

**DECISION OF THE EUROPEAN SYSTEMIC RISK BOARD**

**of 6 August 2021**

**amending Decision ESRB/2015/4**

**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  
(ESRB/2021/7)**

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 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 6 thereof,

Whereas:

(1) Decision ESRB/2015/4 of the European Systemic Risk Board<sup>3</sup> established a coordination framework for the notification of national macroprudential policy measures by relevant authorities and for the issuing of opinions and recommendations by the European Systemic Risk Board (ESRB). These tasks are mandated by Union law, in particular Directive 2013/36/EU of the European Parliament and of the Council<sup>4</sup> and Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>5</sup>, and/or follow from Regulation (EU) No 1092/2010.

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<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> 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).

<sup>4</sup> 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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

<sup>5</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

- (2) Regulation (EU) 2019/876 of the European Parliament and of the Council<sup>6</sup> and Directive (EU) 2019/878 of the European Parliament and of the Council<sup>7</sup> were adopted on 20 May 2019 and amended Regulation (EU) No 575/2013 and Directive 2013/36/EU, respectively. Certain amendments thereby introduced – such as changes to Articles 124 and 164 of Regulation (EU) No 575/2013, and to Article 131 of Directive 2013/36/EU – should be reflected in Decision ESRB/2015/4 by amending provisions relating to the issuing of opinions and recommendations.
- (3) The provisions of Decision ESRB/2015/4 on the composition of the Assessment Team are linked to the relevant provisions of Regulation (EU) No 1092/2010 on the membership of the General Board and of the Steering Committee of the ESRB. It is necessary to align these provisions with recent institutional changes introduced by Regulation (EU) 2019/2176 of the European Parliament and of the Council<sup>8</sup> relating to the composition of the General Board and to the banking union.
- (4) Moreover, this Decision aims to address issues raised in relation to the provisions of Decision ESRB/2015/4 that have over time proven to be insufficiently clear and thus subject to divergent interpretation or that have been found to be impractical or overly burdensome, including the provisions on the procedure that the Assessment Team has to follow when drafting opinions.
- (5) Therefore, Decision ESRB/2015/4 should be amended accordingly,

HAS ADOPTED THIS DECISION:

*Article 1*

**Amendments**

Decision ESRB/2015/4 is amended as follows:

1. In Article 1, paragraph 2 is amended as follows:
  - a) point (a) is replaced by the following:

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<sup>6</sup> Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (OJ L 150, 7.6.2019, p. 1).

<sup>7</sup> Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (OJ L 150, 7.6.2019, p. 253).

<sup>8</sup> Regulation (EU) 2019/2176 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1092/2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 334, 27.12.2019, p. 146).

- '(a) ESRB recommendations and opinions on national macroprudential policy measures in accordance with Articles 131(5a), 133(11) and (12) of Directive 2013/36/EU and Articles 124(2), 164(6) and 458(4) of Regulation (EU) No 575/2013;';
  - b) point (b) is replaced by the following:
    - '(b) Amendments to Recommendation ESRB/2015/2 to incorporate additional notified macroprudential policy measures recommended for reciprocation in accordance with, but not limited to, Article 134(5) of Directive 2013/36/EU and Article 458(8) of Regulation (EU) No 575/2013;';
2. Article 2 is amended as follows:
- a) point (7) is replaced by the following:
    - '(7) "opinion" means any opinion to be issued by the ESRB following the receipt of a notification regarding a macroprudential policy measure, in accordance with Articles 131(5a) and 133(12) of Directive 2013/36/EU and Articles 124(2), 164(6) and 458(4) of Regulation (EU) No 575/2013;';
  - b) point (9) is replaced by the following:
    - '(9) "recommendation" means any recommendation to be issued by the ESRB in accordance with, but not limited to, Articles 133(11), 134(5), 138 and 139(3) of Directive 2013/36/EU and Article 458(8) of Regulation (EU) No 575/2013;';
3. Article 4 is replaced by the following:

*'Article 4*

**ESRB opinions and recommendations on national macroprudential policy measures**

1. This Article shall apply to opinions and recommendations referred to in Article 1(2)(a).
2. Once a notification has been received pursuant to Articles 131 or 133 of Directive 2013/36/EU or Articles 124, 164 or 458 of Regulation (EU) No 575/2013, the ESRB Secretariat shall immediately, but no later than before the end of the following ECB working day, submit it to members of the General Board and to the Assessment Team via Darwin.
3. Within five ECB working days following the receipt of a notification under paragraph 2, members of the General Board may raise material concerns regarding any negative externalities such as adverse cross-border spillover effects of the macroprudential policy measure notified. To ensure a smooth and efficient process, members shall raise, insofar as is possible, such material concerns in English.
4. The Assessment Team shall prepare an assessment of and a draft opinion or recommendation on the appropriateness of the notified macroprudential policy measure having regard to the relevant requirements under Directive 2013/36/EU and Regulation

(EU) No 575/2013 from a macroprudential and financial stability perspective and also having regard to any material concerns raised by members of the General Board under paragraph 3.

5. As soon as it is finalised by the Assessment Team, the ESRB Secretariat shall immediately submit the draft opinion or recommendation, via Darwin, to the members of the General Board.
  6. Based on the assessment and draft prepared by the Assessment Team, the General Board shall take a decision on the draft opinion or recommendation. Unless a General Board meeting is convened in accordance with the Rules of Procedure of the ESRB, the decision of the General Board shall be taken by written procedure. The decision of the General Board shall be taken at least one ECB working day prior to the expiry of the relevant period specified in Articles 131 or 133 of Directive 2013/36/EU or Articles 124, 164 or 458 of Regulation (EU) No 575/2013.
  7. If, following a request by the ESRB to the notifying authorities for further information, the information received still does not contain all relevant information needed to assess the appropriateness of the intended measure, including its compliance with the relevant requirements under Directive 2013/36/EU and Regulation (EU) No 575/2013, the ESRB may provide an opinion stating that it is not possible to assess conformity with the requirements of Directive 2013/36/EU and Regulation (EU) No 575/2013. The ESRB may also issue a negative opinion or recommendation, as appropriate.’;
4. Article 5 is replaced by the following:

*‘Article 5*

**ESRB recommendations on the reciprocity of macroprudential policy measures**

1. This Article shall apply to amendments to Recommendation ESRB/2015/2 within the meaning of Article 1(2)(b).
2. Within five ECB working days following the receipt by the ESRB of a request for reciprocation from a Member State, in accordance with but not limited to Article 134(5) of Directive 2013/36/EU or Article 458(8) of Regulation (EU) No 575/2013, the ESRB Secretariat shall submit it to members of the Advisory Technical Committee (ATC), the General Board and the Assessment Team via Darwin.
3. Within five ECB working days following the transmission of the information referred to in paragraph 2, members of the General Board may demonstrate to the ESRB that the macroprudential policy measure notified would have significant adverse cross-border spillover effects in their jurisdiction. To ensure a smooth and efficient process, members of the General Board shall, insofar as is possible, provide relevant information to the ESRB in English.

4. The Assessment Team shall prepare an assessment of the need for adopting a recommendation on reciprocity together with a draft amendment of Recommendation ESRB/2015/2, where necessary. The Assessment Team shall make a proposal to the ATC on the reciprocity of the notified measure and on the means whereby reciprocity might be achieved in compliance with Recommendation ESRB/2015/2.
  5. The Assessment Team shall consider whether the draft amendment of Recommendation ESRB/2015/2 should be revised in the light of comments received from members of the ATC and, via the ESRB Secretariat, shall submit the draft amendment of Recommendation ESRB/2015/2 to the General Board via Darwin.
  6. Based on the assessment and draft prepared by the Assessment Team, the General Board shall take a decision on the draft amendment of Recommendation ESRB/2015/2. Unless a General board meeting is convened in accordance with the Rules of Procedure of the ESRB, the decision of the General Board shall be taken by written procedure.’;
5. Article 7 is replaced by the following:

*‘Article 7*

**Assessment Team**

1. The Assessment Team shall prepare assessments of and draft opinions or recommendations on macroprudential policy measures, on reciprocity of macroprudential measures and on third-country CCB rates. The Assessment Team’s members, as well as any observers, shall have a sufficient level of seniority, both from a technical and a policy perspective.
2. The Chair of the Assessment Team shall be the Head of the ESRB Secretariat or his/her designated alternate. The Chair of the Assessment Team shall be responsible for preparing the work of the Assessment Team, including setting the agenda, convening the meetings and tabling items for discussion and shall chair the meetings of the Assessment Team.
3. The Assessment Team shall comprise:
  - (a) two representatives from the ESRB Secretariat including the Chair of the Assessment Team;
  - (b) one representative from the supervisory function of the ECB;
  - (c) one representative from the macroprudential function of the ECB;
  - (d) one representative from the European Commission;
  - (e) one representative from the European Banking Authority (EBA); and

- (f) nine representatives, each representing a different national authority from which the ESRB draws the members of its General Board with voting rights pursuant to Article 6(1) of Regulation (EU) No 1092/2010.

The nine representatives in sub-paragraph (f) shall include at least two representatives from those national authorities from which a national member of the Steering Committee has been elected pursuant to Article 11(1)(c) of Regulation (EU) No 1092/2010, as well as a representative of the authority from which the first Vice-Chair of the ESRB has been elected pursuant to Article 5(2) of Regulation (EU) No 1092/2010, and a representative from the authority from which the Chair of the ATC has been appointed pursuant to Article 13(2) of Regulation (EU) No 1092/2010 if that authority is an authority of the type referred to in subparagraph (f) above.

4. Based on nominations from the national authorities from which the ESRB draws its members of the General Board with voting rights, the General Board shall appoint the nine representatives referred to in paragraph 3, having 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. They shall be appointed for the same period as the respective national member of the Steering Committee or otherwise for a period of three years. Representatives on the Assessment Team from national authorities from which a national member of the Steering Committee has not been selected may be reappointed.
5. All other members of the Assessment team shall be appointed for an unlimited period.
6. Authorities represented in the Assessment Team may change their representative based on the expertise needed and the type of assessment to be conducted by the Assessment Team pursuant to Article 1(2). Such changes must be approved by the Chair of the Assessment Team.
7. Observers may request to be invited to participate in the Assessment Team with a view to contributing to the discussion. Observers may comprise representatives of authorities referred to in Article 6(1) and (2) and Article 13(1) of Regulation (EU) No 1092/2010. When a recommendation or opinion is prepared in accordance with Articles 131(5a) and 133(11) and (12) of Directive 2013/36/EU and Article 458(4) of Regulation (EU) No 575/2013, representatives from the Commission and the EBA shall participate as observers. When an opinion is prepared in accordance with Articles 124(2) or 164(6) of Regulation (EU) No 575/2013, representatives from the EBA shall participate as observers. Representatives from relevant authorities in concerned third countries may also be invited as observers, in which case they shall be subject to confidentiality agreements.
8. Where, pursuant to Article 5(2) of Regulation (EU) No 1024/2013, the ECB, instead of a national authority, notifies a macroprudential policy measure at national level, the ECB

shall be represented by two observers and each Member State concerned shall be represented by two observers.

9. To avoid conflicts of interest in the assessment of macroprudential policy measures under Article 1(2)(a), the status of Assessment Team members shall temporarily cease, without those members being replaced, for representatives of Member States or the ECB in all cases where the relevant authorities of the Member State concerned or the ECB have notified a macroprudential policy measure or raised material concerns regarding the macroprudential policy measure or requested reciprocity of a macroprudential policy measure to be assessed by the Assessment Team.
10. Members of the Assessment Team shall prepare draft opinions or recommendations in accordance with Articles 4(4), 5(4) and 6(5) on which the General Board may take a vote. The Assessment Team shall strive to reach consensus among its members. Where circumstances so require, it may provide a majority and a minority view in the assessment it submits to the General Board.

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(\*) 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).

## *Article 2*

### **Transitional provision**

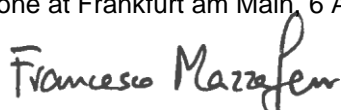
The representatives appointed in accordance with Article 7 of Decision ESRB/2015/4 shall remain in place until the end of their current terms of office as referred to in Article 7(4) of Decision ESRB/2015/4.

## *Article 3*

### **Entry into force**

This Decision shall enter into force on 6 August 2021.

Done at Frankfurt am Main, 6 August 2021.



Francesco MAZZAFERRO

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