/01)

THE GENERAL BOARD OF THE EUROPEAN SYSTEMIC RISK BOARD,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 2(2) and 4(2)(a) and Protocol (No 25) on the exercise of shared competence 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 [1], and in particular Article 3(2)(b), (d) and (f) 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 [2], and in particular Article 15(3)(e) and Articles 18 to 20 thereof,

Whereas:

(1) A well-defined policy framework is a necessary condition for effective macro-prudential policy. With the establishment of the European Systemic Risk Board (ESRB) within the European System of Financial Supervision, a policy framework was put in place for macro-prudential policy at the European Union level, to be exercised through warnings and recommendations, which need to be implemented.

(2) The effectiveness of macro-prudential policy in the Union also depends on the national macro-prudential policy frameworks of the Member States, since the responsibility for the adoption of the measures necessary to maintain financial stability lies first within national frameworks.

(3) Legislative initiatives are currently being discussed in some Member States regarding macro-prudential frameworks.

(4) It is necessary to provide guiding principles on core elements of national macro-prudential mandates, balancing the need for consistency among national approaches with the flexibility to accommodate national specificities.

(5) Setting out explicitly a clear objective would help the national macro-prudential authorities to overcome the bias towards inaction. Macro-prudential policies can be pursued at national level upon the initiative of the national macro-prudential authorities, or as a follow-up to recommendations or warnings from the ESRB.

(6) Generally, macro-prudential policy can be pursued by either a single institution or a board composed of several institutions, depending on the national institutional frameworks. In any case, the entrusted authority should be identified in a clear and transparent way.

(7) Recital 24 of Regulation (EU) No 1092/2010 provides that: 'the national central banks should have a leading role in macro-prudential oversight because of their expertise and their existing responsibilities in the area of financial stability.' This conclusion is further strengthened when central banks are also in charge of micro-prudential supervision.

[1] OJ L 331, 15.12.2010, p. 1.
[2] OJ C 58, 24.2.2011, p. 4.

(8) Depending on the national institutional framework, co-operation among authorities with competences influencing financial stability may take different forms, ranging from coordination to exchange of data and information.

(9) The ESRB will discuss potential cross-border policy spill-overs of macro-prudential measures planned by the competent national authorities so as to ensure a minimum degree of coordination and limit possible negative spill-over effects. To this end, the ESRB Secretariat should be informed in advance of significant macro-prudential actions proposed by national authorities, for discussion by the Steering Committee of the ESRB. If deemed appropriate by the Steering Committee, the proposed macro-prudential actions may be drawn to the attention of the General Board.

(10) The tasks and powers of the macro-prudential authority should be clearly defined. Taking into account the impact that the ongoing EU reform of the capital requirements framework for credit institutions [1] might have, the procedures to assign instruments to the macro-prudential authority should allow — within the principles of the relevant legislative framework — for timely adjustments of the policy toolkit in response to innovation and change within the financial system and to the changing nature of risks to financial stability. The macro-prudential authority should justify ex-ante why it needs certain instruments, and have the right of initiative to request the assignment of those instruments. Instruments should include both those that can affect cyclical risks, such as unsustainable levels of leverage, maturity mismatch and credit growth, and those that can affect market structures. An institutional separation between non-binding and binding instruments could be provided for.

(11) Transparency improves the understanding of macro-prudential policies by the financial sector and the public at large, and is a necessary requirement for accountability vis-à-vis the legislature, as the representative of the wider population. Given that the ultimate objective of macro-prudential policy is difficult to quantify, accountability may be phrased in terms of achieving intermediate objectives, or explaining publicly the rationale of the use of macro-prudential instruments.

(12) Pressures can be put on macro-prudential policy makers not to tighten policies in a boom or to loosen them in a bust. In order to safeguard policy credibility, macro-prudential authorities should be shielded against outside pressures through independence. Central banks entrusted with macro-prudential mandates should be independent in the sense of Article 130 of the Treaty.

(13) This Recommendation is without prejudice to the monetary policy mandates of the central banks in the Union, and to the tasks entrusted to the ESRB.

(14) ESRB recommendations are published after informing the Council of the European Union of the General Board's intention to do so and providing the Council with an opportunity to react,

HAS ADOPTED THIS RECOMMENDATION:

SECTION 1

RECOMMENDATIONS

Recommendation A — Objective

Member States are recommended to:

1. specify that the ultimate objective of macro-prudential policy is to contribute to the safeguard of the stability of the financial system as a whole, including by strengthening the resilience of the financial system and decreasing the build up of systemic risks, thereby ensuring a sustainable contribution of the financial sector to economic growth;

2. ensure that macro-prudential policies can be pursued at national level upon the initiative of the national macro-prudential authority, or as a follow-up to recommendations or warnings from the ESRB.

Recommendation B — Institutional arrangements

Member States are recommended to:

1. designate in the national legislation an authority entrusted with the conduct of macro-prudential policy, generally either as a single institution or as a board composed of the authorities whose actions have a material impact on financial stability. The national legislation should specify the decision-making process of the governing body of the macro-prudential authority;

2. where a single institution is designated as the macro-prudential authority, establish mechanisms for cooperation among all authorities whose actions have a material impact on financial stability, without prejudice to their respective mandates;

[1] Commission proposals for a directive of the European Parliament and of the Council on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and amending Directive 2002/87/EC of the European Parliament and of the Council on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (COM(2011) 453 final) and for a regulation of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms (COM(2011) 452 final).

3. ensure that the central bank plays a leading role in the macro-prudential policy and that macro-prudential policy does not undermine its independence in accordance with Article 130 of the Treaty;

4. mandate the macro-prudential authority to cooperate and to exchange information also cross-border, in particular by informing the ESRB of the actions taken to address systemic risks at national level.

Recommendation C — Tasks, powers, instruments

Member States are recommended to:

1. entrust the macro-prudential authority as a minimum with the tasks of identifying, monitoring and assessing risks to financial stability and of implementing policies to achieve its objective by preventing and mitigating those risks;

2. ensure that the macro-prudential authority has the power to require and obtain in a timely fashion all national data and information relevant for the exercise of its tasks, including information from micro-prudential and securities market supervisors and information from outside the regulatory perimeter, as well as institution-specific information upon reasoned request and with adequate arrangements to ensure confidentiality. Under the same principles the macro-prudential authority should share with micro-prudential supervisory authorities the data and information relevant for the exercise of the tasks of those authorities;

3. entrust the macro-prudential authority with the power to designate and/or develop the surveillance approaches for identifying, in coordination or together with the micro-prudential and securities market supervisors, the financial institutions and structures that are systemically relevant for the respective Member State, and to determine or recommend on the perimeter of national regulation;

4. ensure that the macro-prudential authority has control over appropriate instruments for achieving its objectives. Where necessary, clear and expeditious procedures should be established for assigning instruments to the macro-prudential authority.

Recommendation D — Transparency and accountability

Member States are recommended to:

1. ensure that macro-prudential policy decisions and their motivations are made public in a timely manner, unless there are risks to financial stability in doing so, and that the macro-prudential policy strategies are set out and published by the macro-prudential authority;

2. entrust the macro-prudential authority with the power to make public and private statements on systemic risk;

3. make the macro-prudential authority ultimately accountable to the national parliament;

4. ensure legal protection for the macro-prudential authority and its staff when they act in good faith.

Recommendation E — Independence

Member States are recommended to ensure that:

1. in the pursuit of its objective, the macro-prudential authority is as a minimum operationally independent, in particular from political bodies and from the financial industry;

2. organisational and financial arrangements do not jeopardise the conduct of macro-prudential policy.

SECTION 2

IMPLEMENTATION

1. **Interpretation**

Terms used in this Recommendation have the following meanings:

'financial institutions' means financial institutions as defined in Regulation (EU) No 1092/2010;

'financial system' means financial system as defined in Regulation (EU) No 1092/2010.

2. **Criteria for implementation**

1. The following criteria apply to the implementation of this Recommendation:

   (a) the recommended measures should be enacted in the national legislation;

   (b) regulatory arbitrage should be avoided;

   (c) due regard should be paid to the principle of proportionality in the implementation, with reference to the different systemic significance of the financial institutions, to the different institutional systems, and taking into account the objective and the content of each recommendation;

   (d) For the purpose of recommendation A:

      (i) intermediate policy objectives may be identified as operational specifications of the ultimate objective;

(ii) macro-prudential policy should allow action also on measures that have macro-prudential relevance.

2. Addressees are requested to communicate to the ESRB and to the Council the actions taken in response to this Recommendation, or adequately justify inaction. The reports should as a minimum contain:

(a) information on the substance and timeline of the actions taken;

(b) an assessment of the functioning of the actions taken, from the perspective of the objectives of this Recommendation;

(c) detailed justification of any inaction or departure from this Recommendation, including any delays.

3. **Timeline for the follow-up**

1. Addressees are requested to communicate to the ESRB and the Council the actions taken in response to this Recommendation, or adequately justify inaction, as specified in the following paragraphs.

2. By 30 June 2012, addressees communicate to the ESRB an interim report covering at the minimum the following aspects: (a) a statement concerning whether a macro-prudential mandate has been implemented or is planned to be implemented; (b) an examination of the legal basis for the implementation of this Recommendation; (c) the foreseen institutional shaping of the macro-prudential authority and the devised institutional changes; (d) an assessment for each recommendation hereby provided of whether it is or will be covered by the national measures on the macro-prudential mandate and, if not, adequate explanations. The ESRB may inform the addressees of its views on the interim report.

3. By 30 June 2013, addressees communicate the final report to the ESRB and the Council. Recommended measures should be in force not later than the 1 July 2013.

4. The General Board may extend the deadlines in paragraphs 2 and 3 where legislative initiatives are necessary to comply with one or more recommendations.

4. **Monitoring and assessment**

1. The ESRB Secretariat:

(a) assists the addressees, including by facilitating coordinated reporting, providing relevant templates and detailing where necessary the modalities and the timeline for the follow-up;

(b) verifies the follow-up by the addressees, including by assisting them upon their request, and reports on the follow-up to the General Board via the Steering Committee within two months from the expiry of the deadlines for the follow-up.

2. The General Board assesses the actions and the justifications reported by the addressees and, where appropriate, decides whether this Recommendation has not been followed and the addressees have failed to adequately justify their inaction.

Done at Frankfurt am Main, 22 December 2011.

The Chair of the ESRB

Mario DRAGHI