

III

(Preparatory acts)

EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 4 February 2015

on the review of the mission and organisation of the European Systemic Risk Board

(CON/2015/4)

(2015/C 192/01)

Introduction and legal basis

On 8 August 2014 the European Commission adopted a report on the mission and organisation of the European Systemic Risk Board (ESRB) ⁽¹⁾ (hereinafter the 'Commission report').

The competence of the European Central Bank (ECB) to deliver an opinion on the Commission report to the European Parliament and the Council is based on Article 20 of Regulation (EU) No 1092/2010 of the European Parliament and of the Council ⁽²⁾ and Article 8 of Council Regulation (EU) No 1096/2010 ⁽³⁾. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

General observations

The Commission report reviews the mission and organisation of the ESRB as required under Article 20 of Regulation (EU) No 1092/2010 and Article 8 of Regulation (EU) No 1096/2010. In general, the ECB supports the conclusions reached in the Commission report.

At present, the ECB considers that no far-reaching changes are needed to the ESRB legal framework. The review period has been relatively short and the ECB considers that the ESRB has, on balance, functioned well. However, some technical adjustments to the ESRB's operational framework would improve its efficiency and enhance its contribution to preventing and mitigating systemic risks to financial stability arising from developments within the financial system. These should be considered by the European Parliament, the Council and the Commission, when assessing the need for concrete legislative proposals ⁽⁴⁾. In this regard, when concrete legislative proposals are put forward by the Commission, the ECB will provide its opinion in accordance with its competences under the Treaties.

Specific observations

1. ECB support provided to the ESRB

1.1. *Link between ESRB macro-prudential oversight in the European Union and the ECB's mandate for monetary policy, financial stability and banking supervision*

The ESRB was established in 2010 to conduct macro-prudential oversight in the Union. According to Article 127(1) of the Treaty on the Functioning of the European Union, the ECB's primary objective is to maintain price stability, in accordance with which the ECB defines and implements monetary policy for the euro area. Furthermore, pursuant to Article 127(5) of the Treaty, the European System of Central Banks (ESCB) contributes to the smooth conduct of policies relating to the stability of the financial system. These policies are defined and conducted on the basis of relevant sets of macroeconomic and macro-financial variables and analyses.

⁽¹⁾ COM(2014) 508 final.

⁽²⁾ 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 (OJ L 331, 15.12.2010, p. 1).

⁽³⁾ 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 (OJ L 331, 15.12.2010, p. 162).

⁽⁴⁾ Article 20 of Regulation (EU) No 1092/2010.

Since its inception, the ESRB has been able to draw on the macroeconomic, financial and monetary expertise of all the ESCB central banks, in particular in the areas of financial stability monitoring, macroeconomic analysis, analysis of market conditions and market infrastructures, as well as in the collection of statistical information. In addition, the ESRB has benefited from the synergies in expertise, resources and infrastructure in the context of existing ESCB activities.

The activities the ECB carries out to support the ESRB neither affect the ECB's institutional, functional and financial independence nor the ESCB's performance of its tasks under the Treaty and the Statute of the European System of Central Banks and of the European Central Bank. The ECB remains well placed to continue to ensure analytical, statistical, financial and administrative support for the ESRB in line with the existing arrangements, in particular under Regulation (EU) No 1096/2010. As concerns the proposal advanced by several stakeholders in the Commission consultation process to enhance the ESRB's autonomy⁽¹⁾, the ECB considers that an appropriate balance should be sought as an unwarranted degree of autonomy would be incompatible with the continued reliance of the ESRB on the ECB's reputation and expertise⁽²⁾.

1.2. *The Chair of the ESRB's General Board*

The ECB supports the Commission's proposal to keep the President of the ECB as the Chair of the ESRB's General Board. Central banks play an important role in macro-prudential policy given their responsibility for financial system stability, their analytical expertise and the information they have on the real economy, financial markets and market infrastructures. In particular, the ECB provides analytical, statistical, administrative and logistical support to the ESRB and ensures close cooperation at the technical level by cross-representation in the ESRB's Advisory Technical Committee (ATC) and the ECB's Financial Stability Committee.

The participation of the governors of all ESCB central banks in the ESRB's General Board, as well as the attribution of the Chair to the President of the ECB under Regulation (EU) No 1092/2010, underlines the importance of the central banks' role in the functioning of the ESRB. The role of the President of the ECB as the Chair of the ESRB's General Board should therefore not be changed.

Importantly, the President of the ECB would need to be re-appointed as Chair of the ESRB's General Board by the end of 2015, since Regulation (EU) No 1092/2010 provides an explicit limitation on the term of office⁽³⁾. Consequently, a legislative proposal specifying the modalities for the designation of the Chair would need to be prepared and adopted in the first half of 2015.

2. **ESRB organisation**

2.1. *Review of the composition of the ESRB's General Board*

Regarding the Commission's suggestion to streamline and reduce the size of the ESRB's General Board⁽⁴⁾, the ECB considers that there would be only very limited possibilities to reduce membership. In fact the ECB takes the view that all macro-prudential decision-makers should participate in the General Board. Given their central role in macro-prudential policy, the General Board should include representatives from all ESCB central banks and national macro-prudential authorities, when different from central banks, although not necessarily with voting rights. In addition, it would be beneficial that the Single Supervisory Mechanism (SSM) is represented on the General Board with non-voting rights, i.e. in the same way that national supervisors are currently represented.

2.2. *Review of the composition and tasks of the Steering Committee*

The ECB agrees with the Commission's proposal to strengthen the Steering Committee's role. For example, the Steering Committee could be used as a platform for the exchange of information on planned macro-prudential measures before they are officially notified to the ESRB, thereby ensuring the involvement of all macro-prudential authorities concerned. Such macro-prudential authorities could be invited as ad hoc participants in the relevant Steering Committee meetings. This would give the ECB the opportunity to discuss possible spillover and contagion effects, in particular with non-euro area Member States, before macro-prudential measures are taken. Furthermore, the Steering Committee could take a more proactive, forward-looking approach in setting the priorities for the General Board agenda and in identifying key policy issues in the form of a work programme. The Steering Committee should ensure transparency towards the General Board in the exercise of these tasks. The strengthened role of the Steering Committee should not in any way compromise the role of the General Board as the ESRB's sole decision-making body. Finally, the ECB considers it beneficial that the SSM is represented on the Steering Committee.

⁽¹⁾ See Commission report, Section 3.2.1.

⁽²⁾ See Commission report, Section 3.2.1.

⁽³⁾ See Article 5(1) of Regulation (EU) No 1092/2010.

⁽⁴⁾ See Commission report, Section 4.

2.3. Other sub-structures (ATC and ASC)

The ESRB has established various sub-structures to support its analytical work. The ATC contributes to the work of the ESRB in several areas⁽¹⁾. The Advisory Scientific Committee (ASC) brings a more innovative, external, and scientific perspective to the ESRB's work. The ECB considers that no far-reaching changes are needed to the composition or the structure of these Committees. The Commission has suggested some areas for improvement, i.e. related to the large size of the ATC, the visibility of ASC's work and a closer link of the ASC to the general ESRB agenda⁽²⁾. The ECB's view is that any modification to the size of the ATC should reflect changes in the General Board's composition. As regards the ASC, it could enhance its visibility by also working on priority issues, as identified by the General Board and the Steering Committee, provided that the ASC maintains the possibility to analyse issues upon its own initiative.

2.4. The role of a Managing Director

The Commission report suggests that the Commission would further examine the possibility of creating a full-time Managing Director role, in charge of the day-to-day activities of the ESRB⁽³⁾. While such an organisational change could be beneficial⁽⁴⁾, the fact that the ESRB will continue to rely on the ECB for analytical, statistical, administrative and logistical support entails maintaining a high-profile presence of the ECB in the decision-making bodies of the ESRB. To this end, the appointment of an ESRB Managing Director should be balanced by permanently assigning the ex officio chairmanship of the General Board to the President of the ECB⁽⁵⁾. The ECB furthermore suggests that the scope of the Managing Director's role should be further clarified, for example with regard to the tasks and responsibilities of the Chair and the Head of the Secretariat, and also in terms of accountability and reporting requirements, as well as the external representation of the ESRB.

3. ESRB toolbox

3.1. Communication tools (including letters and public statements)

The ECB considers that additional clarifications are warranted regarding the proposal to expand the ESRB's toolbox⁽⁶⁾. The Commission suggests expanding the current toolbox, which includes warnings and recommendations as the two main communication tools, to include the exercise of more 'soft powers'. By way of example, the Commission report mentions the publication of letters or statements as a means to enhance the flexibility of the early warning function before any formal warning or recommendations would be issued. The ECB supports such an approach, which should enable the ESRB to highlight some risks at an earlier stage without necessarily having to issue a formal warning.

3.2. ESRB participation in the Union legislative process

The ECB notes that several of the respondents in the Commission consultation, as well as the other reports on the same matter⁽⁷⁾ have suggested that the ESRB should be involved in the Union legislative process in one form or another. It is important to underline that Union legislative procedures are governed by the relevant Treaty provisions. In addition, Regulation (EU) No 1092/2010 already provides a basis for the ESRB to issue recommendations to the Commission in respect of relevant Union legislation⁽⁸⁾.

The ESRB's expertise in the area of financial stability would of course be valuable in the discussion of Union policy initiatives. The ECB considers that in line with the above considerations for a proactive communication strategy, the ESRB may provide its input in the legislative process by, for example, highlighting to the Commission areas where future legislative action may be necessary. Another possible avenue for involvement could be ESRB participation in public consultations organised by the Commission. However, the ECB considers that there is no need to establish a formal role for the ESRB in the Union legislative procedure beyond what is already provided for in Regulation (EU) No 1092/2010.

⁽¹⁾ See Mandate of the Advisory Technical Committee, available on the ESRB's website.

⁽²⁾ See Commission Staff Working Document accompanying the document Report to the European Parliament and the Council on the mission and organisation of the European Systemic Risk Board (ESRB), p. 16.

⁽³⁾ See Commission report, Section 3.2.1.

⁽⁴⁾ Notably by contributing to enhancing the ESRB's visibility and facilitating day-to-day decision-making within the ESRB.

⁽⁵⁾ As recommended in paragraph 1.2 of this opinion.

⁽⁶⁾ See Commission report, Section 3.2.3.

⁽⁷⁾ See European Parliament resolution of 11 March 2014 with recommendations to the Commission on the European System of Financial Supervision (ESFS) Review (2013/2166(INL)).

⁽⁸⁾ See Article 16(2) of Regulation (EU) No 1092/2010.

4. ESRB access to data

4.1. ECB provision of statistical support to the ESRB

In the light of its experience in the review period, the ECB assesses the current framework for the provision of data to the ESRB as appropriate and confirms that the ESRB's Secretariat and the European Supervisory Authorities (ESAs) cooperate closely. Nonetheless, improvements could be made to the procedures related to the exchange of data.

As part of its provision of statistical support to the ESRB, the ECB has ensured to date that the initial requirements for the regular reporting of aggregated data set out in Decision ESRB/2011/6 ⁽¹⁾ are met in a timely manner and with high quality data. Decision ESRB/2011/6 was adopted following a key contribution of a joint group comprising representatives of the ESRB's Secretariat, the ECB and the ESAs to address the ESRB's statistical data needs ⁽²⁾. This data is used in regular briefings of the ESRB's General Board and the ATC, and in particular in the ESRB's risk dashboard, which is published every quarter since September 2012.

4.2. General procedures for data access

The ECB would also support streamlining the data access procedures in cases where data are already available in European or national authorities and only the content, format and access rights of such data need to be specified. The procedure should still allow the respective institutions or bodies (e.g. the ESAs, national authorities or the ESCB) to check that any remaining constraints, such as on data dissemination, are respected. Conversely, the ESRB's General Board's existing voting procedure would still be appropriate for those cases where data are not available, thus triggering the launch of genuine ad hoc surveys, which require the collection of data from the financial industry.

4.3. ESRB access to non-aggregated data

Since its inception, the ESRB's statistical needs have been met, to a large extent, through ad hoc requests, both aggregated and firm specific. However, the procedures for collecting, processing and disseminating such data are cumbersome and lengthy, which also affects the timelines of the subsequent analytical work. Having regard to the important complementarity between aggregated and firm-level data for macro-prudential analysis and policy-making, the current restrictive framework for obtaining the relevant information needs to be revisited. Specifically, Article 15 of Regulation (EU) No 1092/2010 constrains the capacity of the ESRB (via its Secretariat and the supporting statistical and analytical function of the ECB) to obtain individual firm-level data in a timely and appropriate manner for the purposes of conducting macro-prudential analysis. Cumbersome procedures had to be put in place to deal with these constraints. These may in part be excessive, as some firm-level data, such as individual financial statement data of listed banks, that currently goes to the 'dark room' managed by the ESRB Secretariat may actually be published by the firms.

Therefore, the ECB strongly supports a review of Article 15 of Regulation (EU) No 1092/2010 to make procedures for the provision of individual firm-level data more attuned to the needs of the ESRB and less restrictive, by distinguishing data that is sensitive (e.g. on interconnectedness) and ensuring the appropriate protection of confidentiality.

The ECB proposes making a distinction, similar to that made by the Financial Stability Board ⁽³⁾, between 'institution-to-aggregate' data, i.e. one institution reporting on its overall exposures such as balance sheet and profit and loss accounts, or vis-à-vis different categories of counterparts (e.g. banks, or government agencies) grouped by risk factors, and 'institution-to-institution' data, i.e. institutions reporting bilateral exposures. Whilst both cases may involve confidential and sensitive data, and hence need to be subject to confidentiality protection and careful case-by-case assessment, the category of 'institution-to-institution' data will in many cases prove more sensitive and for this reason would need to be subject to the constraints under the current procedure. By contrast, the category of 'institution-to-aggregate' data may be subject to a more simplified procedure, without prejudice to the right to request stricter treatment in specific cases where justified by the sensitivity of the data concerned. In a domain where aggregated data are not fit for analytical purposes due to tail factors and associated risks, distribution measures are essential and call for more granularity. It should also be borne in mind that most data are reported several weeks, or even months, after the reference period and, thus, further lose their sensitivity.

⁽¹⁾ Decision ESRB/2011/6 of 21 September 2011 on the provision and collection of information for the macro-prudential oversight of the financial system within the Union (OJ C 302, 13.10.2011, p. 3).

⁽²⁾ Further details on the work that has been carried out to prepare, develop, implement and manage the initial set of statistical and supervisory information necessary to support the ESRB are presented by Israel J.-M., Sandars P., Schubert A., and Fischer B. (2013), *Statistics and Indicators for Financial Stability Analysis and Policy*, Occasional Paper Series, No 145, ECB, Frankfurt am Main, April 2013.

⁽³⁾ See Financial Stability Board, Consultation Paper, *Understanding Financial Linkages: A Common Data Template for Global Systemically Important Banks*, 6 October 2011.

The ESRB's General Board could establish procedures regarding the sharing of such 'institution-to-aggregate' and firm-level data, within the overall legal framework governing such information sharing. The ECB has in place appropriate procedures for protecting genuinely confidential data and can draw on its extensive experience in that respect ⁽¹⁾.

4.4. Supervisory reporting requirements

Finally, the ECB would encourage the ESAs to give appropriate weight to the needs of the ESRB when considering new or amended supervisory reporting requirements, so as to better reflect macro-prudential analytical needs. For its part, the ECB already takes ESRB data requirements into consideration in on-going development work to new or enhanced statistics, through its 'merits and costs exercises', equivalent to the Commission's 'impact assessments'.

5. Interaction between the ESRB and the SSM

5.1. SSM representation in the ESRB structures

At the time when the governance arrangements of the ESRB were made, the Banking Union was not yet in place. To reflect the changes in the context of the European System of Financial Supervision, including the establishment of the SSM, Regulation (EU) No 1092/2010 should explicitly provide for SSM representation on the ESRB's General Board ⁽²⁾. As noted, the SSM representation on the Steering Committee should be also provided for ⁽³⁾. Finally, representation of the SSM on the ATC would also be deemed useful.

5.2. ESRB's role in the application of macro-prudential tools within the SSM

It should be noted that Council Regulation (EU) No 1024/2013 ⁽⁴⁾ expressly entrusts the ECB with policy responsibilities and powers in the macro-prudential field ⁽⁵⁾, which will be exercised over a majority of ESRB members. To this end, national authorities must notify the ECB of the macro-prudential measures that they intend to apply. On the other hand the ECB may, if deemed necessary, apply higher requirements.

In March 2014 the ESRB published a flagship report on macro-prudential policy in the banking sector ⁽⁶⁾. The report states that the ESRB will serve as a central hub for collecting and disseminating information about macro-prudential policy measures in the Union. The ESRB has already recommended that the macro-prudential authorities should cooperate and exchange information also on a cross-border basis, in particular by informing the ESRB of the actions taken to address systemic risks at national level ⁽⁷⁾. Furthermore, the ESRB has recommended that macro-prudential authorities should, without prejudice to relevant provisions of Union legislation, inform the ESRB prior to the application of macro-prudential instruments at national level if significant cross-border effects on other Member States or the single market are to be expected ⁽⁸⁾.

It is essential that ESRB macro-prudential oversight is conducted taking into account the role and functions of the ECB in the macro-prudential area ⁽⁹⁾. Duplication of work could be avoided by clearly distinguishing between the tasks and responsibilities of the ECB and the ESRB. Against this background, it is envisaged that the ESRB's General Board and the relevant ECB decision-making bodies will establish clear rules concerning information-sharing and the follow-up to the ESRB recommendations.

⁽¹⁾ In particular, data collected under Council Regulation (EU) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank (OJ L 318, 27.11.1998, p. 8) are subject to the protection measure specified under Article 8 of the same Regulation, ensuring the physical and logical protection of confidential statistical information.

⁽²⁾ See also paragraph 2.1 of this opinion.

⁽³⁾ See also paragraph 2.2 of this opinion.

⁽⁴⁾ 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).

⁽⁵⁾ See Article 5 of Regulation (EU) No 1024/2013.

⁽⁶⁾ See Flagship Report on Macro-prudential Policy in the Banking Sector, available on the ESRB website at www.esrb.europa.eu

⁽⁷⁾ See Recommendation ESRB/2011/3, recommendation B4.

⁽⁸⁾ See Recommendation ESRB/2013/1, recommendation C3.

⁽⁹⁾ In particular, Regulation (EU) No 1024/2013 already provides a reference for the design of the interaction between SSM countries and the ESRB in relation to macro-prudential issues, as it prescribes that, while keeping the mandate of the ESRB intact, national competent authorities or national designated authorities and the ECB will act in respect of any coordination procedure provided for in other acts of Union law after having followed the procedure provided for in Regulation (EU) No 1024/2013. See recital 24.

5.3. Addressees of ESRB recommendations

Regulation (EU) No 1092/2010 currently provides for a potentially unlimited number of addressees of ESRB recommendations⁽¹⁾. The ESRB has already issued recommendations to Member States, national competent authorities, national designated authorities, the European Banking Authority and the Commission.

At the same time, Regulation (EU) No 1092/2010 is rather restrictive as regards the addressees which are required to provide evidence of their follow-up to ESRB recommendations, under the 'act or explain' mechanism⁽²⁾. Indeed, only some of the above addressees are required to report back on steps taken to comply with these recommendations. Such asymmetries should be avoided to the extent possible.

In view of the foregoing, consideration would need to be given as to whether the legal framework should provide that the ESRB may, within its mandate, issue recommendations to national macro-prudential authorities, as well as to the ECB in its micro-prudential and macro-prudential supervisory functions⁽³⁾. In any case, the inclusion of the ECB as a potential addressee should in no way prejudice the primary objective of the ESCB of maintaining price stability in accordance with Article 127(1) of the Treaty⁽⁴⁾. In this regard, clear *ex-ante* communication and information-sharing between the ESRB's General Board and the relevant ECB decision-making bodies, as suggested above⁽⁵⁾, should be ensured.

Done at Frankfurt am Main, 4 February 2015.

The President of the ECB

Mario DRAGHI

⁽¹⁾ See Article 16 of Regulation (EU) No 1092/2010.

⁽²⁾ See Article 17(1) of Regulation (EU) No 1092/2010.

⁽³⁾ As was already suggested in Section 2.1.1(a) of Recommendation of the European Systemic Risk Board of 18 June 2014 on guidance for setting countercyclical buffer rates (OJ C 293, 2.9.2014, p. 1).

⁽⁴⁾ See High-Level Group on the ESRB Review, Contribution to the Review of the ESRB, March 2013.

⁽⁵⁾ See paragraph 5.2 of this opinion.