

Recommendation of the European Systemic Risk Board of 15 December 2020 amending Recommendation ESRB/2020/7 on restriction of distributions during the COVID-19 pandemic

(ESRB/2020/15)

The aim of European Systemic Risk Board (ESRB) Recommendation 2020/15 is to have sufficient levels of capital and loss-absorbing capacity remaining in the financial institutions to mitigate the effects of the pandemic-induced crisis and thereby contribute to a smoother recovery for the pan-European economy as a whole. Accordingly, supervised institutions are requested to refrain **until 30 September 2021** from undertaking certain actions that might reduce the quantity or quality of own funds, unless they apply extreme caution and the resulting reduction does not exceed the conservative threshold set by their competent authority.

The Recommendation, published in the Official Journal of the European Union on 25 January 2021, was adopted by the ESRB pursuant to Article 16 of Regulation (EU) No 1092/2010 and is addressed to the competent authorities for the prudential supervision of credit institutions, investment firms and insurance and reinsurance undertakings, in addition to the authorities entrusted with the adoption and/or activation of macroprudential policy measures.

The Banco de España, as the competent authority for the supervision of less significant institutions in Spain and a designated authority (pursuant to Directive 2013/36/EU, Regulation (EU) No 575/2013 and Regulation (EU) No 1024/2013), adopted this Recommendation by means of an Executive Committee resolution on 22 January 2021, in coordination with the extension of Recommendation 2020/62 of the European Central Bank (ECB) on dividend distributions during the COVID-19 pandemic (and repealing Recommendation ECB/2020/35) to less significant institutions.

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(Resolutions, recommendations and opinions)

RECOMMENDATIONS

EUROPEAN SYSTEMIC RISK BOARD

RECOMMENDATION OF THE EUROPEAN SYSTEMIC RISK BOARD

of 15 December 2020

amending Recommendation ESRB/2020/7 on restriction of distributions during the COVID-19 pandemic

(ESRB/2020/15)

(2021/C 27/01)

THE GENERAL BOARD OF THE EUROPEAN SYSTEMIC RISK BOARD,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macroprudential oversight of the financial system and establishing a European Systemic Risk Board ⁽¹⁾, and in particular Article 3(2)(b), (d) and (f) and Articles 16 to 18 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 Board ⁽²⁾, and in particular Article 15(3)(e) and Articles 18 to 20 thereof,

Whereas:

- (1) At the onset of the COVID-19 pandemic the European Systemic Risk Board (ESRB) acknowledged the need for financial institutions to maintain a robust level of own funds to mitigate systemic risk and contribute to economic recovery. To that end, the ESRB issued Recommendation ESRB/2020/7 on restriction of distributions during the COVID-19 pandemic ⁽³⁾, which aimed to ensure that all financial institutions that may pose a risk to financial stability maintain high levels of capital by asking relevant authorities to request financial institutions to refrain from making distributions for the duration of the COVID-19 pandemic and at least until 1 January 2021.
- (2) The COVID-19 crisis is still ongoing in Europe and globally, and uncertainty remains about the future impact on the economy and financial institutions, with a risk of further worsening of health and economic conditions. Markets and authorities lack information on the long-term impact of the crisis on the financial sector and credit markets. Financial institutions also remain strongly dependent on public policy support. Ensuring the continuous proper functioning of the financial system is key. An exceptional extension of pay-out restrictions to account for uncertainty about future macroeconomic development serves this objective by allowing financial institutions to maintain a sufficiently high level of capital to mitigate systemic risk and contribute to economic recovery. At the same time, the ESRB recognises the progress made by authorities and financial institutions in dealing with the effects of the pandemic. The ESRB is also aware of the importance of distributions in enabling financial institutions

⁽¹⁾ OJ L 331, 15.12.2010, p. 1.

⁽²⁾ OJ C 58, 24.2.2011, p. 4.

⁽³⁾ Recommendation ESRB/2020/7 of the European Systemic Risk Board of 27 May 2020 on restriction of distributions during the COVID-19 pandemic (OJ C 212, 26.6.2020, p. 1).

to raise capital externally, as rewarding investors for their investment is critical for the long-term sustainability of financial institutions and markets. Nevertheless, the ESRB calls for extreme caution as regards distributions so that they do not put the stability of the financial system and the recovery process at risk, and considers that any level of distribution should be significantly lower than in the recent years prior to the COVID-19 crisis.

- (3) Recommendation ESRB/2020/7 also covers central counterparties (CCPs) given their systemically important role in clearing financial market transactions. The intended outcome was to prevent shareholders and senior staff from drawing on the CCPs' surplus capital through distributions at a time when operational risk – which CCPs cover with their own resources rather than contributions from clearing members – is at its most severe, also taking into account the restrictions on staff presence in the CCPs' offices. However, the stress test exercise regarding CCPs in the Union conducted by the European Securities and Markets Authority following the outbreak of the COVID-19 pandemic confirmed the overall operational resilience of Union CCPs to common shocks and multiple defaults for credit, liquidity and concentration stress risks⁽⁴⁾. In addition, to date there has been no evidence of system or process failures. The effectiveness of the measures deployed by CCPs to mitigate operational risk suggests that it is no longer necessary to include CCPs within the scope of Recommendation ESRB/2020/7.
- (4) The measures covered by Recommendation ESRB/2020/7 are of a temporary nature and the ESRB will continue to monitor their implications for financial institutions and their ability to contribute to economic recovery. When deciding if and when this Recommendation needs to be amended, the ESRB should take into account, inter alia, macroeconomic developments and new data on the stability of the financial system.
- (5) Section 2, Point 5 of Recommendation ESRB/2020/7 provides that the General Board may decide if and when Recommendation ESRB/2020/7 needs to be amended. Such amendments could consist, in particular, in extending the period during which Recommendation A applies.
- (6) Therefore, Recommendation ESRB/2020/7 should be amended accordingly,

HAS ADOPTED THIS RECOMMENDATION:

AMENDMENTS

Recommendation ESRB/2020/7 is amended as follows:

1. in Section 1, Recommendation A is replaced by the following:

Recommendation A – Restriction of distributions

It is recommended that relevant authorities request financial institutions under their supervisory remit (*) to refrain until 30 September 2021 from undertaking any of the following actions:

- (a) make a dividend distribution or give an irrevocable commitment to make a dividend distribution;
- (b) buy-back ordinary shares;
- (c) create an obligation to pay variable remuneration to a material risk taker,

which has the effect of reducing the quantity or quality of own funds, unless the financial institutions apply extreme caution in carrying out any of those actions and the resulting reduction does not exceed the conservative threshold set by their competent authority. Competent authorities are recommended to engage in discussions with financial institutions prior to financial institutions taking either of the actions referred to in points (a) or (b).

(⁴) See ESMA's press release: 'ESMA's Third EU-Wide CCP Stress Test Finds System Resilient to Shocks', available at: <https://www.esma.europa.eu/press-news/esma-news/esma%E2%80%99s-third-eu-wide-ccp-stress-test-finds-system-resilient-shocks>.

This Recommendation applies at the EU group level (or at the individual level where the financial institution is not part of an EU group), and, where appropriate, at the sub-consolidated or individual level.

(*) This does not include branches of financial institutions.’;

2. Section 2(1)(1) is amended as follows:

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

‘(b) “competent authority” means the competent or supervisory authority as defined in point (40) of Article 4(1) of Regulation (EU) No 575/2013 or in Article 13(10) of Directive 2009/138/EC of the European Parliament and of the Council (*), as applicable;

(*) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1);

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

‘(c) “financial institution” means any of the following undertakings that have their head office or registered office in the Union:

(i) an institution as defined in point (3) of Article 4(1) of Regulation (EU) No 575/2013;

(ii) an insurance undertaking as defined in of Article 13(1) of Directive 2009/138/EC;

(iii) a reinsurance undertaking as defined in Article 13(4) of Directive 2009/138/EC;’;

(c) point (d) is replaced by the following:

‘(d) “material risk taker” means a member of a category of staff whose professional activities have a material impact on the financial institution’s risk profile, including a member of a category of staff referred to in Article 92(2) of Directive 2013/36/EU or point (c) of Article 275(1) of Commission Delegated Regulation (EU) 2015/35 (*), as applicable;

(*) Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.1.2015, p. 1).’;

3. In Section 2(3), the following paragraph is inserted:

‘1a. In calibrating the conservative threshold, competent authorities should pay due regard to:

(a) the objectives of this Recommendation, in particular the need for financial institutions to maintain a sufficiently high level of capital - including taking into account their capital trajectory - in order to mitigate systemic risk and to contribute to economic recovery, taking into account the risks of a deterioration of the solvency position of corporations and households in view of the pandemic;

(b) the need to ensure that the overall level of distributions of financial institutions under their supervisory remit is significantly lower than in the recent years prior to the COVID-19 crisis;

(c) the specificities of each sector within their remit.’

4. Section 2(4) is replaced by the following:

‘4. **Timeline for the follow-up**

In accordance with Article 17(1) of Regulation (EU) No 1092/2010 addressees must communicate to the European Parliament, the Council, the Commission and to the ESRB the actions undertaken in response to this Recommendation or substantiate any inaction. Each addressee is requested to deliver a report on the implementation of Recommendation A by 15 October 2021.’;

5. Section 2(5) is replaced by the following:

'5. Amendments to this Recommendation

Prior to 30 September 2021, the General Board will decide if and when this Recommendation needs to be amended, taking into account, inter alia, macroeconomic developments and new data on the stability of the financial system.;

6. In Section 2(6) on 'Monitoring and assessment', the following paragraph is added:

'3. The ESRB Secretariat will assist the addressees by ensuring the coordination of reporting and the provision of relevant templates, and detailing, where necessary, the procedure and the timeline for the follow-up.;

7. The Annex entitled 'Communication of the actions undertaken in response to this Recommendation' is deleted.

Done at Frankfurt am Main, 15 December 2020.

*The Head of the ESRB Secretariat,
on behalf of the General Board of the ESRB*
Francesco MAZZAFERRO
