

EUROPEAN SYSTEMIC RISK BOARD

DECISION OF THE EUROPEAN SYSTEMIC RISK BOARD

of 20 March 2020

amending Decision ESRB/2011/1 adopting the Rules of Procedure of the European Systemic Risk Board (ESRB/2020/3)

(2020/C 140/04)

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 ⁽¹⁾, and in particular Article 6(4) 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 ⁽²⁾,

Whereas:

- (1) On 18 December 2019 Regulation (EU) 2019/2176 of the European Parliament and the Council ⁽³⁾ was adopted which amended Regulation (EU) No 1092/2010. Certain amendments introduced by Regulation (EU) 2019/2176 should be reflected in the Rules of Procedure of the European Systemic Risk Board (ESRB) by the amendment of provisions relating to the membership of the General Board of the ESRB (hereinafter the 'General Board') and corresponding adjustments to provisions relating to the Steering Committee, the Advisory Technical Committee of the ESRB (hereinafter the 'Advisory Technical Committee'), and the Chair and the Vice-Chair of the ESRB.
- (2) The Vice-Chair of the Advisory Technical Committee has until now been selected from the members of the Advisory Technical Committee. The Vice-Chair should be selected from the members of the Advisory Technical Committee and high-level officials of authorities represented on the General Board to allow for greater flexibility as regards selection of the Vice-Chair.
- (3) Therefore, Decision ESRB/2011/1 of the European Systemic Risk Board ⁽⁴⁾, which establishes rules of procedure for the ESRB, should be amended accordingly,

⁽¹⁾ OJ L 331, 15.12.2010, p. 1.

⁽²⁾ OJ L 331, 15.12.2010, p. 162.

⁽³⁾ 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).

⁽⁴⁾ 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 (OJ C 58, 24.2.2011, p. 4).

HAS ADOPTED THIS DECISION:

Article 1

Amendments

Decision ESRB/2011/1 is amended as follows:

1. Article 3 is replaced by the following:

'Article 3

Membership

1. Where a Member State, in which the national central bank is not a designated authority pursuant to Directive 2013/36/EU of the European Parliament and of the Council (*) or Regulation (EU) No 575/2013 of the European Parliament and of the Council (**), has nominated a high-level representative of a designated authority as a member of the General Board with voting rights under Article 6(1)(b) of Regulation (EU) No 1092/2010, that designated authority shall inform the ESRB Secretariat of the name of that high-level representative.
 2. The European Commission shall inform the ESRB Secretariat of the name of its representative for the purposes of Article 6(1)(c) of Regulation (EU) No 1092/2010.
 3. The national supervisory authorities, the national authorities entrusted with the conduct of macroprudential policy, or the national central banks, as applicable in accordance with Article 6(2)(a) of Regulation (EU) No 1092/2010, shall inform the ESRB Secretariat of the names of their respective high-level representatives or, where applicable in accordance with Article 6(3) of Regulation (EU) No 1092/2010, the common representative nominated as member of the General Board without voting rights.
 4. The ESRB Secretariat shall maintain, update and publish a list of the members of the General Board with voting rights and without voting rights. This list shall name the individual members and the authorities, national central banks, or other institutions or committees that those members represent. Any change to this list shall be notified without undue delay to the ESRB Secretariat.;
2. In Article 4, paragraph 2 is replaced by the following:
 - '2. In addition to the members with voting rights, the Chair of the Supervisory Board of the ECB, the Chair of the Single Resolution Board and the President of the Economic and Finance Committee, only one of the high-level representatives per Member State of a national supervisory authority, a national authority entrusted with the conduct of macroprudential policy, or of the national central bank, as referred to in Article 6(2)(a) of Regulation (EU) No 1092/2010, shall sit at the main table during discussions on items for which that individual has been designated as the national high-level representative; the other national high-level representatives shall attend as observers. In the absence of a common representative as referred to in Article 6(3) of Regulation (EU) No 1092/2010, the respective national high-level representatives shall liaise among themselves and inform the ESRB Secretariat at least five calendar days before the General Board meeting of the items on the agenda of the General Board meeting in which they will participate. Where no agreement is reached on the implementation of the rule on rotation of the respective high-level representatives referred to in Article 6(3) of Regulation (EU) No 1092/2010, the national member of the General Board with voting rights shall decide, before each meeting, which national high-level representative should sit at the main table during discussions on the respective items and shall inform the representatives accordingly.;
 3. Article 5 is amended as follows:
 - a) paragraph 1 is replaced by the following:
 - '1. The Chair of the ESRB shall draw up a preliminary agenda for an ordinary General Board meeting and submit it to the Steering Committee for consultation at least eight calendar days before the Steering Committee meeting together with the related documentation. Thereafter, the Chair shall submit the provisional agenda to the members of the General Board together with the related documentation at least ten calendar days before the General Board meeting. When planning the work and preparing the meeting agendas of the General Board the following requirements shall be taken into account:
 - (a) participation by high level-representatives of relevant authorities from third countries pursuant to Article 4(6) should, in accordance with Article 9(5) of Regulation (EU) No 1092/2010, only concern items of relevance to the Union, excluding any case where the situation of individual financial institutions or Member States may be discussed;

(*) 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 (OJ L 176, 27.6.2013, p. 338).

(**) 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 (OJ L 176, 27.6.2013, p. 1).

- (b) members who are participating pursuant to Article 4(7) may be asked not to participate in meetings of the General Board, or in parts of such meetings that relate to specific agenda items, where the situation of individual Union financial institutions or Member States may be discussed.;
- b) paragraph 2a is replaced by the following:
- ‘2a. After receiving the provisional agenda each member may, within three ECB working days, submit a request to the ESRB Secretariat for an agenda item to be discussed without the participation of representatives of authorities from third countries or members who are participating pursuant to Article 4(7), where the member considers that the requirements referred to in points (a) and/or (b) of paragraph 1, as applicable, are not met. The identity of the requesting member shall be kept anonymous.;
- c) paragraph 4 is replaced by the following:
- ‘4. The Chair of the ESRB shall submit the draft minutes to the members of the General Board for comments and approval by written procedure at the latest two weeks following the meeting or, if this is not possible, prior to the subsequent meeting. Once approved, they shall be signed by the Head of the ESRB Secretariat. Representatives of relevant authorities from third countries and members who are participating pursuant to Article 4(7) may only receive and/or comment on draft minutes covering the agenda items in which they participated.;
- d) paragraph 5 is replaced by the following:
- ‘5. The proceedings of the General Board shall be confidential. The General Board may decide to make an account of its deliberations public, subject to applicable confidentiality requirements and in a manner that does not allow for the identification of individual members of the General Board or of individual authorities, national central banks, institutions or committees. The General Board may also decide to hold press conferences after its meetings.;
4. In Article 6, paragraph 2 is replaced by the following:
- ‘2. In accordance with Article 10(4) of Regulation (EU) No 1092/2010, a quorum of two thirds of members with voting rights shall be required for any vote to be taken by the General Board. If the quorum is not met, the Chair of the ESRB may convene an extraordinary meeting at which decisions may be taken by a quorum of one third, in which case the provisions of the second sentence of Article 2(2) shall apply.;
5. Article 7 is amended as follows:
- a) point (a) is replaced by the following:
- ‘(a) the electoral body shall be composed of the national members of the General Board with voting rights *ad personam*.;
- b) point (b) is replaced by the following:
- ‘(b) the Chair of the ESRB shall invite the national members of the General Board with voting rights to an election meeting with at least 15 calendar days’ advance notice. The Chair shall also ask for expressions of interest from eligible candidates. The Head of the ESRB Secretariat shall act as Secretary of the electoral body.;
6. Article 8 is replaced by the following:

‘Article 8

Membership

1. National members of the General Board with voting rights shall be eligible candidates for the election of the four national members of the Steering Committee referred to in Article 11(1)(c) of Regulation (EU) No 1092/2010.
2. Considering the number of Member States which are participating Member States as defined in Article 2(1) of Regulation (EU) No 1024/2013 and those that are not at the time of the election, the electoral body composed of the national members of the General Board with voting rights shall determine accordingly the number of members of the Steering Committee from participating Member States and from non-participating Member States referred to in Article 11(1)(c) of Regulation (EU) No 1092/2010. For this purpose, the electoral body shall round up or down to the nearest whole number.
3. Taking into account the above determination by the electoral body, the Chair of the ESRB shall ask for expressions of interest from eligible candidates no later than 15 calendar days before the election. The Chair of the ESRB shall put forward to the electoral body the list of candidates on the basis of the expressions of interest received before the opening of the meeting convened for the election.

4. The Chair shall organise one or more secret ballots, the result of which shall be that the eligible candidates receiving the highest number of votes shall be elected in line with the proportion required under paragraph 2. In the event of a tie, successive ballots shall take place. When voting, the members of the electoral body should aim at ensuring a balanced representation of Member States.
5. A simple majority of the votes of the members of the electoral body present at the meeting shall be needed to elect each of the four national members referred to in Article 11(1)(c) of Regulation (EU) No 1092/2010.;
7. Article 9 is amended as follows:
 - (a) paragraph 2 is replaced by the following:

'2. The Steering Committee shall decide on the dates of its meetings on a joint proposal from its Chair and the first Vice-Chair of the ESRB. Ordinary meetings shall, as a rule, take place within the four weeks preceding the General Board meeting.');
 - (b) paragraph 4 is replaced by the following:

'4. The Chair of the Steering Committee and the first Vice-Chair of the ESRB may also invite, each on their own initiative, or on a proposal from other members of the Steering Committee, other persons to attend meetings of the Steering Committee where appropriate, and subject to compliance with confidentiality requirements.');
 - (c) paragraph 5 is replaced by the following:

'5. Where a member of the Steering Committee is unable to attend a meeting, an alternate may be appointed in writing. The Chair of the Advisory Scientific Committee shall be replaced as a rule by one of the two Vice-Chairs of the Advisory Scientific Committee. The Vice-Chair of the Advisory Technical Committee shall be the alternate of the Chair of the Advisory Technical Committee. The Head of the ESRB Secretariat shall be notified in writing of these changes in due time before the meeting of the Steering Committee.');
8. Article 10 is amended as follows:
 - (a) paragraph 1 is replaced by the following:

'1. The agenda for each meeting of the Steering Committee shall be proposed jointly by the Chair and the first Vice-Chair of the ESRB and adopted at the beginning of the meeting by the Steering Committee. A provisional agenda shall be drawn up jointly by the Chair and the first Vice-Chair of the ESRB and shall, in principle, be sent, together with the related documents, to the members of the Steering Committee at least ten calendar days before the meeting. All members of the Steering Committee may propose items and documents to the Chair and the first Vice-Chair of the ESRB for consideration by the Steering Committee.');
 - (b) paragraph 2 is replaced by the following:

'2. The Steering Committee shall examine in advance items on the preliminary agenda for a General Board meeting together with the relevant documentation. The Steering Committee shall ensure the preparation of the dossiers for the General Board and, where appropriate, shall propose options or solutions. When planning the work and preparing the meeting agendas of the General Board, the requirements referred to in Article 5(1) (a) and (b), as applicable, shall be taken into account. The Steering Committee shall report on an ongoing basis to the General Board on the development of the ESRB's activities.');
9. Article 13 is amended as follows:
 - (a) paragraph 2a is replaced by the following:

'2a. One representative of the national central banks of Iceland and Norway, and in the case of Liechtenstein, one representative of the Ministry of Finance, as well as one representative of the competent national supervisory authority of each of these EFTA Member States shall participate on the Advisory Technical Committee.

The Chair of the Advisory Technical Committee may also invite, on their own initiative or on a proposal from one or more other members of the Advisory Technical Committee, a high-level representative of a designated authority nominated in accordance with Article 6(1)(b) of Regulation (EU) No 1092/2010 and/or a high-level representative of a national authority entrusted with the conduct of macroprudential policy as referred to in Article 6(2)(a) of that Regulation to participate in meetings of the Advisory Technical Committee where appropriate, and subject to compliance with confidentiality requirements.

The Chair of the Advisory Technical Committee may also invite, on their own initiative or on a proposal from one or more other members of the Advisory Technical Committee, a high-level representative of relevant authorities from third countries in accordance with Article 9(5) of Regulation (EU) No 1092/2010, to participate in meetings of the Advisory Technical Committee where appropriate, and subject to compliance with confidentiality requirements.;

(b) paragraph 5 is replaced by the following:

‘5. The members of the Advisory Technical Committee shall elect the Vice-Chair of the Advisory Technical Committee. The election shall be held by secret ballot and by simple majority of the votes cast. Members of the Advisory Technical Committee and high-level officials of ESRB member institutions shall be eligible candidates. The representative of the Advisory Scientific Committee may not be elected Vice-Chair of the Advisory Technical Committee. The term of office of the Vice-Chair of the Advisory Technical Committee shall be three years and shall be renewable.;

(c) paragraph 7 is replaced by the following:

‘7. The Chair of the Advisory Technical Committee shall propose an agenda at least ten calendar days before the meeting, prepared in accordance with Article 13(3) of Regulation (EU) No 1092/2010, which shall be submitted to the Advisory Technical Committee for approval. Documents for agenda items shall be made available by the ESRB Secretariat to all members of the Advisory Technical Committee. When planning the work and preparing the meeting agendas of the Advisory Technical Committee the following requirements shall be taken into account:

(a) participation by high level-representatives of relevant authorities from third countries pursuant to Article 13(2a) should only concern items of relevance to the Union, excluding any case where the situation of individual financial institutions or Member States may be discussed;

(b) representatives of relevant authorities from EFTA Member States may be asked not to participate in meetings of the Advisory Technical Committee or in parts of such meetings that relate to specific agenda items, where the situation of individual Union financial institutions or Member States may be discussed.

After receiving the provisional agenda each representative may, within three ECB working days, submit a request to the ESRB Secretariat for an agenda item to be discussed without the participation of those representatives who are participating pursuant to Article 13(2a) where the requirements referred to in points (a) and/or (b) of paragraph 7, as applicable, are not met. The identity of the requesting representative shall be kept anonymous.;

(d) paragraph 8 is replaced by the following:

‘8. The Advisory Technical Committee shall be assisted by the ESRB Secretariat. The Head of the ESRB Secretariat shall draw up the summary proceedings of the meetings of the Advisory Technical Committee, which shall be submitted for comments and adoption at the latest two weeks following the meeting or, if this is not possible, prior to the subsequent meeting.;

10. In Article 14, paragraph 1 is replaced by the following:

‘1. The General Board shall be consulted on the candidate(s) selected by the ECB for the position of the Head of the ESRB Secretariat in accordance with Article 3(2) of Regulation (EU) No 1096/2010. The General Board, following an open and transparent procedure, shall assess whether the shortlisted candidates for the position of head of the Secretariat possess the qualities, impartiality and experience necessary to manage the Secretariat. The General Board shall inform the European Parliament and the Council in sufficient detail about the assessment and consultation procedure.;

11. In Article 19, paragraph 2 is replaced by the following:

‘2. ESRB warnings and recommendations shall be adopted by the General Board and signed by the Chair of the ESRB or the Head of the ESRB Secretariat to certify their conformity with the General Board’s decision.;

12. In Article 25, paragraph 2 is replaced by the following:

‘2. The General Board, the Steering Committee, the Advisory Technical Committee and the Advisory Scientific Committee may carry out public or non-public hearings. Stakeholders such as market participants, consumer bodies and academic experts to be interviewed at a hearing shall be selected in a non-discriminatory manner with a view to properly addressing specific situations.;

13. In Article 27, paragraph 1 is replaced by the following:

‘1. The ESRB’s legal instruments shall be adopted by the General Board and signed by the Chair of the ESRB or the Head of the ESRB Secretariat to certify their conformity with the General Board’s decision.;

14. In Article 28, paragraph 2 is replaced by the following:

- ‘2. The agreements referred to in Articles 8(4) and 16(3) of Regulation (EU) No 1092/2010 and any other agreement with other institutions or authorities relating to the exchange of information, including confidential information, shall be approved by the General Board and signed by the Chair of the ESRB on its behalf.’;

Article 2

Entry into force

This Decision shall enter into force on 24 March 2020.

Done at Frankfurt am Main, 20 March 2020.

Francesco MAZZAFERRO
Head of the ESRB Secretariat
on behalf of the General Board of the ESRB
