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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

on the mission and organisation of the European Systemic Risk Board (ESRB)

{SWD(2014) 260 final}

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1. INTRODUCTION

The global financial crisis in 2008 revealed gaps in the regulatory and supervisory framework of the European Union. Supervision remained fragmented along national lines, was insufficiently focused on interdependence within the financial system, did not involve sufficient exchange of information and coordination between supervisors and placed little emphasis on macro-prudential oversight. Building on the recommendations of the de Larosière Report of 2009¹, a new authority in charge of EU-wide macro-prudential oversight was established in 2010 – the European Systemic Risk Board (ESRB), as part of the new European System of Financial Supervision (ESFS) comprising also three European sectoral micro-prudential authorities, the European Supervisory Authorities (the ESAs)².

In line with Article 20 of the Regulation establishing the ESRB³, this report reviews the mission and organisation of the ESRB, including issues relating to the appointment of the Chair of the ESRB, in light of experience in the past three years. Pursuant to Article 5(1) of the 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. For the subsequent terms, the Chair of the ESRB shall be designated in accordance with modalities to be determined. This report also responds to the reporting requirement in Article 8 of the second Regulation on the ESRB⁴, which defines the modalities of the ECB's support to the ESRB.

For consistency, and because the four authorities are part of the same supervisory system, the Commission has decided to conduct the review of the ESRB and of the ESAs in parallel so as to adopt and publish two review reports – one covering the ESRB and one covering the ESAs – at the same time. The purpose of this report is to assess the mission and organisation of the ESRB since its inception, in accordance with the review clauses of two ESRB Regulations. 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 review of the ESRB was informed by 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

¹ 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.

² For the founding regulations of the ESAs see OJ L 331, 15.12.2010, p. 12.

³ 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) (the ESRB Regulation).

⁴ 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).

at the ESAs, national authorities, relevant institutions and agencies and 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 contribution provided by the ESRB's High-Level Group on the ESRB Review⁵ as well as the ESAs Joint Opinion on the review of the ESRB⁶. In addition, the Commission took into account other studies and reports on the matter presented by the IMF⁷. Finally, the study commissioned by the European Parliament (EP)⁸ on the ESRB review and the EP's resolution with recommendations to the Commission on the ESFS Review⁹ 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 legislation¹⁰.

Assessing the functioning of the ESRB at this point in time is a complex task for two main reasons. First, it is difficult to assess the ESRB's performance as a forward-looking macro-prudential authority as it was established at the height of the financial crisis, while its primary mandate is to prevent the occurrence of such crises. Second, there are two significant reforms of the financial framework in the process of being implemented that will have an impact on the role of the ESRB, namely the establishment of a Single Supervisory Mechanism (SSM)¹¹ in the Euro Area – and in non-euro Member States, which have established a close cooperation with the ECB – and the provisions relating to macro-prudential instruments in the new Capital Requirements Directive and Regulation (CRD IV/CRR)¹². Nevertheless, the following sections of the report focus on ESRB activities to date,

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- ⁵ ESRB, High-Level Group on the ESRB Review, Contribution to the Review of the ESRB (foreseen in the ESRB Regulation), March 2013;
http://www.esrb.europa.eu/pub/pdf/other/130708_highlevelgroupreport.pdf?e913faa529f509c934cd484435ad13a8.
- ⁶ 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).
- ⁷ 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.
- ⁸ 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).
- ⁹ 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>.
- ¹⁰ Cf. Article 20 of the ESRB Regulation and Article 8 of Council Regulation (EU) No 1096/2010. The ECB opinion is expected.
- ¹¹ 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) (Regulation establishing the SSM).
- ¹² Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1) and Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

highlighting the ESRB's main strengths and achievements and identifying areas for potential improvement.

2. THE ESRB FUNCTIONING (MISSION AND ORGANISATION) SINCE INCEPTION

2.1. The ESRB mission

The ESRB mandate is defined in broad terms in the ESRB Regulation. It is 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 arising from developments within the financial system. It contributes to the smooth functioning of the internal market and thereby ensures that the financial sector plays a role in fostering sustainable economic growth. The ESRB Regulation defines systemic risk as ‘a risk of disruption in the financial system with the potential to have serious negative consequences for the internal market and the real economy. All types of financial intermediaries, markets and infrastructure may be potentially systemically important to some degree’¹³.

The ESRB Regulation stresses the preventive role of the ESRB in that it should ‘contribute to the prevention of systemic risks’ and ‘avoid periods of widespread financial distress’. In addition, the ESRB should ‘identify and prioritise systemic risks’.

In pursuing its macro-prudential mandate, the ESRB performs a number of key functions, namely risk monitoring, risk assessment and ultimately, if appropriate, the adoption of warnings and recommendations for remedial action¹⁴. Besides policy recommendations, the ESRB has published several documents relating to its activity and analytical work: quarterly risk dashboards, reports of the Advisory Scientific Committee (ASC) and other occasional papers and commentaries as well as two annual reports. According to the ESRB Regulation, the ESRB may only issue warnings and recommendations which are non-binding but to which an ‘act or explain’ procedure applies. The use of non-binding instruments gives the ESRB the ability to interact freely with any public authority involved in financial issues and ensure greater scope in the formulation of any recommendations. The ESRB relies on its influence and authority (i.e. reputational power) in order to ensure that appropriate action is taken in response to its warnings and policy recommendations. Warnings and recommendations can be made public following a decision by the General Board of the ESRB on a case-by-case basis. To date, the ESRB has published seven policy recommendations¹⁵.

With the entry into force of the macro-prudential framework of CRD IV/CRR on 1 January 2014, the ESRB is developing an analytical and organisational

¹³ Cf. Article 2(c) of the ESRB Regulation.

¹⁴ Cf. Article 3 of the ESRB Regulation.

¹⁵ Recommendation on lending in foreign currencies (OJ C 342, 22.11.2011, p. 1); Recommendation on US dollar funding (OJ C 72, 10.03.2012, p. 1); Recommendation on the macro-prudential mandate of national authorities (OJ C 41, 14.2.2012, p. 2); Recommendation on funding of credit institutions (OJ C119, 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).

framework in order to be able to take up the new tasks conferred on it by the legislation, i.e. delivering opinions and/or recommendations to Member States with regards to the use of the new macro-prudential tools (i.e. countercyclical capital buffers, systemic risk buffer), including the possibility to impose stricter prudential requirements under Article 458 of the CRR ('flexibility clause'). With a view to operationalizing the macro-prudential framework, the ESRB has published in March 2014 a Flagship Report¹⁶ providing a first overview of the new macro-prudential framework in the EU as well as a detailed Handbook¹⁷ which aims at giving guidance to national authorities for the use of the new instruments. The ECB will also play a key role in this area in the future. According to Article 5 of the Regulation establishing the SSM, the ECB will have specific macro-prudential competences in the Euro Area – and in non-euro Member States which have established a close cooperation with the ECB – and will notably be able to impose stricter macro-prudential buffers than those adopted at national level.

2.2. The ESRB organisation

The ESRB has a complex organisational structure, reflecting a desire to gather the necessary expertise both at national level - involving national central banks and supervisors-, and at European level - involving the ECB, Commission, the Economic and Financial Committee (EFC), and the ESAs. The institutional framework of the ESRB comprises a General Board, a Steering Committee, an Advisory Technical Committee (ATC) and an Advisory Scientific Committee (ASC). The work of these various fora is supported by the ESRB Secretariat¹⁸. The ESRB General Board, currently comprising 67 members, is the principal decision-making body of the ESRB. Each of the currently 38 members of the General Board with a voting right¹⁹ has one vote and the General Board usually decides by simple majority. A majority of two-thirds is required to adopt a recommendation or to make a warning or recommendation public²⁰. Members of the General Board without voting rights (currently 29 members) comprise one high-level representative per Member State of the competent national supervisory authorities and the President of the EFC. In general, the voting modalities within the General Board were deemed appropriate by stakeholders. The Steering Committee comprising 14 General Board members is responsible for the preparation of the General Board's meetings. The ATC mirrors the composition of the General Board on a more technical level. The ASC has been established to bring a different and more external, scientific perspective to the work of the ESRB. It consists of 15 members representing a wide range of skills and expertise.

¹⁶ Flagship Report on Macro-prudential Policy in the Banking Sector; http://www.esrb.europa.eu/pub/pdf/other/140303_flagship_report.pdf?31b5f8e9c568a6ca55d8bd08d36b1eb8.

¹⁷ ESRB Handbook on Operationalising Macro-prudential Policy in the Banking Sector; http://www.esrb.europa.eu/pub/pdf/other/140303_esrb_handbook.pdf?d15dae97dfb3b9136f3d130ba185dfe9.

¹⁸ Article 2(e) of Council Regulation (EU) No 1096/2010.

¹⁹ The President and the Vice-President of the ECB; the Governors of the national central banks; a Member of the Commission; the Chairperson of the European Supervisory Authority (European Banking Authority); the Chairperson of the European Supervisory Authority (European Insurance and Occupational Pensions Authority); the Chairperson of the European Supervisory Authority (European Securities and Markets Authority); the Chair and the two Vice-Chairs of the Advisory Scientific Committee; the Chair of the Advisory Technical Committee.

²⁰ Article 10 of the ESRB Regulation.

The ESRB relies on the ECB for analytical, financial and administrative support. At the time of inception of the ESRB, the choice of the ECB as host institution was guided by a number of considerations. The primary objective was to draw on the ECB's existing expertise in the field of financial stability. The proximity of macro-prudential policy to the monetary policy function was also considered to be an asset. The fact that the ESRB would be able to benefit from the analytical, financial and administrative support of the ECB was deemed instrumental to its future success. More importantly, the ESRB could benefit from the visibility, independence and strong reputation of the ECB. In the same vein, it was decided that the first Chair of the ESRB should be the President of the ECB for a term of five years. As the ESRB has no binding powers, but relies on moral suasion and peer pressure, it was deemed appropriate to choose a well-known and credible figure as Chair of the ESRB. The review clause in the ESRB Regulation specifically refers to the arrangements for the designation or election of the Chair of the ESRB²¹.

The ESRB is accountable to Parliament and Council. It is required to provide information about its actions to the European Parliament and the Council²². At least annually, and more frequently in the event of widespread financial distress, the Chair of the ESRB is invited to a hearing in the European Parliament. Hearings of the ESRB Chair are generally held back-to-back with hearings of the ECB President. The Chair of the ESRB also holds confidential oral discussions, at least twice a year with the Chair and Vice-Chairs of the Economic and Monetary Affairs Committee of the European Parliament.

The ESRB is part of the ESFS and particular attention has been given in the founding Regulations to the interaction between the ESRB and the ESAs. One of the major lessons of the financial crisis was that, in order to have a stable financial system, micro-prudential supervisors should interact closely with the new macro-prudential level. Both pillars of the new supervisory system are essential to achieve valuable synergies between the micro and macro level, to mutually reinforce the impact on financial stability and to benefit from a fully integrated supervisory framework. Close interaction is ensured by cross-membership among the four authorities. The ESAs Regulations²³ also specify the procedures to be followed by the ESAs to act upon recommendations by the ESRB and how the ESAs should use their powers to ensure timely follow-up to recommendations addressed to one or more competent national supervisory authorities. Cooperation between the ESRB and the ESAs is also important in the area of stress testing.

3. ASSESSMENT OF THE ESRB WORK: MAJOR STRENGTHS AND AREAS FOR IMPROVEMENTS.

Stakeholders were in many respects satisfied with the work of the ESRB in the first years since its inception. Nearly all underlined the importance of macro-prudential oversight and the need for coordination in the use of macro-prudential tools by Member States. However, stakeholders generally felt that it was too early to form a substantiated opinion about the impact of ESRB warnings and recommendations.

²¹ Cf. Article 20 read in conjunction with Article 5 of the ESRB Regulation.

²² Cf. Article 19 of the ESRB Regulation.

²³ Cf. Article 36 of the Regulations establishing the ESAs (see fn. 2).

The ESRB has just finalised its impact assessment framework and more time is needed to obtain a better and more in-depth view on how addressees have reacted.

While the ESRB is seen as a key component of the ESFS, many stakeholders identified areas for improvement. These areas for improvement mainly relate to organisational identity, internal governance and the available tools (i.e. warnings and recommendations).

3.1. MAJOR STRENGTHS

The strengths and successes of the ESRB have been underlined by many stakeholders. The ESRB relies on a unique and wide range of expertise, it has succeeded in raising awareness on financial stability matters among policy makers, and it has started to develop useful and promising analytical work, notably on interconnectedness.

As regards the ESRB mandate and powers, the vast majority of stakeholders shared the view that the mandate of the ESRB was sufficiently broad and all stakeholders were satisfied with the forward-looking and preventive nature of the ESRB's mandate. All stakeholders were also satisfied with the non-binding nature of ESRB warnings and recommendations, which was seen as fitting well with the ESRB's broad mandate and scope. No stakeholder called for a change in this area. There is a broad agreement that the 'act or explain' mechanism should remain a key part of the system of warnings and recommendations, which should be capable of delivery on a timely and flexible basis.

Throughout the crisis, the ESRB has provided a unique forum for discussion at the highest level between central bankers, national supervisors and European authorities on financial stability issues. The ESRB gathers together a wide range of expertise across financial sectors and countries, which has been acknowledged by many stakeholders to be a major strength. The role of the ESRB Secretariat was generally considered to be positive by stakeholders. It played a key role in establishing internal procedures, developing working methods and tools (e.g. ESRB website, ESRB IT application) and preparing and organising meetings in an effective way. It was also actively involved in the analytical work of the ESRB. The resources allocated to the ESRB Secretariat were, however, considered by some stakeholders as insufficient.

The ESRB has contributed to the introduction of a macro-prudential dimension to financial policies and regulations. Macro-prudential policy was the major innovation of the de Larosière Report. Prior to the establishment of the ESRB, there was no authority in the European Union actively involved in macro-prudential supervision. While the ESAs essentially built on activities already performed at national level, the ESRB's field of competence was largely uncharted territory. Due to its activities, notably but not only through its warnings and recommendations, the ESRB has managed to make policy-makers more sensitive to systemic risk and financial stability concerns.

The ESRB is playing a key role in the establishment of a macro-prudential framework in the European Union. The ATC is actively involved in establishing a consistent framework across Member States. It has prepared two recommendations to this effect, which have both been adopted and published by the General Board: one on the necessity to establish national macro-prudential authorities with a

specific mandate; and one on objectives and instruments of macro-prudential policies. The recommendation on macro-prudential authorities had a very tangible impact. In response, – and also as a consequence of the entry into force of CRD IV/CRR in January 2014, which requires Member States to appoint a ‘designated authority’ in charge of activating the new macro-prudential buffers – all Member States have established or are in the process of establishing national macro-prudential authorities (although it should be noted that not all of these authorities are currently represented in the ESRB). The ESRB's new role of coordinator of Member States' macro-prudential policies under CRD IV/CRR is consistent with the objective enshrined in the ESRB Regulation that it 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. With a view to the upcoming macro-prudential competences of the ECB in the Euro Area and in non-euro Member States which have established a close cooperation with the ECB, an appropriate interaction between the ECB and the ESRB will need to be ensured.

The ESRB is developing important analytical work on cross-cutting macro-prudential issues (e.g. over-banking, interconnectedness). The recent work on contagion channels via Credit Default Swaps (CDS) or interbank funding is particularly interesting in that respect. Many stakeholders have stressed the importance of this recent work and suggest that it should be further developed. The participation of micro-prudential supervisors in the work of the ESRB as well as the participation of the ESRB in the work of the ESAs is essential to ensure that the assessment of macro-prudential risk is based on complete and accurate information. In general, the cooperation between the ESRB and the ESAs is deemed to have worked well, but many stakeholders would welcome more joint work – e.g. the establishment of a common risk dashboard. The increasing role of the ESRB in stress testing is also worth noting and has been welcomed by many stakeholders.

The current accountability arrangements were considered by stakeholders as appropriate, as they allow for a proper dialogue while ensuring full confidentiality for sensitive information.

3.2. AREAS FOR IMPROVEMENT

The areas for potential improvement identified by stakeholders relate mainly to three aspects: the organisational identity of the ESRB, the internal organisation of the ESRB and its working structures, and the tools and powers at its disposal, which could be expanded to enhance the early warning function.

3.2.1. Organisational identity

Entrusting the function of the Chair of the ESRB to the President of the ECB for the first five years after the ESRB's inception has allowed the ESRB to benefit from the ECB's visibility, independence and strong reputation. Given that the mandate of the first Chair will expire five years after the entry into force of the ESRB Regulation i.e. on 16 December 2015, the Regulation will have to be revised to ensure legal clarity. As the ESRB has non-binding powers, but relies on moral suasion and peer pressure, a well-known and credible figure as Chair of the ESRB has a lot of merit.

Many stakeholders stressed the need to enhance the ESRB's identity. Many stakeholders insisted on the need to enhance the ESRB autonomy, while allowing it to continue to rely on ECB reputation and expertise. This issue was also addressed in the EP Resolution. In this context, the possibility of a two-tier managerial structure has been suggested by some stakeholders. 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 EFC. Appointing an "executive Chairperson" has also been recommended in the EP Resolution.

3.2.2. Internal organisation and working structures

According to the majority of stakeholders, the current structure and governance arrangements of the ESRB could be improved to ensure more efficient decision-making.

The size of the General Board could be reduced. Nearly all stakeholders have identified the large size of the General Board (67 members) as a potential problem and some have also pointed to the size of the ATC in similar terms. If gathering together a wide range of expertise is generally considered to be an asset, many stakeholders highlighted that the current size of the General Board has drawbacks in terms of functioning of meetings and discussions, possibility to exchange confidential and sensitive information as well as smooth decision-making. The Steering Committee, the size of which is more limited (i.e. 14 members of the General Board), is more suited for the discussion of sensitive issues but it is not empowered to decide and its role is thus limited to the preparation of the meetings of the General Board. Some stakeholders have suggested that increasing the frequency of the Steering Committee meetings could contribute to enhancing its role. Many stakeholders have argued that there is scope to reduce the size of the General Board (e.g. by limiting the representation of Member States to one representative) or to entrust more powers to the Steering Committee whose composition could be also modified, notably but not only because of the creation of the SSM.

Some stakeholders also suggested that the composition of the General Board could be amended with a view to rebalancing the ESRB focus across sectors and strengthen the European perspective. Members could, for example, represent several institutions within the same Member State or even several Member States. Another factor that has been identified as possibly contributing to a certain "banking bias" would be ESRB Secretariat staff drawn from central banks, who would more naturally be focusing on banking issues (most National Central Banks are in charge of banking supervision) than on other financial sectors. Moreover, it must also be acknowledged that banks are typically the main sources of systemic risk, so the focus is also motivated by the higher risk that the banking sector generates.

It has been suggested that the composition of the two advisory committees could be reviewed. There was a contrast in the feedback received during the consultation on the work of the two advisory committees. As regards the ATC, many respondents praised the Committee for delivering regular input to the ESRB General Board agenda. However, others highlighted that it was too banking oriented and had

a certain national bias in its approach to systemic risk. It has been suggested that the number of ATC members could be reduced, mirroring the solution that could be retained for the General Board. As regards the ASC, stakeholders noted its less frequent output than the ATC. However, in terms of substance, its work is deemed generally more innovative and ‘out of the box’ than that of the ATC. Some respondents proposed to merge the two advisory committees so as to combine the working method of the ATC and the ‘out of the box’ approach of the ASC.

3.2.3. *The ESRB toolbox*

The ESRB communication and interaction with other institutions and bodies is perceived by many stakeholders as perfectible and too reliant on the formal instruments of warnings and recommendations.

Stakeholders have called for increased transparency as a means to enhance the ‘act or explain’ mechanism (e.g. publications of warnings and recommendations, more transparency on the follow-up by addressees, etc.).

Stakeholders have also suggested that the ‘act or explain’ mechanism could be enhanced by a better interaction with other European bodies, notably the EFC. A better and early interaction could strengthen the impact of the ESRB actions and raise awareness among Member States of the impact of their policy decisions on financial stability. Some – and notably the report by the high-level experts from the ATC and ASC – have stressed that a full-time Managing Director of the ESRB²⁴ could contribute to a smoother interaction with potential addressees at an early stage, thereby rendering the ESRB’s action more effective.

As regards the ESRB intervention in the field of legislation, some stakeholders have suggested that it could be better framed with a view to avoiding involvement at a very late stage of the legislative process or even after a legislation has been adopted. Foreseeing an early input could avoid inefficiencies caused by a late involvement– as occurred in the case of CRD IV/CRR. In this context, it has been argued that the involvement of the ESRB could be restricted to identifying areas for future legislative action. Other stakeholders proposed that the ESRB could be consulted prior to the adoption of a legislative proposal in the field of financial stability.

There is a view among stakeholders that the ESRB’s external communications could be enhanced. The ESRB’s role is to monitor and assess risks to the financial system, but it relies on other bodies and Member States to implement macro-prudential policies to mitigate those risks. Its performance is, therefore, contingent on how well it manages relations with other stakeholders and the Member States. It also relies on information from these bodies to inform its work. Some stakeholders see scope to improve the quality and timeliness of ESRB communications both internally, with other bodies of the ESFS and the European System of Central Banks (ESCB) but also vis-à-vis foreign and international peers (US Financial Stability Oversight Council, Financial Stability Board, Basel Committee on Banking Supervision, IMF), market participants and the public at large. The potential role of

²⁴ See Section 3.2.1 above.

a full-time Managing Director could help increase the visibility of the ESRB and facilitate a more proactive and coherent communication strategy.

Stakeholders have identified a need to improve the processes for dealing with the exchange of data between the ESRB and ESAs within the ESFS. There is a detailed and lengthy approval process through which the ESRB receives data, which can affect the timeliness and impact of its output. Numerous approval steps are duplications. It has been argued that these processes should be streamlined to improve efficiency and effectiveness. Delays in accessing data means that the ESRB may not be able to issue warnings and recommendations before risks crystallise – this could detrimentally affect its early-warning capability.

The ESRB's toolbox could be expanded to include more 'soft powers'. The ESRB has issued a series of formal recommendations in the past three years. The timeliness of ESRB recommendations was criticised by some stakeholders, with some recommendations coming late and, in one case, after the problem had already been addressed. The process for adoption of ESRB recommendations by the General Board and the fact that ESRB recommendations are drafted in a very formal manner have been identified as likely sources of delay. Addressees sometimes perceived them as too formal, which led them to adopt a defensive attitude in reaction. A more gradual approach could enhance the impact of the ESRB action and allow engaging in a constructive dialogue with potential addressees at an early stage. There may be scope to expand the options for the ESRB to exercise more 'soft power' for example via published letters or public statements as a means to enhance the flexibility of the early warning function. It has been suggested that the figure of a full-time Managing Director of the ESRB could play a positive role in this respect by enhancing the ESRB visibility, and hence its capacity of influence before formal warnings and recommendations are issued.

4. CONCLUSION

It is difficult to assess the ESRB's performance as a forward-looking macro-prudential authority given its only recent inception. Nevertheless, the feedback received by the Commission from stakeholders shows that during the first three years of its existence, the ESRB has managed to establish itself as a key component of the European supervisory framework. Stakeholders have recognised that the ESRB has been providing a unique forum for discussion on financial stability issues throughout the crisis and that it has raised awareness among policy makers on the macro-prudential dimension of financial policies and regulations. The ESRB remains an important component of the ESFS.

Bearing in mind these achievements, there is, however, merit in drawing attention to important aspects of the ESRB's framework with a view to enhancing the efficiency of macro-prudential oversight at EU level.

Some of the improvements can be implemented in the short term by the ESRB and would not require any change to the legislative framework. This is the case as concerns for example:

- **A more proactive communication strategy and earlier interaction with potential addressees.** This could include, in particular, a better exchange of

information with the EFC and a stronger involvement of the ESRB in the EFC discussions and meetings. The ESRB could also make more use of 'soft powers' for example via published letters or public statements, as a means to enhance the flexibility of the early warning function before any formal warning or recommendations would be issued.

- **An increased frequency of the Steering Committee meetings.** This could be a way to enhance the role of the Steering Committee by allowing it to more closely monitor the work of the ESRB working structures in between General Board meetings.

- **Less formalism in the drafting of ESRB recommendations.** This could contribute to shorten the deadlines for the adoption of the recommendations and enhance the ESRB reactivity, thus reinforcing its early warning function.

- **A rebalancing of the focus beyond banking risks.** The ESRB has started to widen its perspective and has worked recently more and more on non-banking issues. Such trend is welcome and should be pursued as it is important to maintain the cross-sectoral dimension of the ESRB mandate.

At the same time, many issues identified by stakeholders as warranting further attention concern the ESRB Founding Regulations themselves. This would notably apply to the arrangements for the chairmanship (as the ECB President was appointed for the first term of five years, i.e. until 16 December 2015); the creation of a full-time Managing Director function; changes in the decision-making structure (e.g. amendments of the composition of the General Board and the Steering Committee, reduction of the size of the General Board, enhancement of the decision-making powers of the Steering Committee etc.). The Commission intends to further examine the technical and legal aspects of the various issues raised and to launch preparatory work to assess the possible options for addressing these issues. This work will in particular examine:

- **Organisational identity:** There is a need to enhance the ESRB's visibility and autonomy, while allowing it to continue to benefit from the ECB's reputation and expertise. The Commission will continue to reflect on this issue. The possibility of a two-tier managerial structure with the ECB President as Chair and a new full-time Managing Director in charge of the day-to-day activities of the ESRB is one option that could be further explored.

- **Internal governance:** The present internal structure of the ESRB could benefit from reform. In particular, there is scope for streamlining decision-making arrangements involving the General Board and the Steering Committee by reducing the size of the General Board or delegating/transferring more powers to the Steering Committee. There may be further potential for improving the efficiency and effectiveness of the supporting advisory committees.

- **Toolbox:** The ESRB has issued a series of formal warnings and recommendations in the past three years. However, there is scope to expand the ESRB toolbox so that it exercises more 'soft power' to enhance flexibility and foster early intervention. On the other hand, there may be scope to more clearly specify the role of ESRB in relation to legislative changes.

The technical and legal work which the Commission will undertake will be able to take into account the important elements of the overall financial architecture which are not yet in place today: the various pillars of the Banking Union are not fully established yet; Member States are in the process of establishing national macro-prudential authorities; the macro-prudential responsibility within the ECB/SSM is being set up. Greater clarity on all these elements is needed before any possible legislative action could be proposed on the reform of the ESRB, as these will clearly impact the design of the proposal.