

## ESRB review – AMIC position

### ***Introduction***

The European Commission's proposal to review the European Systemic Risk Board (ESRB) comes at an important time in the evolution of macro-prudential policy in Europe.

On 14 February 2018, the European Systemic Risk Board (ESRB) published a Recommendation on liquidity and leverage risks in investment funds (ESRB/2017/6), that it had adopted on 7 December 2017. The Recommendation contains five policy recommendations addressing liquidity management tools, liquidity mismatches, stress testing, UCITS reporting and leverage limits, directed at either the European Commission to change UCITS Directive and AIFMD legislation or to ESMA to create guidelines for firms and/or to national competent authorities (NCAs).

This ESRB's report took the European fund industry by surprise. In terms of process, while the EU fund industry is used to public consultations by the European Supervisory Authorities (ESAs), and by ESMA in particular, there was no consultation by the ESRB.

In terms of content, considering the granularity of the proposed recommendations as developed in the Annexes, this first ad hoc public document from the ESRB targeting specifically EU investment funds also raises a question: to what extent, on the ground of macro-economic risk, can macro-prudential supervisors enter the field of micro-economic regulation of financial market players and the scope of action of European and national securities regulators.

It is important to remember that currently the voting membership of the ESRB General Board is composed primarily of national central banks, while the official regulators and supervisors for fund managers and investment funds are national securities regulators.

The European institutions are currently debating the official review of ESAs and the improvement of their governance, which includes a review of the ESRB. In this regard, the lack of public consultation, the intrusion by macro-risk supervisors into the field of micro-regulation, and the unbalanced composition of the board of the macro-prudential supervisor should justify that the ESAs review includes an improvement of the functioning and composition of the ESRB.

In 2016 AMIC stressed such concerns in its [official response to the European Commission's consultation on the EU macro-prudential framework](#). Two years later, this Recommendation of the ESRB now illustrates in practice the risk of unintended consequences due to the current functioning and composition of the ESRB.

In this paper we lay out two targeted changes to the proposal to review the ESRB Regulation in order to balance the composition of the ESRB to ensure greater representation from securities markets and to ensure consultation with industry takes place where legislative change is recommended.

***Voting members of the general board***

In the current governance of the ESRB half of the ESRB Steering Committee members are representing the ECB and national central banks and among the 38 voting members of the ESRB General Board, 30 members are representatives of the ECB and national central banks.

The governance structure of the ESRB gives very little prominence to securities regulators and ESMA – indeed, apart from the Chairperson of ESMA, they have no voting rights on the General Board of the ESRB. It is disappointing that the ESRB review does not address this unbalanced structure, especially in the light of increasing attention to securities markets aspects of systemic risk by the ESRB.

Therefore, we recommend that the national supervisory authorities that currently attend board meetings without voting rights be given voting rights. This could be achieved as we have laid out below.

Text proposed by the Commission	Suggested amendment
<p>(3) Article 6 is amended as follows:</p> <p>(a) paragraph 1 is amended as follows: (i) the following points (fa) and (fb) are inserted: “(fa) the Chair of the Supervisory Board of the ECB; (fb) the Chair of the Single Resolution Board;”; (ii) point (g) is replaced by the following: “(g) the Chair of the Advisory Scientific Committee;”;</p> <p>(b) paragraph 2 is amended as follows: (i) point (a) is replaced by the following: “(a) one high-level representative per Member State either of the national competent authorities or of the national authorities designated for the application of measures aimed at addressing systemic or macro-prudential risk, in accordance with paragraph 3;”;</p> <p>(c) paragraph 3 is replaced by the following: “3. With regard to the representation of the national authorities referred to under paragraph 2(a), the respective high-level representatives shall rotate depending on the item discussed, unless the national authorities of a particular Member State have agreed on a common representative.”;</p>	<p>(3) Article 6 is amended as follows:</p> <p>(a) paragraph 1 is amended as follows: <b>(i) the following point (ba) is inserted: “(ba) one high-level representative per Member State either of the national competent authorities or of the national authorities designated for the application of measures aimed at addressing systemic or macro-prudential risk, in accordance with paragraph 3”;</b> (ii) the following points (fa) and (fb) are inserted: “(fa) the Chair of the Supervisory Board of the ECB; (fb) the Chair of the Single Resolution Board;”; (ii) point (g) is replaced by the following: “(g) the Chair of the Advisory Scientific Committee;”;</p> <p><del>(b) paragraph 2 is amended as follows: (i) point (a) is replaced by the following: “(a) one high-level representative per Member State either of the national competent authorities or of the national authorities designated for the application of measures aimed at addressing systemic or macro-prudential risk, in accordance with paragraph 3;”;</del></p> <p><b>(b) paragraph 2 point (a) is deleted</b></p> <p>(c) paragraph 3 is replaced by the following:</p>

	<p>“3. With regard to the representation of the national authorities referred to under paragraph 2(a), the respective high-level representatives shall rotate depending on the item discussed, unless the national authorities of a particular Member State have agreed on a common representative.”;</p>
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**Public consultations and cost/benefit analysis**

The proposed suggestions of the recently released Recommendation on investment funds are potentially unnecessarily disruptive, as they propose significant changes to EU legislation for the fund sector which has not previously been subject to ESRB recommendations.

In particular, we believe that the lack of public consultation with industry is regrettable, particularly as we note that the ESRB Regulation states in Article 14 that “[...] the ESRB shall, where appropriate, seek the views of relevant private sector stakeholders”. There was also no cost/benefit analysis to justify the substantial action proposed.

Therefore, we believe that Article 14 should be amended to make public consultation and cost/benefit analysis a more formal, and mandatory, part of the ESRB’s working when issuing recommendations that contain legislative initiatives.

Text proposed by the Commission	Suggested amendment
	<p><b>(7a) Article 14 is replaced by the following:</b></p> <p><b>“(1) In performing the tasks set out in Article 3(2), the ESRB shall, where appropriate, seek the views of relevant private sector stakeholders.</b></p> <p><b>(2) In particular, before performing tasks set out in Article 3(2)(d) and where the remedial actions include legislative initiatives, the ESRB shall systematically conduct public consultations prior to the issuance of its recommendations .”</b></p>

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