Regulation (EU) 2019/2176 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1092/2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (Text with EEA relevance)

REGULATION (EU) 2019/2176 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 18 December 2019

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Central Bank[(1)],

Having regard to the opinion of the European Economic and Social Committee[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

(1) In accordance with Article 20 of Regulation (EU) No 1092/2010 of the European Parliament and of the Council[(4)], the European Parliament and the Council, on the basis of the report from the Commission to the European Parliament and to the Council of 8 August 2014 on the mission and organisation of the European Systemic Risk Board, have examined Regulation (EU) No 1092/2010 to determine whether the mission and organisation of the European Systemic Risk Board (ESRB) needed to be reviewed. The modalities for the designation of the Chair of the ESRB have also been reviewed.

(2) The Commission effect analysis accompanying its proposal for this Regulation concludes that, while the ESRB is generally well-functioning, improvements on certain specific points are necessary.

(3) Recent institutional changes relating to the banking union, coupled with efforts to achieve a capital markets union, as well as technological change, have actually altered the ESRB's operating environment. The ESRB should contribute to preventing or mitigating systemic risks to financial stability in the Union and thereby to achieving the objectives of the internal market. Union macro-prudential oversight of the financial system is an integral part of the European System of Financial Supervision. Institutional arrangements that effectively identify and address micro and macro-prudential risks

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can ensure that all stakeholders have sufficient confidence to engage in financial activities, in particular cross-border activities. By promoting timely and consistent policy responses in Member States to identified systemic risks, the ESRB should contribute to preventing diverging approaches and improving the functioning of the internal market.

(4) The broad membership of the General Board of the ESRB (the 'General Board') is a major asset. Recent developments in the financial supervisory architecture of the Union, and in particular the creation of a banking union, are, however, not reflected in the composition of the General Board. For that reason, the Chair of the Supervisory Board of the European Central Bank (ECB) and the Chair of the Single Resolution Board established by Regulation (EU) No 806/2014 of the European Parliament and of the Council[(5)] should become members without voting rights of the General Board. Corresponding adjustments should also be made to the Advisory Technical Committee of the ESRB (the 'Advisory Technical Committee').

(5) The President of the ECB has chaired the ESRB since its establishment, pursuant to Regulation (EU) No 1092/2010 until 15 December 2015 and thereafter on an interim basis. During that period, the President of the ECB has conferred authority and credibility on the ESRB and ensured that it can effectively build and rely on the expertise of the ECB in the area of financial stability. It is therefore appropriate that the President of the ECB chair the ESRB on a permanent basis.

(6) The ESRB is responsible for the macro-prudential oversight of the financial system within the Union and contributes to the prevention or mitigation of systemic risks in the Union as a whole or parts thereof, including identifying and discussing financial stability risks regardless of their origin. Monetary conditions may have implications for financial stability and it falls under the ESRB's macro-prudential oversight mandate to discuss those implications while fully respecting the independence of central banks. The ESRB is also responsible for monitoring and assessing risks to financial stability arising from developments that can have an impact on a sectoral level or at the level of the financial system as a whole, including risks and vulnerabilities resulting from technological change or from environmental or social factors. The ESRB should also analyse developments outside the banking sector, including those leading to the completion of the capital markets union.

(7) Members of the General Board are collectively responsible for achieving the mission, objectives and tasks of the ESRB. All members are also responsible for shaping the ESRB's agenda and work programme and for actively contributing to its regular work, including bringing relevant topics to the attention of the other members of the General Board.

(8) To strengthen the visibility of the ESRB, the Chair of the ESRB should be able to delegate tasks, such as tasks related to the external representation of the ESRB to the first Vice-Chair or, if the first Vice-Chair is unavailable and where appropriate, to the second Vice-Chair or to the head of the ESRB Secretariat. Such delegation should not extend to participation in public hearings and in discussions behind closed doors at the European Parliament.

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(9) In order to provide for flexibility as regards the selection of the member of the General Board with voting rights, Member States should be able to choose their voting representative between the Governor of the national central bank and a high-level representative of a designated authority pursuant to Directive 2013/36/EU of the European Parliament and of the Council[(6)] or Regulation (EU) No 575/2013 of the European Parliament and of the Council[(7)], where that designated authority has the leading role in financial stability in its area of competence. That flexibility as regards the selection of the member of the General Board with voting rights does not affect Member States in which the national central bank is a designated authority pursuant to Directive 2013/36/EU or Regulation (EU) No 575/2013. In order to avoid political influence, no member of the General Board should have a function in the central government of a Member State.

(10) In accordance with Article 5(2) of Regulation (EU) No 1092/2010, the first Vice-Chair of the ESRB has until now been elected by and from the members of the General Council of the ECB, with regard to the need for a balanced representation of Member States overall and between those whose currency is the euro and those whose currency is not the euro. Following the creation of the banking union, it is appropriate to replace the reference to Member States whose currency is the euro and those whose currency is not the euro with a reference to Member States which are participating Member States as defined in Council Regulation (EU) No 1024/2013[(8)] and those which are not. The first Vice-Chair should be elected by and from the national members of the General Board with voting rights, reflecting the greater flexibility as regards membership of the General Board.

(11) Council Regulation (EU) No 1096/2010[(9)] provides that the head of the ESRB Secretariat is to be appointed by the ECB, in consultation with the General Board. To raise the profile of the head of the ESRB Secretariat, the General Board should assess, in an open and transparent procedure, whether the shortlisted candidates for the position of head of the ESRB Secretariat possess the qualities and experience necessary to manage the ESRB Secretariat. The ECB should consider systematically opening the selection procedure to external candidates. The General Board should inform the European Parliament and the Council about the assessment procedure. Furthermore, the tasks of the head of the ESRB Secretariat should be clarified.

(12) Given that Regulation (EU) No 1092/2010 has been incorporated into the Agreement on the European Economic Area, Article 9(5) of that Regulation should be amended.

(13) To decrease costs and to enhance procedural efficiency, the number of representatives of the Commission in the Advisory Technical Committee should be reduced from the current two representatives to one representative.

(14) The ECB should be added as a possible addressee of the ESRB's warnings and recommendations in respect of the tasks conferred on it in accordance with Articles 4(1), 4(2) and 5(2) of Regulation (EU) No 1024/2013. Resolution authorities designated by Member States pursuant to Directive 2014/59/EU of the European Parliament and of the Council[(10)] and the Single Resolution Board should also be added as possible addressees.

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Regulation (EU) No 1092/2010 requires that those warnings and recommendations be transmitted to the Council and the Commission and, where addressed to one or more national supervisory authorities, to the European Supervisory Authority (European Banking Authority), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council[(11)], to the European Supervisory Authority (European Insurance and Occupational Pensions Authority), established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council[(12)] and to the European Supervisory Authority (European Securities and Markets Authority), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(13)] (hereinafter collectively referred to as the 'ESAs'). To strengthen democratic control and transparency, the ESRB's warnings and recommendations should also be transmitted to the European Parliament and to the ESAs. Where appropriate, the General Board should require that an agreement be concluded to ensure confidentiality when confidential or non-public warnings or recommendations are being transmitted.

(15) Members of the ESRB from national central banks, national supervisory authorities and national authorities entrusted with the conduct of macroprudential policy should be able to use the information they receive from the ESRB in the course of their duties and in relation to the tasks of the ESRB, including for the exercise of their statutory tasks.

(16) The ESRB should facilitate the sharing among national authorities or bodies responsible for the stability of the financial system and Union bodies of information related to measures designed to address systemic risk across the Union's financial system.

(17) To ensure the quality and relevance of ESRB opinions, recommendations, warnings and decisions, the Advisory Technical Committee and Advisory Scientific Committee are expected to consult stakeholders, where appropriate, at an early stage and in an open and transparent manner, and to do so as widely as possible to ensure an inclusive approach towards all interested parties.

(18) When reviewing the mission and organisation of the ESRB, the Commission should in particular consider possible alternative institutional models. It should also consider whether the balance between Member States which are participating Member States as defined in Regulation (EU) No 1024/2013 and those which are not, in the organisation of the ESRB remains appropriate.

(19) Regulation (EU) No 1092/2010 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

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

(1) in Article 2, point (c) is replaced by the following:

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

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(2) Article 4 is amended as follows:

(a) the following paragraph is inserted:

2a. When consulted on the appointment of the head of the Secretariat in accordance with Article 3(2) of Council Regulation (EU) No 1096/2010[(14)], the General Board, following an open and transparent procedure, shall assess whether the shortlisted candidates for the position of head of the Secretariat possess the qualities, impartiality and experience necessary to manage the Secretariat. The General Board shall inform the European Parliament and the Council in sufficient detail about the assessment and consultation procedure.;

(b) the following paragraph is inserted:

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

a the day-to-day management of the Secretariat;

b any administrative and budgetary issues related to the Secretariat;

c the coordination and preparation of the work and the decision making of the General Board;

d the preparation of the annual ESRB programme proposal and its implementation;

e the preparation of the annual report on the ESRB's activities and the reporting to the General Board on the implementation of the annual programme.;

(3) Article 5 is amended as follows:

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

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

2 The first Vice-Chair shall be elected by and from the national members of the General Board with voting rights for a term of five years, with regard to the need for a balanced representation of Member States between those which are participating Member States as defined in point (1) of Article 2 of Council Regulation (EU) No 1024/2013[(15)] and those which are not. The first Vice-Chair may be re-elected once.;

(b) paragraph 8 is replaced by the following:

8. The Chair shall represent the ESRB externally. The Chair may delegate tasks, such as tasks related to the external representation of the ESRB, including the presentation of the work programme, to the first Vice-Chair, or if the first Vice-Chair is unavailable and where appropriate, to the second Vice-Chair or to the head of the Secretariat. Tasks related to the ESRB's accountability and reporting obligations laid down in Article 19(1), (4) and (5) may not be delegated.;

(4) Article 6 is amended as follows:

(a) paragraph 1 is amended as follows:

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