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A8-0011/ 001-001

**AMENDMENTS 001-001**

by the Committee on Economic and Monetary Affairs

**Report**

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**A8-0011/2019**

European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board

Proposal for a regulation (COM(2017)0538 – C8-0317/2017 – 2017/0232(COD))

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**Amendment 1**

**AMENDMENTS BY THE EUROPEAN PARLIAMENT\***

to the Commission proposal

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**Proposal for a**

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

amending Regulation (EU) No 1092/2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board

(Text with EEA relevance)

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\* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol **■**.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In accordance with Article 20 of Regulation (EU) No 1092/2010<sup>2</sup> (ESRB Regulation), the European Parliament and the Council, on the basis of a report<sup>3</sup> from the Commission, have examined the ESRB Regulation to determine whether the mission and organisation of the ESRB needed to be reviewed. The modalities for the designation of the Chair of the ESRB have also been reviewed.
- (2) The 2017 Commission report on the mission and organisation of the ESRB<sup>4</sup> concludes that, while the ESRB is generally well-functioning, improvements on certain specific points are necessary. *In addition, recent institutional changes relating to the Banking Union, coupled with efforts to achieve a capital markets union, as well as technological change, have effectively altered the ESRB's operating environment since the time of its inception. The establishment of the ESRB should contribute directly to achieving the objectives of the internal market. The Union macro-prudential oversight of the financial system is an integral part of the overall new supervisory arrangements in the Union as the macro-prudential aspect is closely*

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> 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).

<sup>3</sup> Report from the Commission to the European Parliament and to the Council on the mission and organisation of the European Systemic Risk Board, COM(2014) 508 final.

<sup>4</sup> Commission Staff Working Document, Effect Analysis, Amendments to ESRB Regulation, COM(2017).

*linked to the micro-prudential supervisory tasks attributed to the ESAs. Only with arrangements in place that properly acknowledge the interdependence of micro and macro-prudential risks can all stakeholders have sufficient confidence to engage in cross-border financial activities. The ESRB should monitor and assess risks to financial stability arising from developments that can impact on a sectoral level or at the level of the financial system as a whole, including risks and vulnerabilities resulting from technological change or from environmental or social factors. By addressing such risks, the ESRB should contribute directly to an integrated Union supervisory structure necessary to promote timely and consistent policy responses among the Member States, thus preventing diverging approaches and improving the functioning of the internal market. In order to accomplish its objectives, the ESRB should analyse all the relevant information, including developments leading to the completion of the Capital Markets Union.*

- (3) The broad membership of the General Board of the ESRB is a major asset. Recent developments in the financial supervisory architecture of the Union, and in particular the set-up of a Banking Union, are however not reflected in the composition of that General Board. For that reason, the Chair of the Supervisory Board of the ECB and the Chair of the Single Resolution Board should become members with voting rights of the General Board of the ESRB. Corresponding adjustments should also be made to the Steering Committee and to the Advisory Technical Committee, respectively.
- (4) The ECB President has chaired the ESRB for the first 5 years of its existence, after which the ECB President has continued to chair the ESRB on an interim basis. During that period, the ECB President has conferred authority and credibility to the ESRB and ensured that the ESRB can effectively build and rely on the expertise of the ECB in the area of financial stability. It is therefore appropriate that the ECB President chairs the ESRB on a permanent basis.
- (5) To strengthen the visibility of the ESRB as a body that is separate from its individual members, the Chair of the ESRB should be able to delegate tasks related to the external representation of the ESRB to *Vice-Chairs or to* the head of the ESRB Secretariat, *with the exception of participation in hearings and discussions behind closed doors at the European Parliament.*

- (6) Article 3(2) of Council Regulation (EU) No 1096/2010<sup>1</sup> provides that the head of the Secretariat of the ESRB is to be appointed by the ECB, in consultation with the General Board of the ESRB. To raise the profile of the head of Secretariat of the ESRB, the General Board of the ESRB should assess, in an open and transparent procedure, whether the shortlisted candidates for the position of head of Secretariat of the ESRB possess the qualities and experience necessary to manage the ESRB Secretariat. The General Board should inform the European Parliament and the Council about the assessment procedure. Furthermore, the tasks of the head of the ESRB Secretariat should be clarified.
- (7) In accordance with Article 5(2) of Regulation (EU) No 1092/2010, the first Vice-Chair of the ESRB has up until now been elected by and from the members of the General Council of the ECB, with regard to the need for a balanced representation of Member States overall and between those whose currency is the euro and those whose currency is not the euro. ***This is no longer appropriate, although such a balanced representation should remain a consideration for the ESRB's Steering Committee. Furthermore, following the creation of the Banking Union, it is appropriate to replace the reference to Member State whose currency is the euro and those whose currency is not the euro with a reference to Member States that do participate in the Banking Union and those who do not.***
- (8) █
- (9) To decrease costs and to enhance procedural efficiency, the number of representatives of the Commission in the Advisory Technical Committee of the ESRB should be reduced from the current two representatives to one representative.
- (10) Article 16(3) of Regulation (EU) No 1092/2010 requires that the ESRB warnings and recommendations are transmitted to the Council and the Commission and, where addressed to one or more national supervisory authorities, to the ESAs. To strengthen democratic control and transparency, those warnings and recommendations should also be transmitted to the European Parliament and to the ESAs.

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<sup>1</sup> 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).

- (11) To ensure the quality and relevance of the ESRB opinions, recommendations and decisions, the Advisory Technical Committee and Advisory Scientific Committee are expected to consult stakeholders, where appropriate, at an early stage and in an open and transparent manner, ***and to do so as widely as possible to ensure an inclusive approach towards all interested parties.***
- (12) Regulation (EU) No 1092/2010 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

#### Article 1

Regulation (EU) No 1092/2010 is amended as follows:

***(-1) In Article 2, point (c) is replaced by the following:***

“(c) ‘systemic risk’ means a risk of disruption in the financial system with the potential to have serious negative consequences for the ***financial stability of the Union or of one or more of its Member States or for the real economy and the functioning of the*** internal market **■**. All types of financial intermediaries, markets and infrastructure may be potentially systemically important to some degree.”;

***(-1a) In Article 3(2), point (d) is replaced by the following:***

“(d) issuing recommendations ***to Union institutions and Member States*** for remedial action in response to the risks identified and, where appropriate, making those recommendations public;”;

(1) Article 4 is amended as follows:

(a) the following paragraph 2a is inserted:

“2a. When consulted on the appointment of the head of Secretariat of the ESRB in accordance with Article 3(2) of Council 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 Secretariat of the ESRB possess

the qualities, *independence* and experience necessary to manage the ESRB Secretariat. The General Board shall inform the European Parliament and the Council *in sufficient detail* about the *assessment and* consultation procedure.

\* 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).”;

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(b) the following paragraph 3a is inserted:

“3a. When giving directions to the head of Secretariat of the ESRB in accordance with Article 4(1) of Council Regulation (EU) No 1096/2010, the ESRB Chair and the Steering Committee may in particular address the following:

- (a) the day-to-day management of the ESRB Secretariat;
- (b) any administrative and budgetary issues related to the ESRB Secretariat;
- (c) the coordination and preparation of the work and the decision making of the General Board;
- (d) the preparation of the annual ESRB programme proposal and its implementation;
- (e) the preparation of the annual report on the ESRB activities and the reporting to the General Board on its implementation”;

(2) Article 5 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

“1. The ESRB shall be chaired by the President of the ECB.

2. The first Vice-Chair shall be elected by and from the members of the General Council of the ECB for a term of 5 years ■ . The first Vice-Chair may be re-elected once.

\*\* 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).”;

(b) paragraph 8 is replaced by the following:

“8. The Chair shall represent the ESRB externally. The Chair may delegate tasks related to the external representation of the ESRB *with the exception of the tasks set out in Article 19(1), (4) and (5), to the Vice-Chairs of the ESRB or to the head of the Secretariat.*”;

(3) Article 6 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the following points (fa) and (fb) are inserted:

“(fa) the Chair of the Supervisory Board of the ECB;

(fb) the Chair of the Single Resolution Board;”;

(ii) ■

(b) paragraph 2 is amended as follows:

(i) point (a) is replaced by the following:

“(a) one high-level representative per Member State either of the national competent authorities or of the national authorities designated for the application of measures aimed at addressing systemic or macro-prudential risk, in accordance with paragraph 3;”;

(c) paragraph 3 is replaced by the following:

“3. With regard to the representation of the national authorities referred to under paragraph 2(a), the respective high-level representatives shall rotate depending on the item discussed, unless the national authorities of a particular Member State have agreed on a common representative.”;

***(3a) Article 7(1) is replaced by the following:***

“1. When participating in the activities of the General Board and of the Steering Committee or when conducting any other activity relating to the ESRB, the members of the ESRB shall perform their duties impartially and solely in the interest of the Union as a whole. They shall not seek nor take instructions from **any government**, the Union institutions or any other public or private body.”;

**(3b) In Article 8(1), the following subparagraphs are added:**

***“This paragraph shall not apply to any person who reports or discloses information on a threat or harm to the public interest in the context of their work-based relationship.***

***This paragraph is without prejudice to the confidential oral discussions held in accordance with Article 19(5).”;***

**(4) Article 9 is amended as follows:**

**(a) paragraph 4 is replaced by the following:**

“4. Where appropriate, high-level representatives from international financial organisations **or from the European Parliament** carrying out activities directly related to the tasks of the ESRB set out in Article 3(2) may be invited to attend the meetings of the General Board.”;

**(b) paragraph 5 is replaced by the following:**

“5. Participation in the work of the ESRB may be open to high-level representatives of the relevant authorities from **EEA** countries, strictly limited to issues of particular relevance to those countries. Arrangements may be made by the ESRB specifying, in particular, the nature, scope and procedural aspects of the involvement of those **EEA** countries in the work of the ESRB. Such arrangements may provide for representation, on an ad-hoc basis, as an observer, on the General Board and should concern only items of relevance to those countries, excluding any case where the situation of individual financial

institutions or Member States may be discussed.”

(5) Article 11 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (c) is replaced by the following:

“(c) four other members of the General Board who are also members of the General Council of the ECB, with regard to the need for a balanced representation of Member States overall, and between those which are participating Member States as defined in Article 2(1) Regulation (EU) No 1024/2013 and those which are not. They shall be elected by and from among the members of the General Board who are also members of the General Council of the ECB, for a period of 3 years;”;

(ii) the following points (ga), (gb) *and (gba)* are inserted:

“(ga) the Chair of the Supervisory Board of the ECB;

(gb) the Chair of the Single Resolution Board;

*(gba) the head of the Secretariat of the ESRB;*”;

(6) Article 12 is amended as follows:

*(-a) paragraph 1 is replaced by the following:*

“1. The Advisory Scientific Committee shall be composed of the Chair of the Advisory Technical Committee and 15 experts representing a wide range of skills **■**, experiences *and knowledge pertaining to all relevant financial markets sectors*, proposed by the Steering Committee and approved by the General Board for a four-year, renewable mandate. The nominees shall not be members of the ESAs and shall be chosen on the basis of their general competence and their diverse experience in academic fields or other sectors, in particular in small and medium-sized enterprises or trade-unions, or as providers or consumers of financial services.”;

*(-aa) paragraph 2 is replaced by the following:*

“2. The Chair and the two Vice-Chairs of the Advisory Scientific Committee shall be appointed by the General Board following a proposal from the Chair of the ESRB and they shall each have a high level of relevant expertise and knowledge, for example by virtue of their *relevant academic professional* background in the sectors of banking, securities markets, or insurance and occupational pensions. The chairmanship of the Advisory Scientific Committee should rotate between those three persons.”;

***(-ab) paragraph 3 is replaced by the following:***

“3. The Advisory Scientific Committee shall provide advice and assistance to the ESRB in accordance with Article 4(5), at the request of the Chair of the ESRB *or the General Board.*”;

(a) paragraph 5 is replaced by the following:

“5. Where appropriate, the Advisory Scientific Committee shall organise consultations with stakeholders, *such as market participants, consumer bodies and academic experts*, at an early stage and in an open and transparent manner, while taking into account the requirement of confidentiality. *Such consultations shall be conducted as widely as possible to ensure an inclusive approach towards all interested parties and relevant financial sectors and shall allow reasonable time for stakeholders to respond.*”;

(7) Article 13 is amended as follows:

(a) paragraph 1 is amended as follows:

***(-i) point (a) is replaced by the following:***

“(a) a representative of each national central bank█”;

(i) point (f) is replaced by the following:

“(f) a representative of the Commission;”;

(ii) the following points (fa) and (fb) are inserted:

“(fa) a representative of the Supervisory Board of the ECB;

(fb) a representative of the Single Resolution Board;”;

**(aa) paragraph 3 is replaced by the following:**

“3. The Advisory Technical Committee shall provide advice and assistance to the ESRB in accordance with Article 4(5) at the request of the Chair of the ESRB **or the General Board**”;

**(b) the following paragraph 4a is inserted:**

“4a. Where appropriate, the Advisory Technical Committee shall organise consultations with stakeholders at an early stage and in an open and transparent manner, while taking into account the requirement of confidentiality. **Such consultations shall be conducted as widely as possible to ensure an inclusive approach towards all interested parties and relevant financial sectors and shall allow reasonable time for stakeholders to respond.**”;

**(7a) Article 14 is replaced by the following:**

“In performing the tasks set out in Article 3(2), the ESRB shall, where appropriate, seek the views of relevant private sector stakeholders. **Such consultations shall be conducted as widely as possible to ensure an inclusive approach towards all interested parties and relevant financial sectors and shall allow reasonable time for stakeholders to respond.**”;

**(7b) Article 15(7) is replaced by the following:**

“7. Before each request for information **of a supervisory nature** which is not in summary or aggregate form, the ESRB shall duly consult the relevant European Supervisory Authority in order to ensure that the request is justified and proportionate. If the relevant European Supervisory Authority does not consider the request to be justified and proportionate, it shall, without delay, send the request back to the ESRB and ask for additional justification. After the ESRB has provided the relevant European Supervisory Authority with such additional justification, the requested information shall be transmitted to the ESRB by the addressees of the

request, provided that they have legal access to the relevant information.”;

(8) Article 16 is amended as follows:

(a) in paragraph 2, the first sentence is replaced by the following:

“Warnings or recommendations issued by the ESRB in accordance with points (c) and (d) of Article 3(2) may be of either a general or a specific nature and shall be addressed in particular to the Union, to one or more Member States, to one or more of the ESAs or to one or more of the national competent authorities, or ***national resolution authorities***, to the ECB for the tasks conferred to the ECB in accordance with Articles 4(1), 4(2) and 5(2) of Regulation (EU) No 1024/2013, ***or to the Single Resolution Board. If a warning or a recommendation is addressed to one or more of the national supervisory authorities, the Member State or Member States concerned shall also be informed thereof. Recommendations shall include a specified timeline for the policy response. Recommendations may also be addressed to the Commission in respect of the relevant Union legislation. Warnings and recommendations shall be sufficiently detailed and reasoned and shall be accompanied by an adequate and comprehensive statement of reasons.***”;

(b) paragraph 3 is replaced by the following:

“3. At the same time as they are transmitted to the addressees in accordance with paragraph 2, the warnings or recommendations shall be transmitted, in accordance with strict rules of confidentiality, to the Council, the European Parliament, the Commission and to the ESAs.”;

(9) in Article 17, paragraphs 1 and 2 are replaced by the following:

“1. If a recommendation referred to in Article 3(2)(d) is addressed to the Commission, to one or more Member States, to one or more ESAs, or to one or more national competent authorities, the addressees shall communicate to the European Parliament, the Council, ***the Commission*** and to the ESRB the actions undertaken in response to the recommendation and shall substantiate any inaction. Where relevant, the ESRB shall, subject to strict rules of confidentiality, inform the ESAs of the answers received without delay.”;

2. If the ESRB decides that its recommendation has not been followed or that the addressees have failed to provide adequate justification for their inaction, the ESRB shall, subject to strict rules of confidentiality, inform the addressees, the European Parliament, the Council, *the Commission* and the relevant ESAs thereof.”;

(9a) *Article 19 is amended as follows:*

(a) *paragraphs 1 and 2 are replaced by the following:*

“1. At least annually and more frequently in the event of widespread financial distress, the Chair of the ESRB shall be invited to an annual hearing in the European Parliament *by the competent committee*, marking the publication of the ESRB’s annual report to the European Parliament and the Council. That hearing shall be conducted separately from the monetary dialogue between the European Parliament and the President of the ECB.

2. The annual report referred to in paragraph 1 shall contain the information that the General Board decides to make public in accordance with Article 18. The annual report shall be made available to the public. *It shall include giving an account of the resources made available to the ESRB in accordance with Article 3(1) of Regulation (EU) 1096/2010.*”;

(b) *the following paragraph is added:*

*“5a. The ESRB shall reply orally or in writing to questions put to it by the European Parliament or by the Council. It shall reply to those questions without delay and in any event within five weeks of the date of their transmission to the ESRB.”;*

(10) Article 20 is replaced by the following:

“No sooner than five years after [OJ, please insert the date of entering into force], the Commission shall carry out an evaluation of this Regulation and present a Report on the main findings to the European Parliament, the Council and the European Economic and Social Committee.”

Article 2

This Regulation shall enter into force on the [...] day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...,

*For the European Parliament*

*The President*

*For the Council*

*The President*