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EUROPEAN  
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Brussels, 8.8.2014  
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**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)**

{ COM(2014) 508 final }

## Contents

<u>1.</u>	<u>INTRODUCTION</u> .....	3
<u>2.</u>	<u>MANDATE, POWERS &amp; TOOLS</u> .....	4
<u>2.1.</u>	<u>Background</u> .....	4
2.1.1.	The regulatory framework.....	4
2.1.2.	Warnings and Recommendations .....	6
2.1.3.	Other analytical work .....	7
<u>2.2.</u>	<u>Assessment</u> .....	7
2.2.1.	Focus.....	7
2.2.2.	Binding or non-binding recommendations .....	7
2.2.3.	Timeliness.....	8
2.2.4.	Addressees .....	8
2.2.5.	Transparency .....	9
<u>3.</u>	<u>STRUCTURE &amp; GOVERNANCE</u> .....	9
<u>3.1.</u>	<u>Background</u> .....	9
3.1.1.	<u>Structure</u> .....	10
3.1.2.	<u>Governance</u> .....	10
<u>3.2.</u>	<u>Assessment</u> .....	15
3.2.1.	<u>Organisational identity</u> .....	15
3.2.2.	<u>Decision-making process</u> .....	16
3.2.3.	<u>Perspective of the ESRB</u> .....	16
3.2.4.	<u>Advisory Committees</u> .....	17
<u>4.</u>	<u>STAKEHOLDER MANAGEMENT, ACCOUNTABILITY &amp; COMMUNICATIONS</u> .....	17
<u>4.1.</u>	<u>Background</u> .....	17
<u>4.2.</u>	<u>Assessment</u> .....	18
<u>5.</u>	<u>COOPERATION AND INTERACTION BETWEEN THE ESRB (MACRO LEVEL) AND THE ESAS (MICRO LEVEL)</u> .....	18
<u>5.1.</u>	<u>Background</u> .....	18
<u>5.2.</u>	<u>Assessment</u> .....	20
<u>6.</u>	<u>DATA</u> .....	21
<u>6.1.</u>	<u>Background</u> .....	21
<u>6.2.</u>	<u>Assessment</u> .....	21
ANNEX I		24
ANNEX II		25

## 1. INTRODUCTION

The European Systemic Risk Board (ESRB) was established in 2010 as a component of the new European System of Financial Supervision (ESFS), along with the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA) (together the European Supervisory Authorities (ESAs)).

Its creation, amidst an epochal financial crisis, came as a result of the 2009 de Larosière Report<sup>1</sup> aimed at strengthening European supervisory arrangements in order to better protect citizens and rebuild trust in the financial system. The crisis had exposed shortcomings in the micro-prudential supervision of individual institutions, and deficiencies in the relationships between national supervisors; but also a lack of focus on the degree of interdependence within the financial sector and more generally on systemic risks that threaten financial stability (and therefore the 'real economy'). The ESRB was created as the EU body charged with macro-prudential oversight. Its role is to contribute to the smooth functioning of the internal market through the prevention and mitigation of systemic risks to EU financial stability by means of ex ante warnings and recommendations for action.

The Union macro-prudential oversight of the financial system is an integral part of the overall supervisory arrangements in the Union as the macro-prudential aspect is closely linked to the micro-prudential supervisory tasks attributed to the ESAs. The ESRB was mandated to 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.

Article 20 of the Regulation establishing the ESRB<sup>2</sup> (the "ESRB Regulation") foresees a review process as regards the mission and organisation of the ESRB, in particular, the modalities for the designation or election of the Chair of the ESRB. Pursuant to Article 5(1) of the ESRB Regulation, the ECB President is appointed as ESRB Chair for a first term of five years following the entry into force of the Regulation i.e. 16 December 2010. Pursuant to the ESRB Regulation, for the subsequent terms, the Chair of the ESRB shall be designated in accordance with the modalities determined on the basis of the review. A review clause is also included in Article 8 of the second Regulation on the ESRB (the "ECB Regulation")<sup>3</sup>, which defines the modalities of the ECB's support to the ESRB.

Apart from first-hand experience through its participation as a member of the ESRB General Board and other ESRB governing or advisory bodies, the Commission's assessment, as outlined in this review report, draws on various sources. First, the Commission analysed evidence from the Public Hearing on the ESFS review on 24 May 2013. Second, the Commission assessed the feedback it received from the consultation process, which was held between 26 April and 31 July 2013. This process comprised a public consultation and a targeted consultation including more detailed and technical questions directed at the ESAs, national authorities, relevant institutions and agencies and

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<sup>1</sup> The High Level Group on Financial Supervision (chaired by Jacques de Larosière), Report, 25 February 2009; [http://ec.europa.eu/internal\\_market/finances/docs/de\\_larosiere\\_report\\_en.pdf](http://ec.europa.eu/internal_market/finances/docs/de_larosiere_report_en.pdf).

<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> 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).

key stakeholders. The Commission received 137 responses in total (94 to the public consultation and 43 to the targeted consultation). Third, the Commission considered the self-assessment provided by the ESRB<sup>4</sup> as well as the ESAs Joint Opinion on the review of the ESRB<sup>5</sup>. In addition, the Commission took into account other studies and reports on the matter presented by the IMF<sup>6</sup>. Finally, the study commissioned by the European Parliament (EP)<sup>7</sup> on the ESRB review and the EP's resolution with recommendations to the Commission on the ESFS review<sup>8</sup> (hereinafter the EP Resolution) and the preceding discussions were carefully considered. Drawing on input from these various external sources – hereafter referred to simply as “stakeholders” – the Commission has proceeded with the assessment required in the relevant legislation.

**The present Staff Working Document accompanies the report from the Commission to the European Parliament and the Council on the mission and organisation of the European Systemic Risk Board (ESRB). It covers the following aspects: the ESRB mandate, powers and tools; the structure and governance arrangements; the stakeholder management, accountability and communications; the cooperation and interaction between micro and macro-prudential policy; the issue of data access.**

## **2. MANDATE, POWERS & TOOLS**

### **2.1. Background**

#### **2.1.1. *The regulatory framework***

The mandate of the ESRB is defined in Article 3(1) of the ESRB Regulation, which states that “The ESRB shall be responsible for the macro-prudential oversight of the financial system within the Union in order to contribute to the prevention or mitigation of systemic risks to financial stability in the Union that arise from developments within the financial system and taking into account macroeconomic developments, so as to avoid periods of widespread financial distress. It shall contribute to the smooth functioning of the internal market and thereby ensure a sustainable contribution of the financial sector to economic growth”. This constitutes the ESRB's competencies (with implicit provisions also in Article 2, which includes the definitions).

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<sup>4</sup> ESRB, High-Level Group on the ESRB Review, Contribution to the Review of the ESRB, March 2013;

[http://www.esrb.europa.eu/pub/pdf/other/130708\\_highlevelgroupreport.pdf?e913faa529f509c934cd484435ad13a8](http://www.esrb.europa.eu/pub/pdf/other/130708_highlevelgroupreport.pdf?e913faa529f509c934cd484435ad13a8).

<sup>5</sup> ESAs Joint Opinion – review of the European Systemic Risk Board (ESRB, 17 December 2013, ESAs-2013-035;

[https://eiopa.europa.eu/fileadmin/tx\\_dam/files/publications/opinions/ESAs\\_opinion\\_on\\_the\\_ESRB\\_review.pdf](https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/opinions/ESAs_opinion_on_the_ESRB_review.pdf))

<sup>6</sup> European Union: Publication of Financial Sector Assessment Program Documentation—Technical Note on Macroprudential Oversight and the Role of the ESRB; IMF Country Report No. 13/70; March 2013

<sup>7</sup> European Parliament, Review of the New European System of Financial Supervision (ESFS) – Part 2: The Work of the European Systemic Risk Board (ESRB) (Authors: Samuel McPhilemy and John Roche (Oxford Analytica)), October 2013;

[http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507490/IPOL-ECON\\_ET\(2013\)507490\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507490/IPOL-ECON_ET(2013)507490_EN.pdf).

<sup>8</sup> European Parliament resolution of 11 March 2014 with recommendations to the Commission on the European System of Financial Supervision (ESFS) Review (2013/2166(INL));

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0202+0+DOC+XML+V0//EN&language=EN#top>.

Its powers and tools are listed in Article 3(2) of the ESRB Regulation, and further clarified in Articles 15-19 and the relevant recitals of the ESRB Regulation. The duties of the ESRB are:

- a) Determining and/or collecting and analysing all the relevant and necessary information, for the purposes of achieving the objectives described in paragraph 1;*
- b) Identifying and prioritising systemic risks;*
- c) Issuing warnings where such systemic risks are deemed to be significant and, where appropriate, making those warnings public;*
- d) Issuing recommendations for remedial action in response to the risks identified and, where appropriate, making those recommendations public*
- e) When the ESRB determines that an emergency situation may arise pursuant to Article 18 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 issuing a confidential warning addressed to the Council and providing the Council with an assessment of the situation, in order to enable the Council to assess the need to adopt a decision addressed to the ESAs determining the existence of an emergency situation;*
- f) Monitoring the follow-up to warnings and recommendations;*
- g) Cooperating closely with all the other parties to the ESFS; where appropriate, providing the ESAs with the information on systemic risks required for the performance of their tasks; and, in particular, in collaboration with the ESAs, developing a common set of quantitative and qualitative indicators (risk dashboard) to identify and measure systemic risk;*
- h) Participating, where appropriate, in the Joint Committee;*
- i) Coordinating its actions with those of international financial organisations, particularly the IMF and the FSB as well as the relevant bodies in third countries on matters related to macro-prudential oversight;*
- j) Carrying out other related tasks as specified in Union legislation.*
- k) In the framework of the public consultation, most respondents found the mandate appropriate, in the sense that it was sufficiently broad to cover most factors possibly creating systemic risk and that it allowed for sufficient freedom to further interpret the concept of systemic risk, which was a welcome flexibility. When comments were made, they were often referring to the substance of previous ESRB warnings or recommendation (critical or supportive), rather than on the mandate itself. A few respondents supported an explicit advisory role in the design of financial regulation given its impact on systemic risk.*

### **2.1.2. Warnings and Recommendations**

The ESRB can issue warnings and recommendations. According to Article 16(1) of the ESRB Regulation, "When significant risks to the achievement of the objective in Article 3(1) are identified, the ESRB shall provide warnings and, where appropriate, issue

recommendations for remedial action, including, where appropriate, for legislative initiatives."

So far, the ESRB has issued seven public recommendations<sup>9</sup> (and no public warnings):

- *Recommendation on lending in foreign currencies (OJ C 342, 22.11.2011, p. 1)*
- *Recommendation on the macro-prudential mandate of national authorities (OJ C 41, 14.2.2012, p. 2)*
- *Recommendation on US dollar funding (OJ C 72, 10.03.2012, p. 1)*
- *Recommendation on funding of credit institutions (OJ C 119, 25.4.2013, p. 1)*
- *Recommendation on money market funds (OJ C 146, 25.5.2013, p. 1)*
- *Recommendation on intermediate objectives and instruments of macro-prudential policy (OJ C 170, 15.6.2013, p. 1)*
- *Recommendation on guidance for setting countercyclical buffer rates (ESRB/2014/1; 30.06.2014).*

The difference between a warning and a recommendation is not explained by the ESRB Regulation<sup>10</sup>, although the distinction is important because the adoption procedure requires different majorities (simple majority for a warning, two-thirds majority for a recommendation). Originally, the warning had been seen by legislators as a first possible step, which would be followed by a recommendation only if necessary. The fact that the ESRB has issued solely recommendations, which is the most powerful tool, may be explained by the wish to immediately state the problem and the solution and by the stricter 'comply or explain' procedure foreseen for recommendation.

In addition to warnings and recommendations the ESRB relied also on 'soft powers', such as communication through letters and other channels with relevant interested parties.

### **2.1.3. Other analytical work**

In addition to issuing recommendations, the ESRB conducted research into and assessments of sources of systemic risk. These relate notably to the linkages and potential channels of contagion within the EU financial system; the shadow banking sector and securities financing transactions; the macro-prudential aspects of draft EU legislation, real estate, etc. That work has been carried out through the Advisory Technical Committee, and the Advisory Scientific Committee and the various sub-groups created under these two bodies<sup>11</sup>. The work on interconnectedness has been particularly praised by stakeholders. The ESRB – together with the ESAs – has been examining this issue in relation to two specific market segments, namely interbank interconnectedness and contagion in the credit default swap (CDS) market. Further work could provide more insights regarding systemic fragility and resilience.

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<sup>9</sup> The report will obviously not mention or discuss any confidential warning or recommendation, if any.

<sup>10</sup> At some point, the difference between a warning and a recommendation can be purely semantic. The sentence "you are driving too fast" is a warning, the sentence "slow down" is a recommendation, both clearly have the same meaning.

<sup>11</sup> For a detailed overview on the sub-structures, see the chart in Annex I to this Report.

In line with Article 3(2)(g) of the ESRB Regulation, the ESRB has also developed a Risk Dashboard, which was first published in September 2012. This dashboard is produced with the close involvement of the ECB and in cooperation with the three ESAs, and is one of the inputs considered by the General Board in its discussions on risks and vulnerabilities within the financial system.

## **2.2. Assessment**

### **2.2.1. *Focus***

The majority of stakeholders deemed the ESRB broad mandate as defined in the ESRB Regulation appropriate. Notwithstanding its cross-sectorial mandate, the ESRB has so far devoted most of its attention and activities to the banking sector. A number of stakeholders pointed to a certain banking bias in ESRB output.

However, a certain focus on banks is not surprising, considering that the ESRB was established in the middle of a crisis, in which mainly banks were involved, while the insurance sector experienced relatively few shocks. The banking bias could also derive from the ESRB governing bodies' composition, which relies mainly on central banks (see 3.2.3.).

### **2.2.2. *Binding or non-binding recommendations***

The ESRB may only issue warnings and recommendations which are non-binding but to which an 'act or explain mechanism' applies. The ESRB Regulation imposes that addressees “shall communicate to the ESRB and to the Council the actions undertaken in response to the recommendation and shall provide adequate justification for any inaction” (Article 17 of the ESRB Regulation). A few stakeholders have expressed some reservations vis-à-vis the “act or explain mechanism”. Such criticisms were already voiced during the drafting of the ESRB regulatory proposal. Some stakeholders regretted that recommendations were not followed more thoroughly by addressees. However, no stakeholders made concrete proposals to move beyond the current non-binding nature of the ESRB warnings and recommendations, given in particular the legal complexity that such a change would entail. Some respondents highlighted that improvement could be brought by increased transparency (i.e. systematically rendering public the warnings and recommendations), and by generally increasing the reputation of the ESRB and public awareness about its work.

The ESRB has itself highlighted the importance of monitoring compliance to its recommendations by publishing a handbook, which provides guidance on the steps that are to be followed in order to carry out an assessment of the implementation of ESRB recommendations. These steps include creating assessment teams; collecting information on addressee compliance; assessing addressee compliance; interacting with addressees; drafting the follow-up report for the General Board decision-making; and communicating the results of assessments.

### **2.2.3. *Timeliness***

The ESRB has been designed with the purpose of providing early warnings on possible future negative developments. It does so by analysing risks, as possible triggers of these negative developments. In that framework, timeliness of warnings and recommendations is essential. Being able to detect risks well in anticipation is a key feature of any efficient early warning system.



However, many stakeholders highlighted the fact that assessing the timeliness of the ESRB warnings and recommendations is made difficult given its inception in the middle of a crisis. The ESRB was established in a crisis period, when risks were crystallising and it would be speculation to determine whether the ESRB would have acted on time and would have been able to prevent the crisis from occurring. Similarly, for the cases where the ESRB has provided warnings and recommendations to avoid future negative developments, the effect of such warnings and recommendations may have been clouded by the environment of an existing crisis.

Some stakeholders noted that the ESRB could rely more on other instruments of influence, such as letters and reports. These would not include the legalistic language and constraints of an official recommendation or warning, they can be adopted earlier in the process and provide more flexibility as regards the message. Despite their lack of formality, these instruments carry a significant weight, as they are fed into discussion at other policy levels. They could be a way to reinforce the early warning function.

#### **2.2.4. Addressees**

Article 16(2) of the ESRB Regulation states that “Recommendations may also be addressed to the Commission in respect of the relevant Union legislation.”. This provision has been questioned by a few stakeholders who pointed that this could be interpreted as impinging on the exclusive competence of the Commission to propose legislation. However recommendations are non-binding and the Commission keeps its full autonomy to table a proposal or not. The Commission continuously receives input from various stakeholders, and organises consultations itself to collect the views of these stakeholders. Yet many stakeholders expressed a preference to advance the involvement of the ESRB to the earliest stages of the process. Late interventions, as have taken place in the CRD IV/CRR negotiations whereas the regulatory proposals were already discussed by the co-legislators can affect the serenity of the legislative debate. Such late intervention could be avoided by foreseeing an early input of the ESRB<sup>12</sup>.

#### **2.2.5. Transparency**

The ESRB has been designed with the desire to preserve some confidentiality of its warnings and recommendations. The confidentiality principle has been embedded in the ESRB process given the concern that a warning or recommendation could create adverse market reactions and become self-fulfilling following its publication. The procedure to make a warning or recommendation public is relatively strict. Article 18(1) of the ESRB Regulation states that "The General Board shall decide on a case-by-case basis, after having informed the Council sufficiently in advance so that it is able to react, whether a warning or a recommendation should be made public. Notwithstanding Article 10(3), a quorum of two thirds shall always apply to decisions taken by the General Board under this paragraph". The difficulty arises from the two-thirds majority and the need to inform the Council, the latter obligation causing sometimes delays. The procedure foreseen to make warnings and recommendation public was mentioned by some stakeholders as potentially excessive.

Furthermore, an inconsistency may be observed in the ESRB Regulation which provides in Article 16(4) that "In order to enhance the awareness of risks in the economy of the Union and to prioritise such risks, the ESRB, in close cooperation with the other parties

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<sup>12</sup> In the case of the CRD IV/CRR process, early consultation was impossible as the ESRB did not exist prior to 2011.

to the ESFS, shall elaborate a colour-coded system corresponding to situations of different risk levels.". The inconsistency is that such colour-coded announcement of the risk level is incompatible with the possibility of issuing confidential warnings and recommendations. If such confidential warnings highlighting an increase of risk had to be issued, either the colour would have to be adapted to reflect this, and the confidentiality would be lost, or the colour would be kept unchanged, and the colour-coded system would lose its purpose, plus be exposed to the accusation of having misled the public if the warning materialises.

### **3. STRUCTURE & GOVERNANCE**

#### **3.1. Background**

The review of the ESRB by the European Parliament and the Council shall comprise the ESRB's organisation and shall in particular include the modalities for the designation or the election of the Chair<sup>13</sup>. Moreover, the conferral of specific tasks concerning the functioning of the ESRB on the ECB (i.e. provision of analytical, statistical, administrative and logistical support) is subject to review<sup>14</sup>. The framework for the ESRB's structure and governance is laid down in the ESRB Regulation, the ECB Regulation, the Rules of Procedure of the ESRB<sup>15</sup>, the Code of Conduct of the ESRB<sup>16</sup> and the ESRB Decision on the Advisory Scientific Committee<sup>17</sup>.

##### *3.1.1. Structure*

Though established as an "independent body", unlike the ESAs, the ESRB has neither legal personality nor its own budget<sup>18</sup>. It has its seat in Frankfurt am Main<sup>19</sup>. The ESRB receives analytical, logistical, statistical and administrative support from the ECB, which bears the respective budgetary cost. The ECB provides the support notably by ensuring the human and financial resources for the fulfilment of the ESRB Secretariat's tasks<sup>20</sup>.

ESRB members shall perform their duties impartially and solely in the interest of the Union as a whole when participating in the activities of the General Board and of the Steering Committee or when conducting other activities relating to the ESRB. They are not permitted to ask for, or take instructions from Members States, the Union institutions

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<sup>13</sup> Cf. Article 20 read in conjunction with Article 5(1) of the ESRB Regulation.

<sup>14</sup> Cf. Article 8 of the ECB Regulation.

<sup>15</sup> Decision of the European Systemic Risk Board of 20 January 2011 adopting the Rules of Procedure of the European Systemic Risk Board (ESRB/2011/1) (OJ C 58, 24.2.2011, p. 4).

<sup>16</sup> Decision of the European Systemic Risk Board of 25 March 2011 adopting the Code of Conduct of the European Systemic Risk Board (ESRB/2011/) (OJ C 140, 11.05.2011, p.18).

<sup>17</sup> Decision of the European Systemic Risk Board of 20 January 2011 on the procedures and requirements for the selection, appointment and replacement of the members of the Advisory Scientific Committee of the European Systemic Risk Board (ESRB/2011/2) (OJ 39, 8.2.2011, p. 10).

<sup>18</sup> Cf. Recital 15 of the ESRB Regulation.

<sup>19</sup> Article 1(1) of the ESRB Regulation.

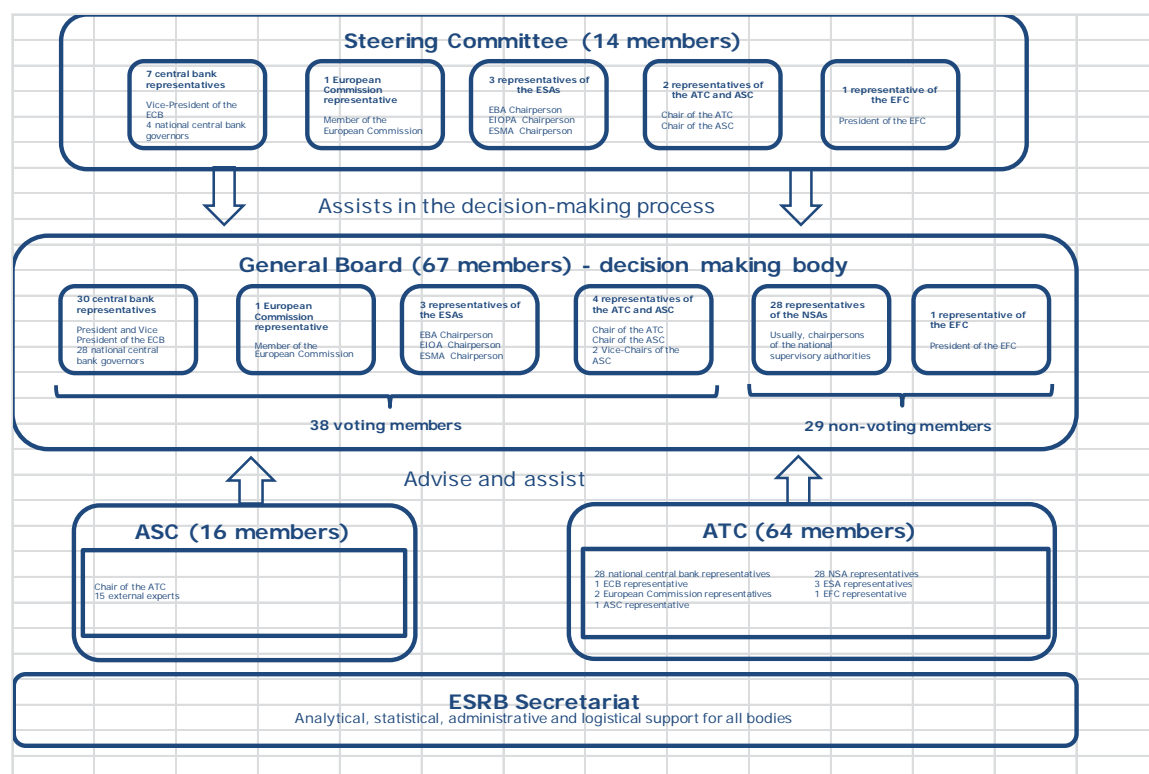
<sup>20</sup> See Article 3 (1) of the ECB-Regulation. In 2012, the ECB provided the ESRB with 56.5 full-time equivalent staff (of which 22 were deployed in the Secretariat and the remaining 34.5 to other forms of support) in 2012. The direct cost incurred by the ECB amounted to €7.3 million (not including additional cost relating to other support services shared with the ECB such as human resources, IT and general administration). See ESRB Annual Report for 2012  
<http://www.esrb.europa.eu/pub/pdf/ar/2012/esrbar2012en.pdf?7d146a5043df3f279aeb60f85f4427b2>.

or other public or private bodies and these bodies must not seek to influence ESRB members on the performance of their tasks<sup>21</sup>.

### 3.1.2. Governance

The ESRB is composed of a Chair, a General Board, a Steering Committee, a Secretariat, an Advisory Technical Committee (ATC) and an Advisory Scientific Committee (ASC).

Chart: ESRB Governance<sup>22</sup>



### Chair and Vice-Chairs

The ESRB is represented externally by the Chair<sup>23</sup> who also presides at the meetings of the General Board and the Steering Committee. Since its establishment, the ESRB has been chaired by the President of the ECB. The ECB President's term will end five years after the entry into force of the ESRB Regulation, i.e. on 16 December 2015. Pursuant to the ESRB Regulation, the modalities for the designation or election of the Chair for the subsequent terms shall be determined on the basis of the review.

The ESRB has a first and a second Vice Chair<sup>24</sup>, who preside at the General Board and/or the Steering Committee when the Chair is unable to participate in a meeting. The first Vice-Chair is elected by and from the ECB General Council for a term of five years and

<sup>21</sup> Article 7 of the ESRB Regulation.

<sup>22</sup> Chart: Deutsche Bundesbank, The European Systemic Risk Board: from institutional foundation to credible macroprudential oversight, in: Monthly Report, April 2012, pp. 29-39 (updated with a view to the accession of Croatia).

<sup>23</sup> For the Chair, see Article 5 of the ESRB Regulation.

<sup>24</sup> See Article 5 of the ESRB Regulation. Currently, the first and the second Vice-Chairs are Governor of the Bank of England Mark Carney and Chairman of EIOPA Gabriel Bernadino.

may be re-elected once<sup>25</sup>. The second Vice-Chair is the Chair of the Joint Committee of the ESAs and consequently one of the Chairpersons of the ESAs.

### *The General Board*

The General Board<sup>26</sup> is the main decision-making body of the ESRB. It is composed of members with and without voting rights. Members with voting rights are the President and the Vice-President of the ECB, the Governors of the national central banks, a member of the European Commission, the Chairpersons of each of the ESAs, the Chair and the two Vice-Chairs of the Advisory Scientific Committee and the Chair of the Advisory Technical Committee. Members without voting rights comprise one representative per Member State of the national supervisory authorities (on a rotating basis depending on the item discussed, unless a common representative has been agreed on) and the President of the Economic and Financial Committee (EFC).

Following the accession of Croatia to the European Union, the General Board has in total 67 members, 38 of whom have voting rights.

Representatives of national supervisory authorities shall attend as observers, where they have not been designated as the national representative for an agenda item<sup>27</sup>. Moreover, high-level representatives from international financial organisations whose activities are directly related to the ESRB may be invited to attend the General Board's meetings where appropriate<sup>28</sup>.

In general, decisions of the General Board are taken by a simple majority of members with voting rights present at a meeting. However, the General Board requires a quorum of two-thirds of the members with voting rights. Each member with a voting right has one vote. In case of a tie, the Chair has the casting vote. If the quorum is not met, the Chair may convene an extraordinary meeting at which decisions may be taken with a quorum of one-third. A majority of two-thirds of the votes cast is required to adopt a recommendation or to make a warning or recommendation public. Decisions may be taken by written procedure, unless at least five members of the General Board with voting rights object<sup>29</sup>.

Ordinary meetings of the General Board take place at least four times a year. Extraordinary meetings may be convened at the initiative of the Chair or at the request of at least one third of the members of the General Board with voting rights.

### *The Steering Committee*

The role of the Steering Committee<sup>30</sup> is to assist the decision-making process by preparing General Board meetings, reviewing the documents to be discussed and monitoring work progress. The agenda for meetings of the Steering Committee is drafted and sent to members for comments by the ESRB Chair.

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<sup>25</sup> See Article 5(2) of the ESRB Regulation. For the election see Article 7 of the ESRB Rules of Procedure.

<sup>26</sup> For the General Board, see in particular Articles 4(2) and Articles 6 et seq. of the ESRB Regulation.

<sup>27</sup> See Article 4(2) of the ESRB Rules of Procedure.

<sup>28</sup> See Article 9(4) of the ESRB Rules of Procedure.

<sup>29</sup> See Article 6(4) of the ESRB Rules of Procedure.

<sup>30</sup> For the Steering Committee, see Article 4(3) and Article 11 of the ESRB Regulation and Article 8 et seq. of the ESRB Rules of Procedure.

The Steering Committee has 14 members. It is composed of the ESRB Chair and Vice Chair, the ECB Vice-President, four other members of the General Board who are also members of the General Council of the ECB<sup>31</sup>, a member of the Commission, the Chairpersons of each of the ESAs, the EFC-President and the Chairs of the Advisory Scientific Committee and of the Advisory Technical Committee (in total 14 members).

Ordinary meetings of the Steering Committee shall be convened at least quarterly before each meeting of the General Board<sup>32</sup>.

### *The Secretariat*

The Secretariat<sup>33</sup> is responsible for the day-to-day business of the ESRB. This includes in particular the preparation of ESRB meetings, the collection and processing of information, the preparation of analyses, support to the ESRB in international cooperation on macro-prudential issues and the support to the work of the other ESRB bodies<sup>34</sup>.

The tasks of the Secretariat include<sup>35</sup>:

- acting as the interface and facilitate cooperation within the ESRB and between the ESRB, the European System of Central Banks, the other parties to the ESFS, and other relevant institutions at national, European and international level and ensuring efficient communication flows;
- contributing to defining and reviewing the overall macro- prudential framework of the ESRB;
- performing analysis and synthesis, preparing notes for discussion by the ESRB, supporting the Steering Committee, taking into account ESRB members' contributions and identify issues for consideration;
- building-up expertise, in cooperation with the ESRB members, on macro-supervisory instruments and evaluating macro- prudential instruments as a basis for possible ESRB policy recommendations;
- contributing to the preparation and monitoring of the follow- up of warnings and recommendations;
- keeping the records and documents of the ESRB, administer the ESRB's website and deal with the ESRB's correspondence; and
- managing the financial, material and human resources allocated by the ECB to the ESRB.

The Secretariat is managed by a Head<sup>36</sup> who receives directions from the Chair and the Steering Committee<sup>37</sup>. The Head is appointed by the ECB in consultation with the General Board<sup>38</sup>. Currently, the ESRB Secretariat has 23 staff<sup>39</sup>.

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<sup>31</sup> For the election of the four members see Article 8 of the ESRB Rules of Procedure.

<sup>32</sup> Article 11(2) of the ESRB Regulation.

<sup>33</sup> For the Secretariat, see Article 4(4) of the ESRB Regulation, Article 2 et seq. of the ECB Regulation and Article 14 et seq. of the ESRB Rules of Procedure.

<sup>34</sup> See Article 2 et seq. of the ECB Regulation.

<sup>35</sup> Article 15 of the ESRB Rules of Procedure.

<sup>36</sup> For the tasks of the Head see Article 15(1) & (2) of the ESRB Rules of Procedure.

<sup>37</sup> Article 4(1) of the ESRB Regulation.

<sup>38</sup> Article 3(2) of the ESRB Regulation; see also Article 14(1) of the ESRB Rules of Procedure.

## *The Advisory Technical Committee and the Advisory Scientific Committee*

The Advisory Technical Committee and the Advisory Scientific Committee provide advice and assistance on issues relevant to the work of the ESRB at the request of the ESRB Chair. They are supported by the ESRB Secretariat, whose Head participates in their meetings.

### (a) The Advisory Technical Committee

The mandate of the Advisory Technical Committee (ATC)<sup>40</sup> is to contribute in the following areas<sup>41</sup>:

- Regular reviews of financial stability conditions in the EU, including the detection of systemic risks (such as advice on the draft regular reports produced by the ECB);
- Analytical and policy preparations for discussions in the Steering Committee and the General Board on warnings and recommendations;
- Review and possible development of macro-prudential policy instruments available to the competent authorities of the Member States (regulatory mapping and conduction of studies in this field);
- Monitor macro-prudential policy decisions taken on national level and in third countries;
- Other tasks assigned to the ESRB by Union legislation (in particular preparation of opinions on EU legislation where the legislation expressly requests the ESRB to give recommendations).

The ATC mirrors the General Board and is mostly composed of national central banks' and national supervisory authorities' representatives. It has 64 members<sup>42</sup>. The ATC shall at least meet four times a year<sup>43</sup>. It has sub-structures to provide specific technical support to its work<sup>44</sup>. Sub-structures comprise the ATC Analysis Group (AWG) with four sub-groups<sup>45</sup>, the ATC Instruments Working Group (IWG) with five sub-groups<sup>46</sup>, the ATC Task Force on Stress Testing, the ATC Assessment Team of the Macro-

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<sup>39</sup> Cf. Annual Report 2012 of the ECB; <http://www.ecb.europa.eu/pub/pdf/annrep/ar2012en.pdf>.

<sup>40</sup> For the Advisory Technical Committee, see Article 4(5) and Article 13 of the ESRB Regulation and Article 13 of the ESRB Rules of Procedure.

<sup>41</sup> See Mandate of the Advisory Technical Committee of the European Systemic Risk Board of 20 January 2011; <http://www.esrb.europa.eu/pub/pdf/ATC-mandate.pdf?6b168b254570c3495fcd360f1e603830>.

<sup>42</sup> One representative of each national central bank of the Member States and one representative of the ECB, one representative per Member State of the competent national supervisory authorities (the respective representatives rotate depending on the item discussed, unless the national supervisory authorities of a particular Member State have agreed on a common representative), one representative of each of the ESAs, two representatives of the European Commission, one representative of the EFC and one representative of the Advisory Scientific Committee.

<sup>43</sup> Article 13(1) sentence 1 of the ESRB Rules of Procedure.

<sup>44</sup> See Mandate of the ATC and chart attached as Annex I to this Report.

<sup>45</sup> Sub-groups (as at 12 December 2013): AWG Working Group on Systemic Risk Identification and Categorization; AWG Analysis of National Banking System Thematic Section Team; AWG Risk Dashboard Development Team and AWG Insurance Team.

<sup>46</sup> Sub-groups (as at 12 December 2013): IWG Countercyclical Capital Buffers Expert Group; IWG Workstream 1 on Liquidity; IWG Workstream 2 on Real Estate; IWG Workstream 3 on Systemic Buffers and IWG Workstream 4 on Stricter National Measures.

prudential Mandate Recommendation and the ATC Task Force on Central Counterparties. Moreover, the ATC has joint sub-structures with the ASC (see below).

#### (b) Advisory Scientific Committee

The Advisory Scientific Committee (ASC)<sup>47</sup> contributes to the work of the ESRB through analytical and consultative tasks. Analytical tasks include contributing on potential improvements of analytical risk detecting methodologies to and assessing potential impacts of risk materialisation and on designing and calibrating effective macro-prudential policy tools. Consultative tasks include reviewing macro-prudential strategies and operational frameworks. At the request of the Chair, the ASC can suggest and contribute to special analytical studies.

The ASC has 16 members (one Chair and 15 experts)<sup>48</sup> and meets at least twice per year. Members are chosen on the basis of their general competence and their diverse experience in particular in academic fields or other sectors<sup>49</sup>. As at December 2013, the ASC has issued four reports since its inception<sup>50</sup>.

The ASC had one working group (ASC Group on Overbanking) and three Joint Expert Groups together with the ATC<sup>51</sup>.

### 3.2. Assessment

#### 3.2.1. Organisational identity

As suggested by the High-Level Group of Financial Supervision in the EU in February 2009, the ESRB has been set up under the auspices and with the logistical support of the ECB<sup>52</sup>. As set out above, ties with the ECB go beyond the external organisation and are also enshrined in the ESRB's governance. This becomes most tangible in the dual role of the ECB President as Chair of the ESRB and in the staffing of the ESRB Secretariat by the ECB.

According to some stakeholders, the close link with the ECB may present some drawbacks. The ESRB has not yet developed the full identity of an autonomous body. The dual role of the ECB President, being at the same time the ESRB Chair, may not have always facilitated the visible distinction between the ESRB and the ECB. Thus, many stakeholders insisted on the need to enhance the ESRB's autonomy, while allowing it to continue to rely on ECB reputation and expertise.

Another issue, which was often raised in the context of whether the ESRB's current set-up allows it to fulfil its mandate in a sufficiently autonomous manner, are the resources

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<sup>47</sup> For the Advisory Scientific Committee, see Article 4(5) and Article 12 of the ESRB Regulation, the ESRB Decision on the ASC (ESRB/2011/2) and Articles 11 and 12 of the ESRB Rules of Procedure.

<sup>48</sup> See list of members attached as Annex II attached to this Report.

<sup>49</sup> Article 12 of the ESRB Regulation.

<sup>50</sup> "Forbearance, resolution and deposit insurance" (July 2012); "A contribution from the Chair and Vice-Chairs of the Advisory Scientific Committee to the discussion on the European Commission's banking union proposals" (October 2012) "The consequences of the Single Supervisory Mechanism for Europe's Macro-Prudential Policy Framework" (September 2013); "Is Europe Overbanked?" (June 2014).

<sup>51</sup> Joint Expert Groups (as at 12 December 2013): ATC-ASC Joint Expert Groups: ATC-ASC Expert Group on Interconnectedness; ATC-ASC Expert Group on Shadow Banking and ATC-ASC Expert Group on Sovereign Exposures.

<sup>52</sup> For the background see also Recitals 4 to 6 of the ESRB Regulation.

allocated to the ESRB, including in particular the staffing of its Secretariat which was considered as under-resourced by a number of respondents (also with a view to the ESRB's role in the context of CRD IV/CRR).

On the other hand, the close ties with the ECB have been considered by stakeholders as entailing a number of advantages, which have contributed to the success of the ESRB's work so far. The current structure allows the ESRB direct access to the ECB's monetary and macro-prudential expertise. Moreover, as a newly created body, the ESRB is deemed to have gained credibility from the ECB's reputation and the latter's central role in the EU monetary system. Some stakeholders considered that the potential for synergies between the ECB and the ESRB has not yet been fully exploited.

Against this background, many stakeholders saw a case for enhancing the ESRB's autonomy (e.g. at the staff level and budget) while at the same time preserving strong ties with national central banks and the ECB, in particular with a view to accessing analytical information.

With regard to the designation or election of the Chair, there is an explicit mandate for review in the ESRB Regulation, in particular having in mind that the current mandate of the ECB President as Chair of the ESRB will expire on 16 December 2015. In view of enhancing the ESRB visibility while preserving strong links with the ECB, the possibility of a two-tier managerial structure has been suggested. The ESRB would continue to be chaired by the ECB President, but a new function of a full-time Managing Director would be created. While the ECB President would continue to chair the ESRB General Board, the highest decision-making body of the ESRB, the Managing Director would be in charge of the day-to-day activity of the ESRB and could also represent the ESRB in certain key fora, e.g. in the Economic and Financial Committee (EFC) and/or the Financial Services Committee (FSC) and on the wider international level (such as with an observer status in the Financial Stability Board (FSB)). Appointing an "executive Chairperson" has also been recommended in the EP Resolution.

### *3.2.2. Decision-making process*

While there was overall agreement that the General Board has generally functioned well as a forum for discussion, most respondents to the consultation acknowledged a need for streamlining the decision-making process. This could be achieved, for example, by reducing the size of the General Board or by delegation/transfer of certain tasks, be it to a new or an existing ESRB body (e.g. the ATC, the Steering Committee and/or the Secretariat). Another significant parameter to be taken into account would be how the ECB will organize itself for macro-prudential policies.

### *3.2.3. Perspective of the ESRB*

Another issue which was addressed by a number of stakeholders was whether the ESRB has a sufficiently broad perspective. Notably, most central banks participating in the consultation had a positive view on the composition of the General Board and the strong role of central banks, which was considered as beneficial for the credibility of the measures taken. However, a number of stakeholders pointed to a certain banking bias in ESRB discussions and measures<sup>53</sup>, stemming inter alia from the relative over-representation of central banks and asked for a more diverse perspective (including the point of view of e.g. national macro prudential authorities and ministries of finance). This

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<sup>53</sup> See also section 2.2.1.



was also raised with respect to the Secretariat. While it is true that the ESRB is supposed to cover the entire spectrum of financial activities, any measures taken with a view to broadening the perspective of the ESRB should respect the objective of streamlining the decision-making process (see section 3.2.2.). An option which could be explored in this respect could be members of the decision-making body representing several authorities or Member States. Such an approach could also help overcoming situations where the ESRB members are too focused on the national dimension of financial stability. Such ‘national bias’ in the decision-making has been criticised by many stakeholders.

#### *3.2.4. Advisory Committees*

On the ATC, the overall feedback given in the consultation was positive although its large size was criticised. Regarding the ASC, comments were more contrasted with some contributions calling for more visible work and a closer link to the general ESRB agenda.

### **4. STAKEHOLDER MANAGEMENT, ACCOUNTABILITY & COMMUNICATIONS**

#### **4.1. Background**

The ESRB's role, to prevent or mitigate systemic risks to EU financial stability through the macro-prudential oversight of the financial system, necessarily involves a complex and interconnected stakeholders landscape. Its position within the ESFS and its powers, which include issuing warnings and recommendations to various addressees, means that its communications strategy and delivery are critical to the successful achievement of its objectives. There are also accountability and reporting requirements set out in the Regulation to increase transparency to the Parliament, Council (EFC), and the public.

The ESRB Regulation<sup>54</sup> sets out a number of responsibilities and tasks for the ESRB with regard to communications and stakeholder relations. The ESRB should, inter alia:

- In the preparation and communication of warnings and recommendations, provide the EFC with timely policy advice and send the texts of any warnings and recommendations as soon as they have been adopted<sup>55</sup>;
- Issue, privately or publicly, warnings of systemic risk and recommendations for remedial action to Member States and / or the European Supervisory Authorities;
- Coordinate action with other bodies such as the IMF and FSB.

The Regulation<sup>56</sup> also outlines the obligations of the ESRB with regard to accountability and reporting:

- At least annually, and more frequently in crises, the ESRB Chair appears before a hearing of the European Parliament and Council to publish the ESRB annual report;
- The Parliament, Commission and Council may also request that certain specific issues be examined by the ESRB;

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<sup>54</sup> Articles 16 & 18 of the ESRB Regulation.

<sup>55</sup> Recital 19 of the ESRB Regulation.

<sup>56</sup> Article 19 of the ESRB Regulation.

- The Chair of the ESRB holds confidential oral discussions at least twice a year and more often if deemed appropriate, with the Chair and Vice-Chairs of the Economic and Monetary Affairs Committee of the European Parliament on the on-going activity of the ESRB;
- The European Parliament may request that the Chair of the ESRB attends a hearing of the competent Committees of the European Parliament.

## **4.2. Assessment**

### *Accountability*

The Parliament and Council have specific roles and procedures with regard to ESRB accountability. Stakeholders generally consider the ESRB to have fulfilled its obligations to report to the Parliament in a satisfactory manner. According to some stakeholders, the creation of a new function of a permanent Managing Director of the ESRB would be easier to hold to account for the output and progress of the ESRB as distinct from the ECB.

### *Stakeholder Management*

Stakeholders have voiced concerns about the interaction between the ESRB and the EFC notably in respect of the timeliness of transmission of documents, including input to the EFC-FST. There are also issues with the lack of time given to EFC to form a proper policy response; and the flows of information between the ESRB and EFC. While many of the procedural problems have been addressed, there remains a fundamental issue with the high level representation of the ESRB on the EFC. The absence of such representation reduces the effectiveness of the ESRB's communication and advocacy and therefore diminishes the body's influence on discussions of systemic risk at EFC meetings. The appointment of a Managing Director of the ESRB who would represent the ESRB in the EFC could help mitigate these problems.

The ESRB's relations with the Commission have also been mentioned. The interaction with the Commission on regulatory issues has, in particular, been identified as an area for improvement. The ESRB is independent of the Commission and is therefore free to comment on any matter and undertake analysis leading to regulatory recommendations for the Commission to review. The timing is critical, however, and intervention once legislative proposals are already under discussion should always be very carefully considered (see section 2.2.4.).

The ESRB should also seek to work more closely with international fora such as the FSB and the Basel Committee of Banking Supervisors (BCBS), while avoiding the potential for duplication of work.

### *Communications*

Many stakeholders have highlighted that the ESRB external communication could be enhanced. There have been efforts to publicise more of the output of the ESRB, for example, the publication of reports from the ASC, but more could be done to raise the public profile and market impact of ESRB work. Here again the appointment of a full-time Managing Director of the ESRB could play a role in enhancing the public profile of the authority, as distinct from the ECB.

## 5. COOPERATION AND INTERACTION BETWEEN THE ESRB (MACRO LEVEL) AND THE ESAs (MICRO LEVEL)

### 5.1. Background

A smooth and effective cooperation between the micro and macro pillars of the ESFS is critical for financial stability and is essential to the good functioning of financial supervision. When the ESFS was established, particular attention was paid to the articulation and relationship between the ESAs and the ESRB. The ESRB is required 'to cooperate closely with all the other parties to the ESFS'<sup>57</sup>. Reciprocally, each ESA is required to 'cooperate regularly and closely with the ESRB' as well as with the other ESAs<sup>58</sup>.

Cross-membership was conceived as one of the ways to ensure a smooth cooperation between the two pillars of the system. The Chairs of the ESAs are voting members of the ESRB General Board<sup>59</sup> and participate in its Steering Committee<sup>60</sup>. The Chair of the Joint Committee who is also the Chair of one of the ESAs serves as the second vice Chair of the ESRB<sup>61</sup>. A representative of the ESRB participates as a non-voting member in the Board of Supervisors of the ESAs<sup>62</sup>. An ESRB representative also participates as an observer in the Joint Committee of the ESAs and in the sub-committees established by the Joint Committee (e.g. Sub-Committee on Financial conglomerates)<sup>63</sup>. Cross-membership is also ensured at technical level.

Beyond cross-membership, a number of articles in the ESA and ESRB regulations relate to the proper interaction and good cooperation between ESAs and ESRB. Good cooperation between the micro and macro levels of the system is particularly important in the following areas:

- Sharing of information and access to data (See dedicated chapter below);
- Analytical work and contribution to the assessment of systemic risk<sup>64</sup>; The ESRB and the ESAs are required to exchange information on systemic risks, and market developments, as necessary for the fulfilment of their tasks;

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<sup>57</sup> Article 3(2g) of the ESRB Regulation.

<sup>58</sup> See Article 2(3) and 8(1d) of the founding regulation of each ESA (Regulation (EU) 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12); Regulation (EU) 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48) and Regulation (EU) 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84) (together "the ESAs Regulations").

<sup>59</sup> Article 6(1) of the ESRB Regulation.

<sup>60</sup> Article 11(1) of the ESRB Regulation.

<sup>61</sup> Article 5(3) of the ESRB Regulation; Article 55(3) of the ESAs Regulations.

<sup>62</sup> Article 40(1) of the ESAs Regulations.

<sup>63</sup> Article 55(2) of the ESAs Regulations.

<sup>64</sup> Articles 8(1d), 32 & 36 of the ESAs Regulations; Article 3(2g) of the ESRB Regulations.

- Stress tests<sup>65</sup>. The ESAs must consult the ESRB in developing criteria for identifying and measuring systemic risk and in developing an adequate stress testing regime; and
- Implementation and effectiveness of ESRB warnings and recommendations<sup>66</sup>. The ESAs are required to ensure a proper follow-up to ESRB warnings and recommendations. When ESRB warnings and recommendations are addressed to competent national authorities, the ESAs are required to use their powers to ensure a timely follow-up.

Finally, the ESRB has been given the task to determine that ‘an emergency situation may arise’<sup>67</sup>. Upon detecting the existence of such a situation, the ESRB is required to issue a confidential warning to the Council and to provide the Council with an assessment of the situation. The Council, in consultation with the ESRB and the Commission, and where appropriate, the ESAs, may adopt a decision addressed to the ESAs, enabling the latter to use ‘emergency powers’ requiring competent authorities to take the necessary action<sup>68</sup>.

## 5.2. Assessment

The cooperation between ESAs and ESRB seems to have functioned well. The feedback received from respondents was overall positive. Cross-membership proved useful and cooperation at staff level was broadly fruitful. Beyond the provision of statistical information and regular analyses of risks and vulnerabilities in their respective sectors, the ESAs’ staff has played an active role in contributing to the work of the ESRB ATC and its sub-committees, for example to important work streams on shadow banking and interconnectedness (interbank and CDS). The cooperation with EBA on banking issues was deemed particularly successful by many respondents. Reciprocally, the ESRB staff has contributed to a number of ESAs working groups (e.g. the EBA Stress Test Task force).

- *Access to data* (see dedicated Chapter 6)
- *Analytical work*: A few respondents raised concerns on the risk of overlaps between ESRB and ESAs work, in particular as regards risk-identification carried out by the ESRB and work taking place under the auspices of the risk-subcommittee of the Joint Committee. The risk-subcommittee produces a bi-annual cross sectoral risk assessment report, which contributes to the ESRB risk identification process. Two such assessments have been produced<sup>69</sup>. However the majority of stakeholders were broadly satisfied with the current situation. The risk of potential overlaps should not necessarily be considered an issue, the objective being rather to avoid ‘blind spots’ in order to protect financial stability. More common output could be developed. The establishment of a common risk dashboard would, in particular, be a welcome step forward in that respect.
- *Stress Tests*: Until recently the ESRB has played only a limited role in this area. ESMA has not yet established its stress test framework. Hence there has been little

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<sup>65</sup> Article 23(1) & 32(2) of the ESAs Regulations.

<sup>66</sup> Articles 8(1d) & 36 of the ESAs Regulations.

<sup>67</sup> Article 3(2e) of the ESRB Regulation.

<sup>68</sup> Article 18 of the ESAs Regulations.

<sup>69</sup> Joint Committee Report on Risks and Vulnerabilities in the EU Financial System, March 2013 and August 2013.

cooperation between ESMA and ESRB in this area. EIOPA stress tests are coordinated by the EIOPA Financial Stability Committee which has worked closely with the ESRB. As regards banks stress testing, currently the ESRB plays a more active role in the EBA EU-wide stress test and cooperates with the ECB to provide the macroeconomic adverse scenario. It has established its own Stress Test task force to this effect, involving the EBA. Such development should be welcome.

- *Follow-up of ESRB warnings and recommendations*: It is too early to assess the role of the ESAs in the follow-up of ESRB recommendations. To date, the ESRB has issued three recommendations, which involve EBA in the follow-up, including the recommendation on lending in foreign currencies.

## **6. DATA ACCESS**

### **6.1. Background**

The protocol for the accessing and sharing of data between the ESRB, ECB, the European System of Central Banks (ESCB) and ESAs is set out in Article 15 of the ESRB Regulation and Article 5 of the ECB Regulation. Details outlining the procedures for the collection and provision of this data, both for the regular dissemination of aggregated information and for ad hoc requests, are set out in the ESRB Decision of 21 September 2011 (ESRB/2011/6). This decision sets out the datasets that the ESAs transmit to the ESRB on a quarterly basis and the processes by which any ad hoc requests can be made and fulfilled. These regular datasets are in aggregate form and are serviced from the ESAs and to the ESRB via the ECB Directorate General for Statistics.

Evidence suggests that processes for the collection and provision of data, necessary for the ESRB to discharge its functions under Article 3 of the ESRB Regulation, may not be fit for purpose and could be made more efficient and effective. This is supported by feedback from the public consultation, the ESRB's own review<sup>70</sup>, and the Commission's analysis.

### **6.2. Assessment**

The ESRB, in order to achieve its objectives, is empowered to determine, collect and analyse all relevant and necessary information. The ESRB Regulation requires the close cooperation between the ESAs, the ESCB, the Commission, national supervisory authorities, national statistical authorities, and the ESRB.

It was envisaged that the majority of information requested for the ESRB to be able to discharge its functions, would be in summary or aggregate form via the regular transmission of permanent datasets from the ESAs, such that individual financial institutions cannot be identified. This assumption has proved broadly correct. Where summary or aggregate information is not available or available quickly enough, the ESRB Regulation enables the ESRB to direct a request to the ESAs, ESCB, national supervisory authorities or national statistical authorities.

As regards the process for ad hoc requests, it is subject to a detailed procedure set out in the ESRB decision of September 2011, which includes guidance on the rationale for requests, approval, procedure (investigation and data collection). First, the 'investigation

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<sup>70</sup> See fn. 4.

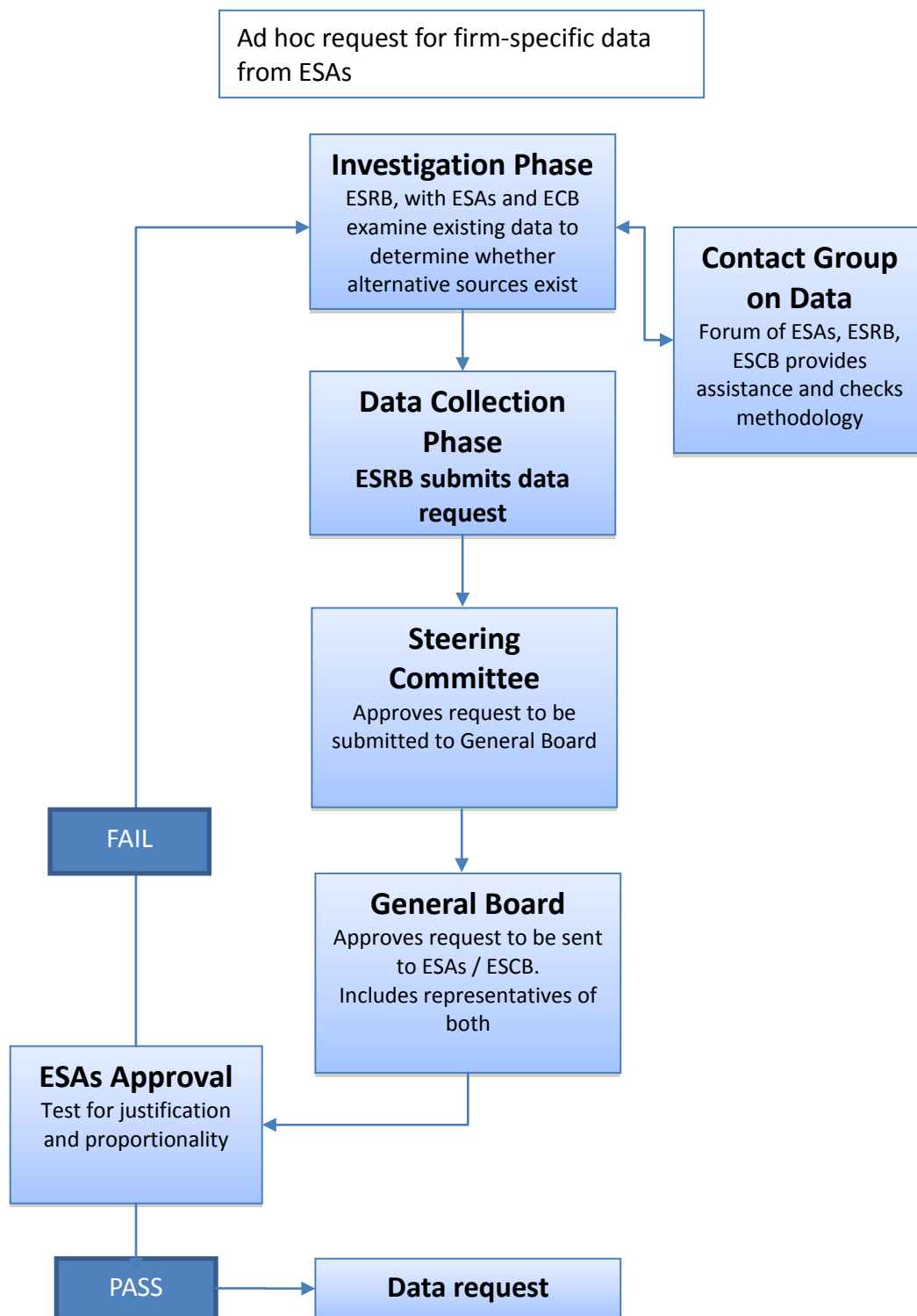
phase' involves ESRB, ECB and ESAs examining the ad hoc request to determine the availability of pre-existing data that could address the information requirements. Second, the 'data collection phase'. The ESRB Secretariat submits a proposal for following up the results of the investigation phase, via the ESRB Steering Committee, to the General Board for approval. Upon approval, the request is made to the relevant body, be it ESA, ESCB, international organisation etc.

In circumstances where the ESRB feels that more granular data is required, a separate approval process exists for disaggregated ad hoc requests, which includes a further requirement for approval from the appropriate ESA, and a test for justification and proportionality<sup>71</sup>, in addition to the engagement with the ESA during the identification phase.

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<sup>71</sup> Article 15(7) of the ESRB Regulation.

Chart: Approval processes for ad hoc data requests



In general, the ESRB Regulation does allow the ESRB access to the appropriate data i.e. that the ESRB's mandate and role means that systemic risks identification and mitigation are its priority and that therefore aggregate data is most important. It is also right that the ESRB should continue to have access to firm specific data, on an ad hoc basis, where necessary.

However, the processes for accessing ad hoc aggregate and firm-specific requests are considered as inefficient, the approval process overly burdensome. There is significant scope for streamlining.

Two main problems with the processes for accessing information have been identified:

- i. The process for the submission and approval of *ad hoc* requests data is overly burdensome, slow and creates potentially problematic time delays, reducing the ESRB's ability to produce timely warnings and / or recommendations. When requests are sent to the ESCB for approval (via the Statistics Committee), the request has already been approved by central banks in the General Committee. This duplication of approval is unwieldy and unnecessary.
- ii. The process for the approval of disaggregated, firm-specific information is also burdensome and creates unnecessary delays. In this case, the ESA is consulted in the investigation phase, approves via the Chairperson's *ex officio* representation on the General Board, and re-approves via the 'justification and proportionality' test.

There have been efforts to better manage and coordinate the sharing of data between the ESRB and other bodies. The reticence of national supervisors to share disaggregated data with the ESRB has caused problems in the past; the lengthy duplicative process for approval reflects this. However, there have been steps taken to establish a confidential system for the sharing of data.

The agreement<sup>72</sup> of November 2011, between the ESRB and ESAs set out certain provisions for improving the conditions for securing confidential data, which included: use of encrypted files in the ESRB document management system (DARWIN); limits on access to a special area for the use of computers not connected to the wider ESRB / ECB systems; strengthened rules on confidentiality. These changes have increased the confidence that ESAs have in the dissemination of information and firm-specific data to the ESRB.

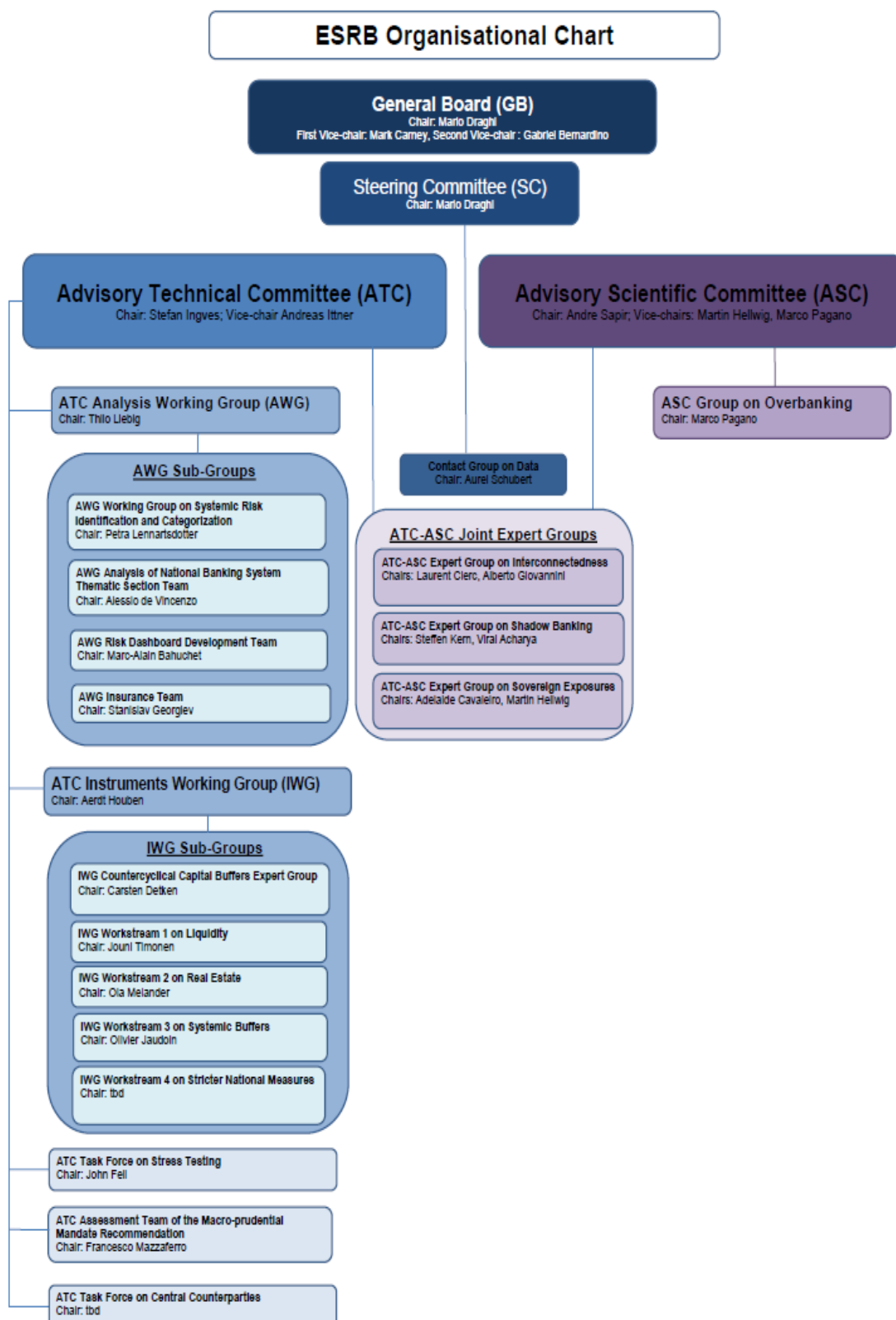
Furthermore, a Contact Group on Data was established in 2012 to coordinate the collection and dissemination of data between the ESAs, ESRB and ESCB. This body assists in the early stage of planning ad hoc requests for data outside the regular information sharing process. The early examination of requests, including an assessment of the data sources and methodology proves useful in identifying improvements before the formal approval process. However, since this also involves ESAs, for example, it is conceivable that, in an ad hoc request to the EBA, there could theoretically be three separate stages of ESA approval (formal and informal) before the request is delivered and acted upon.

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<sup>72</sup> [http://www.esrb.europa.eu/pub/pdf/111125\\_agreement\\_EBA\\_EIOPA\\_ESMA\\_ESRB.pdf](http://www.esrb.europa.eu/pub/pdf/111125_agreement_EBA_EIOPA_ESMA_ESRB.pdf).



**ESRB organisation**<sup>73</sup>



<sup>73</sup> Source: ESRB Secretariat (Date: 12 December 2013).

## Annex II

### **Members of the ESRB Advisory Scientific Committee**<sup>74</sup>

Marco Pagano (Chair)

University of Napoli Federico II, Naples

André Sapir (Vice-Chair)

Université Libre de Bruxelles, Brussels

Martin F. Hellwig (Vice-Chair)

Max Planck Institute for Research on Collective Goods, Bonn

Viral V. Acharya

New York University Stern School of Business, New York

Leszek Balcerowicz

Warsaw School of Economics, Warsaw

Arnoud Boot

Universiteit van Amsterdam, Amsterdam

Markus K. Brunnermeier

Princeton University, Princeton

Claudia Buch

Institut für Wirtschaftsforschung Halle, Halle

Dario Focarelli

Associazione Nazionale Fra Le Imprese Assicuratrici (ANIA – Italian Association of Insurance Companies)

Alberto Giovannini

Unifortune Asset Management SGR SpA, Milan

Daniel Gros

Centre for European Policy Studies, Brussels

Richard Portes

London Business School, London

Dirk Schoenmaker

Duisenberg School of Finance, Amsterdam

Ieke van den Burg

Former Member of the European Parliament

Charles Wyplosz

The Graduate Institute of Geneva, Geneva

Andreas Ittner

Österreichische Nationalbank, Vienna in representation of the Advisory Technical Committee

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Source:

[https://www.esrb.europa.eu/pub/pdf/other/list\\_of\\_ASC\\_members.pdf?0500b90fe6f3d5c98278e7f7fe97b2a6](https://www.esrb.europa.eu/pub/pdf/other/list_of_ASC_members.pdf?0500b90fe6f3d5c98278e7f7fe97b2a6) (Date: 10 February 2014).