

EUROPEAN SYSTEMIC RISK BOARD

RECOMMENDATION OF THE EUROPEAN SYSTEMIC RISK BOARD

of 15 December 2015

on the assessment of cross-border effects of and voluntary reciprocity for macroprudential policy measures

(ESRB/2015/2)

THE GENERAL BOARD OF THE EUROPEAN SYSTEMIC RISK BOARD,

Having regard to 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 Board¹, and in particular Article 3 and Articles 16 to 18 thereof,

Having regard to 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 648/2012², and in particular Article 458 thereof,

Having regard to 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/EC³, and in particular Section II of Chapter 4 of Title VII thereof,

Having regard to Decision ESRB/2011/1 of the European Systemic Risk Board of 20 January 2011 adopting the Rules of Procedure of the European Systemic Risk Board⁴, and in particular Article 15(3)(e) and Articles 18 to 20 thereof,

Whereas:

- (1) In the Union, the financial system is highly integrated. This means that foreign entities often provide cross-border financial services. In the single market, financial service providers in a certain Member State can choose between providing financial services via subsidiaries or branches located in another Member State or providing cross-border financial services directly. This situation can lead to national macroprudential policy having sizeable cross-border effects.
- (2) Foreign financial service providers providing cross-border financial services, either directly or through their branches in other Member States, are not usually affected by the macroprudential

1 OJ L 331, 15.12.2010, p. 1.

2 OJ L 176, 27.6.2013, p. 1.

3 OJ L 176, 27.6.2013, p. 338.

4 OJ L 58, 24.2.2011, p. 4.

measures that apply to national financial service providers in that Member State. As a result, financial service providers that would otherwise fall within the scope of such requirements, i.e. because they have a local subsidiary, have an incentive to route their activities through alternative channels to circumvent host country measures. The leakages and regulatory arbitrage that result from such behaviour could undermine the effectiveness of national macroprudential policy measures.

- (3) Furthermore, competition may be distorted if branches of foreign financial service providers and foreign financial service providers that provide cross-border financial services directly use their competitive advantage, such as lower capital requirements for exposures generated in the activating Member State, over domestic financial service providers and subsidiaries of foreign financial service providers in that Member State, in order to increase their market share.
- (4) Macroprudential measures taken in one country will have external effects on financial stability in other countries through cross-border linkages. In general, these effects will be positive, since macroprudential policy reduces the build-up of systemic risk and the probability and impact of systemic crises, thereby also improving financial stability in other Member States. However, such effects may also be negative. For instance, despite being exposed to the same risks as domestic financial service providers and subsidiaries of foreign financial service providers, branches of foreign financial service providers and foreign financial service providers providing cross-border financial services directly will not usually be required to build-up resilience against these risks, for example by being subject to national capital measures in their home Member State. Moreover, to the extent that these financial service providers enjoy a competitive advantage over domestic financial service providers and the subsidiaries of foreign financial service providers, this might encourage them to increase their exposure to the relevant macroprudential risks in the activating Member State, thereby exposing the home Member State to greater risk. If these macroprudential risks relating to the provision of financial services were to materialise, the capital buffers of these financial service providers might prove to be insufficient, which would have negative consequences for their home financial systems.
- (5) Against this background and to ensure the effectiveness and consistency of macroprudential policy, macroprudential policy makers need to give due consideration to such cross-border effects and, when warranted, deploy suitable policy instruments to address them. To achieve this aim, the European Systemic Risk Board (ESRB) recommends an approach that is based on two main pillars, namely: (a) the systematic assessment of the cross-border effects of macroprudential policy; and (b) a coordinated policy response in the form of voluntary reciprocity for macroprudential policy measures when needed. It is also important that these pillars are implemented as consistently as possible throughout the Union.
- (6) To date, the systematic assessment of the cross-border effects of macroprudential policy has not received the attention it deserves. This is partially due to the fact that knowledge relating to (potential) spillover channels remains limited and the available data has not been fully examined with a view to analysing cross-border effects. As a result, the ESRB considers it important for all available data to be used systematically to better understand and assess cross-border effects.

- (7) It is important to set out a procedure that targets the systematic assessment of the cross-border effects of macroprudential policy and aims to ensure that macroprudential policy makers make an *ex ante* assessment of any potential cross-border effects of their proposed measures. In addition, and considering the existing requirements of Regulation (EU) No 575/2013 of the European Parliament and of the Council⁵, Directive 2013/36/EU and Recommendation ESRB/2013/1 of the European Systemic Risk Board⁶, macroprudential policy makers should make *ex post* assessments of the actual cross-border effects of their policies. The analytical work conducted by the Member States will complement the analytical work conducted by the ESRB.
- (8) The coordinated policy response advocated by the ESRB takes the form of an arrangement for voluntary reciprocity for macroprudential policy measures. The voluntary nature of the arrangement, resulting from the nature of ESRB recommendations⁷, differentiates such voluntary reciprocity from the mandatory recognition of certain macroprudential policy measures under Union law. This Recommendation, with the exception of recommendation A regarding the assessment of cross-border effects and recommendation B regarding the notification of macroprudential policy measures, is not intended to apply to macroprudential policy measures for which Union law already provides for mandatory recognition. Mandatory recognition is currently provided for with regard to measures taken pursuant to Articles 124(5) and 164(7) of Regulation (EU) No 575/2013, and for the countercyclical capital buffer (CCB) if it is set below the ceiling for mandatory recognition. The same exception applies to CCB rates that are above the ceiling for mandatory recognition, since Recommendation ESRB/2014/1 of the European Systemic Risk Board⁸ already advocates the full reciprocation of CCB rates between Member States.
- (9) To ensure the effectiveness and consistency of national macroprudential measures, it is important to complement the mandatory recognition required under Union law with voluntary reciprocity, thereby also bringing branches of foreign financial service providers and foreign financial service providers providing cross-border financial services directly within the scope of national macroprudential measures. The ultimate objective is for the same set of macroprudential requirements to apply to the same type of risk exposure in a given Member State, irrespective of the legal status and location of the financial service provider. Hence exposure-based macroprudential measures, in particular those which target a specific risk exposure, should be reciprocated.
- (10) This Recommendation provides guidance to the relevant authorities with regard to adopting reciprocating measures in response to other relevant authorities' macroprudential policy measures. The listed macroprudential policy measures activated in one Member State should be reciprocated

⁵ 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)

⁶ Recommendation of the European Systemic Risk Board of 4 April 2013 on intermediate objectives and instruments of macro-prudential policy (ESRB/2013/1) (OJ C 170, 15.6.2013, p. 1).

⁷ Although ESRB recommendations are not legally binding, they are coupled with an 'act or explain' mechanism.

⁸ Recommendation of the European Systemic Risk Board of 18 June 2014 on guidance for setting countercyclical buffer rates (ESRB/2014/1) (OJ C 293, 2.9.2014, p. 1).

in all other Member States. Macroprudential policy measures will be listed in this Recommendation if the relevant activating authority requests reciprocity and if the ESRB regards the request for reciprocity as being justified. In order to ensure the efficiency of the voluntary reciprocity arrangement it is important that the ESRB is notified of such measures in a timely manner and in sufficient detail, using a standardised template.

- (11) In order to ensure the effectiveness of the voluntary reciprocity arrangement the relevant authorities will be expected to adopt reciprocating measures within a reasonable time frame. Longer time frames will be recommended for measures that are not available in all jurisdictions.
- (12) This Recommendation is intended to cover all macroprudential measures, irrespective of which part of the financial system they address. Based on the ESRB's mandate in Regulation (EU) No 1092/2010, the scope of this Recommendation goes beyond the application of macroprudential instruments provided for in Directive 2013/36/EU and Regulation (EU) No 575/2013. Hence, this Recommendation is intended to also cover measures that have not been harmonised under Union law. The scope of this Recommendation is subject to the respective jurisdiction of the relevant authorities and applies to macroprudential policy measures that the relevant authorities are mandated to adopt or activate.
- (13) National competent authorities, designated authorities as well as macroprudential authorities and the European Central Bank (ECB) (for Member States participating in the Single Supervisory Mechanism (SSM)) are considered relevant authorities, in particular if they are mandated to adopt or activate macroprudential policy measures. Moreover, Council Regulation (EU) No 1024/2013⁹ and Regulation (EU) No 468/2014 of the European Central Bank¹⁰ assign specific supervisory tasks to the ECB. The ECB may apply higher requirements for capital buffers or more stringent measures than those applied by the national designated authorities. For this exclusive purpose, the ECB is considered, as appropriate, the competent and designated authority and has all the powers and obligations, which competent authorities and designated authorities have under the relevant Union law.
- (14) New macroprudential policy measures taken by the Member States participating in the Single Supervisory Mechanism (SSM) must go through the relevant SSM coordination procedures. The reciprocity arrangement, as defined by this Recommendation, is without prejudice to these internal SSM coordination procedures, and the ESRB's reciprocity assessment will only start once the internal SSM coordination procedures have been concluded.
- (15) Authorities may exempt financial service providers with non-material exposure to the identified macroprudential risk in the activating country (*de minimis* principle). This is a national discretion that authorities may also choose not to apply if reciprocity is considered a matter of principle.

⁹ 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).

¹⁰ Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.5.2014, p. 1).

- (16) To ensure the transparency and accountability of macroprudential policy measures, as well as their effective implementation, the relevant authorities should establish a communication strategy regarding reciprocation requests and any reciprocating measures, as part of their general communication strategy regarding macroprudential policy measures. With regard to reciprocation requests it is of particular importance that all authorities concerned are provided with any information that is relevant and necessary for their respective decision-making processes in a timely manner. Moreover, it is equally important that stakeholders (including, but not limited to, the direct addressees of macroprudential measures) are fully informed of any macroprudential measure that is relevant for them in a timely manner.
- (17) The process recommended by this Recommendation and Decision ESRB/2015/4¹¹ is designed to be as efficient and effective as possible in order to achieve voluntary reciprocation. In the context of the forthcoming review of the Union's macroprudential policy framework and in line with possible amendments to the existing toolset, the European Commission should, however, consider whether and in what manner the voluntary reciprocity arrangement as set out in this Recommendation could best be anchored in Union law to foster the effectiveness of national macroprudential policies. Ideally, the European Commission's proposal should be based on the voluntary reciprocity arrangement as elaborated in this Recommendation and on Chapter 11 of the ESRB Handbook on Operationalising Macroprudential Policy in the Banking Sector (ESRB Handbook)¹².
- (18) ESRB recommendations are published after informing the Council of the General Board's intention to do so and providing the Council with an opportunity to react,

11 The English version is available on the ESRB's website at www.esrb.europa.eu.

12 Published on the ESRB's website at www.esrb.europa.eu.

HAS ADOPTED THIS RECOMMENDATION:

SECTION 1 RECOMMENDATIONS

Recommendation A – Assessment of cross-border effects of relevant authorities’ own macroprudential policy measures

1. The relevant activating authorities are recommended to assess, prior to their adoption, the cross-border effects of the implementation of their own macroprudential policy measures. At the very least, the spillover channels operating via risk adjustment and regulatory arbitrage should be assessed, using the methodology set out in Chapter 11 of the ESRB Handbook on Operationalising Macroprudential Policy in the Banking Sector¹³.
2. The relevant activating authorities are recommended to assess the possible:
 - (a) cross-border effects (leakages and regulatory arbitrage) of the implementation of macroprudential measures in their jurisdiction; and
 - (b) cross-border effects on other Member States and on the Single Market of any proposed macroprudential measures.
3. The relevant activating authorities are recommended to monitor at least once a year the materialisation and evolution of the cross-border effects of the macroprudential measures they have introduced.

Recommendation B – Notification and reciprocity request with regard to relevant authorities’ own macroprudential measures

1. The relevant activating authorities are recommended to notify the ESRB of macroprudential policy measures as soon as they are adopted, and no later than two weeks after their adoption. Notifications should include an assessment of cross-border effects and of the necessity for reciprocity by other relevant authorities. The relevant activating authorities are requested to provide the information in English using the templates published on the ESRB’s website.
2. If reciprocity by other Member States is deemed necessary to ensure the effective functioning of the relevant measures, the relevant activating authorities are recommended to submit a request for reciprocity to the ESRB, together with the notification of the measure.
3. If macroprudential measures were activated prior to the adoption of this Recommendation, or if reciprocity was not considered necessary when the measures were first introduced, but the relevant activating authority has subsequently decided that such reciprocity has become necessary, the relevant activating authorities are recommended to submit a request for reciprocity to the ESRB.

¹³ Available on the ESRB’s website at www.esrb.europa.eu.

Recommendation C – Reciprocation of other relevant authorities' macroprudential policy measures

1. The relevant authorities are recommended to reciprocate the macroprudential policy measures adopted by other relevant authorities and recommended for reciprocation by the ESRB.
2. The relevant authorities are recommended to reciprocate the macroprudential policy measures listed in this Recommendation by implementing the same macroprudential policy measure as the one that has been implemented by the activating authority. If the same macroprudential policy measure is not available in national legislation, the relevant authorities are recommended to reciprocate, following consultation with the ESRB, by adopting a macroprudential policy measure available in its jurisdiction that has the most equivalent effect to the activated macroprudential policy measure.
3. Unless a specific deadline is recommended in relation to the reciprocation of a macroprudential policy measure, the relevant authorities are recommended to adopt reciprocating macroprudential policy measures no later than three months, following the publication of the latest amendment of this Recommendation in the Official Journal of the European Union. The adopted and reciprocating measures should have the same activation date insofar as possible.

Recommendation D – Notification of the reciprocation of other relevant authorities' macroprudential policy measures

The relevant authorities are recommended to notify the ESRB of their reciprocation of other relevant authorities' macroprudential policy measures. Notifications should be sent no later than one month after the reciprocating measure has been adopted. The notifying authorities are requested to provide the information in English, using the template published on the ESRB's website.

SECTION 2

IMPLEMENTATION

1. Interpretation

For the purposes of this Recommendation, the following definitions apply:

- (a) 'activation' means the application of a macroprudential policy measure at national level;
- (b) 'adoption' means a decision taken by a relevant authority regarding the introduction, reciprocation or amendment of a macroprudential policy measure;
- (c) 'financial service' means any service of a banking, credit, insurance, personal pension, investment or payment nature;
- (d) 'macroprudential policy measure' means any measure that addresses the prevention and mitigation of systemic risk as defined in Article 2(c) of Regulation (EU) No 1092/2010 and is adopted or activated by a relevant authority subject to Union or national law;

- (e) 'notification' means a written notice in English to the ESRB from the relevant authorities, including the ECB pursuant to Article 9 of Regulation (EU) No 1024/2013, regarding a macroprudential policy measure in accordance with, but not limited to, Article 133 of Directive 2013/36/EU and Article 458 of Regulation (EU) No 575/2013, and which may be a reciprocation request from a Member State in accordance with, but not limited to, Article 134(4) of Directive 2013/36/EU and Article 458(8) of Regulation (EU) No 575/2013;
- (f) 'reciprocity' means an arrangement, whereby the relevant authority in one jurisdiction applies the same, or equivalent, macroprudential measure, as is set by the activating relevant authority in another jurisdiction, to any financial institutions under its jurisdiction, when they are exposed to the same risk in the latter jurisdiction;
- (g) 'relevant activating authority' means a relevant authority that is in charge of applying a macroprudential policy measure at national level;
- (h) 'relevant authority' means an authority entrusted with the adoption and/or activation of macroprudential policy measures, including but not limited to:
 - (i) a designated authority in accordance with Chapter 4 of Directive 2013/36/EU and Article 458 of Regulation (EU) No 575/2013, a competent authority as defined in Article 4(1)(40) of Regulation (EU) No 575/2013, the ECB in accordance with Article 9(1) of Regulation (EU) No 1024/2013; or
 - (ii) a macroprudential authority with the objectives, arrangements, powers, accountability requirements and other characteristics set out in Recommendation ESRB/2011/3 of the European Systemic Risk Board¹⁴.

2. Exemptions

1. The relevant authorities may exempt financial service providers under its jurisdiction from applying a particular reciprocating macroprudential policy measure, if these financial service providers have non-material exposures to the identified macroprudential risk in the jurisdiction, where the relevant activating authority is applying the macroprudential policy measure in question (*de minimis* principle). Similar to the practice adopted for the CCB in Article 130 of Directive 2013/36/EU, authorities may choose to exempt financial service providers with exposures below a set threshold from reciprocating this macroprudential policy measure. The relevant authorities are requested to report to the ESRB on such exemptions, using the template for notifying reciprocating measures published on the ESRB's website. When applying a *de minimis* principle, authorities need to monitor closely whether leakages and regulatory arbitrage materialise and close the regulatory loophole if needed.
2. If the relevant authorities have already reciprocated and disclosed the measure before the reciprocation of that measure is recommended for reciprocation in this Recommendation, the

¹⁴ Recommendation of the European Systemic Risk Board of 22 December 2011 on the macro-prudential mandate of national authorities (ESRB/2011/3) (OJ C 41, 14.2.2011, p. 1).

reciprocating measure does not need to be amended even if it differs from the one implemented by the activating authority.

3. Timeline and reporting

1. The relevant authorities are requested to report to the ESRB and the Council on the actions they take in response to this Recommendation, or adequately justify any inaction. Reports shall be sent every two years, with the first report due by 30 June 2017. The reports should contain as a minimum:
 - (a) information on the substance and timing of the actions taken;
 - (b) an assessment of the functioning of the actions taken, from the perspective of the objectives of this Recommendation;
 - (c) detailed justification on any exemptions granted pursuant to the *de minimis* principle, together with any inaction or departure from this Recommendation, including any delays.
2. In the event of shared responsibilities, relevant authorities should coordinate with each other in order to provide the necessary information on time.
3. The relevant authorities are encouraged to inform the ESRB at the earliest opportunity of any proposed macroprudential measures.
4. A reciprocating macroprudential policy measure is deemed to be equivalent if it has, insofar as possible:
 - (a) the same economic impact;
 - (b) the same scope of application; and
 - (c) the same consequences (sanctions) for non-compliance.

4. Amendments to the Recommendation

The General Board will decide when this Recommendation needs to be amended. Such amendments include in particular any additional or modified macroprudential policy measures to be reciprocated as set out in Recommendation C and the related annexes containing measure-specific information. The General Board may also extend the deadlines set forth in the previous paragraphs where legislative initiatives are necessary to comply with one or more recommendations. In particular, the General Board may decide to amend this Recommendation following the European Commission's review of the mandatory recognition framework under Union law or on the basis of experience gained with the operation of the voluntary reciprocity arrangement established by this Recommendation.

5. Monitoring and assessment

1. The ESRB Secretariat:
 - (a) assists the relevant authorities by facilitating coordinated reporting, providing relevant templates and detailing where necessary the procedure and the timeline for compliance;

- (b) verifies compliance by the relevant authorities, including by assisting them at their request, and submits compliance reports to the General Board.
- 2. The General Board assesses the actions and the justifications reported by the relevant authorities and, where appropriate, decides whether this Recommendation has not been followed and whether the relevant authorities have failed to adequately justify their inaction.

Done at Frankfurt am Main, 15 December 2015.

The Chair of the ESRB

Mario Draghi