



EUROPEAN CENTRAL BANK  
EUROSYSTEM

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ECB-PUBLIC

**OPINION OF THE EUROPEAN CENTRAL BANK**  
**of 28 February 2019**  
**on the establishment of a macroprudential board**  
**(CON/2019/10)**

**Introduction and legal basis**

On 18 February 2019 the European Central Bank (ECB) received a request from the Banco de España, on behalf of the State Secretary for Economic Affairs and Support for Business, for an opinion on a draft royal decree on the creation of a macroprudential authority financial stability board, and on the development and notification of the macroprudential tools which may be adopted by the Banco de España, the National Securities Market Commission and the Directorate General for Insurance and Pension Funds (hereinafter the 'draft royal decree').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and the third and sixth indents of Article 2(1) of Council Decision 98/415/EC<sup>1</sup>, as the draft royal decree relates to the Banco de España and rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

**1. Purpose of the draft decree law**

- 1.1 The draft royal decree creates *Autoridad Macroprudencial Consejo de Estabilidad Financiera* (AMCESFI, the Macroprudential Authority Financial Stability Board) and (among other things) lists the macroprudential tools that may be used by the competent macroprudential authorities.
- 1.2 The objective of AMCESFI is to contribute to the stability of the financial system as a whole through the identification, prevention and mitigation of circumstances or actions which could cause systemic risk in the financial sector. AMCESFI is to pursue this objective in cooperation with the Banco de España, the National Securities Market Commission and the Directorate General for Insurance and Pension Funds (hereinafter collectively referred to as 'the sectoral authorities'). However, each of the sectoral authorities retains its supervisory competences, including the power to adopt macroprudential tools.
- 1.3 The tasks of AMCESFI include the identification, prevention and mitigation of the circumstances or actions which may give rise to systemic risk in the financial sector. For these purposes AMCESFI is to monitor and analyse the factors that could affect systemic risk. Based on the results of this work,

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<sup>1</sup> Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

AMCESFI may issue opinions, warnings and recommendations, specifying, wherever possible, the systemic risk factor it means to address and the level of severity of that risk factor. After it receives notification from any of the sectoral authorities of their intention to activate, recalibrate or deactivate any of their macroprudential tools, AMCESFI will issue its opinion thereon. AMCESFI may direct communications to the financial system as a whole, or to a particular financial authority or a group or subgroup of financial sector participants, warning about activities or issues that could constitute systemic risk factors. AMCESFI may also recommend that the sectoral authorities take measures to prevent or mitigate systemic risk factors.

- 1.4 AMCESFI will take into account the European Union and European Economic Area objectives on financial stability and cooperate with the macroprudential authorities in other Member States and with the competent European authorities. AMCESFI will inform the Secretariat of the European Systemic Risk Board (ESRB) of any recommendations issued, and will also inform the ECB where the recommendation issued affects institutions under the ECB's direct supervision. AMCESFI may adopt recommendations of the ESRB at the national level in cases where it is the competent authority for these purposes, or provide a justification for lack of action, as applicable, under the provisions of Regulation (EU) No 1092/2010<sup>2</sup>.
- 1.5 The two main bodies of AMCESFI are the Board, which is AMCESFI's decision-making body, and the Technical Committee, which prepares the matters to be decided by the Board. The Board is composed of seven members, including the Minister for Economy and Enterprise (as Chair), the Governor of the Banco de España (as Vice-Chair), the Deputy Governor of the Banco de España, the President and Vice-President of the National Securities Market Commission, the State Secretary for Economic Affairs and Support for Business, and the Director General for Insurance and Pension Funds. The Technical Committee is composed of nine members, including the Deputy Governor of the Banco de España (as Chair), the Secretary-General of the Treasury and International Finance (as Vice-Chair), the Director General of Financial Stability, Regulation and Resolution of the Banco de España (as Secretary), the Director General of Banking Supervision of the Banco de España and five other high-level officials of the Treasury and the sectoral authorities.
- 1.6 AMCESFI will be a collegiate body, formally established within the Ministry of Economy and Enterprise. Each of the bodies that form part of AMCESFI will contribute its own members of staff and the material resources needed for the operation of AMCESFI. AMCESFI will not have a specific budget.
- 1.7 The draft royal decree also lists the macroprudential tools which may be adopted by the sectoral authorities for the purpose of preventing systemic risks and seeking a sustainable contribution from the financial system towards economic growth. These include the tools – such as capital buffer requirements, limits on sectoral concentrations, conditions on loan provisions and other transactions, higher risk weightings for real estate exposures, and any of the measures set out in

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<sup>2</sup> 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).

Article 458 of Regulation (EU) No 575/2013<sup>3</sup> – that may be adopted by the Banco de España in respect of credit institutions. The Banco de España is also explicitly designated under the draft royal decree as the competent authority for the implementation of Article 458 of Regulation (EU) No 575/2013<sup>4</sup>.

- 1.8 The draft royal decree also authorises the Banco de España to use macroprudential tools concerning capital buffer requirements in relation to exposures to specific sectors or categories, and to establish limits on sectoral concentrations and conditions on loan provisions and other transactions. Where these tools and limits are only required in relation to exposures to a specific sector or category, as envisaged by Law 10/2014 on the organisation, supervision and solvency of credit institutions<sup>5</sup>, the draft royal decree provides that the following points, amongst others, may be taken into account: (1) the quantitative importance of the different categories or sectors to which credit institutions have exposures (in order to determine the potential limits on sectoral or category concentration and the potential countercyclical buffer to be established); (2) the relevant factors for setting the limits and conditions on lending and the acquisition of fixed-income securities and derivatives by credit institutions, for transactions with agents in the private sector based in Spain, including but not limited to (i) the relationship between the volume of credit provided to borrowers and their disposable income or the guarantees provided by them; (ii) the financial burden occasioned by repayment; (iii) the duration of these agreements; (iv) the fixed, variable or mixed nature of the agreed interest rate; and (v) the currency of the credit transactions; (3) the credit dynamics in each category/ sector of credit exposure; and (4) the criteria established in this regard by European and international authorities relating to macroprudential objectives, instruments and indicators. The draft royal decree provides that the sectoral authorities, including the Banco de España, will establish internal procedures for using macroprudential tools. Any potential use, recalibration or deactivation of a macroprudential tool, including those tools applicable to credit institutions adopted by the Banco de España, must be notified to AMCESFI at least seven working days in advance of the planned date of adoption of the measures.

## 2. General observations

- 2.1 The ECB welcomes the fact that the draft royal decree establishes a national macroprudential board which ensures that all the relevant authorities and institutions involved in macroprudential policy are represented on the board, and defines the board's objectives, mission and powers in line with the guiding principles expressed in Recommendation ESRB/2011/3<sup>6</sup> and Recommendation ESRB/2013/1<sup>7</sup>.

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<sup>3</sup> 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).

<sup>4</sup> This provision is intended to confer on the Banco de España an authority that had been previously only granted on a transitional basis.

<sup>5</sup> Law 10/2014, of 16 June, on the organisation, supervision and solvency of credit institutions, BOE no. 156, 27.06.2014, p. 49412.

<sup>6</sup> 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, 14.2.2012, p.1).

<sup>7</sup> 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).

2.2 The ECB also welcomes the fact that the draft royal decree lists the macroprudential tools that the sectoral authorities, including the Banco de España, may use, and in particular gives the Banco de España the authority to use macroprudential tools concerning capital buffer requirements for exposures to specific sectors or categories, and to establish limits on sectoral concentrations and conditions on loan provisions and other transactions, as envisaged by Law 10/2014 on the organisation, supervision and solvency of credit institutions. The draft royal decree also refers to the possibility of applying a countercyclical capital buffer for exposures to a specific sector or category, which was also envisaged by Law 10/2014 on the organisation, supervision and solvency of credit institutions. The ECB has previously stated its views with respect to this specific application of the sectoral buffer in its opinion<sup>8</sup> on Royal Decree-law 22/2018 on the creation of macroprudential tools<sup>9</sup>, which amended Law 10/2014 on the organisation, supervision and solvency of credit institutions.

### 3. Role of Banco de España as macroprudential authority

- 3.1 The ECB considers that central banks should play a leading role in macroprudential oversight, given their expertise and existing responsibilities in the area of financial stability<sup>10</sup>. This is particularly so in the case of the Banco de España, which retains the powers to use macroprudential tools as provided in Law 10/2014 on the organisation, supervision and solvency of credit institutions, holds the position of Vice-Chair on the Board and of Chair on the Technical Committee, and will act as the secretariat of the Technical Committee. The ECB therefore welcomes the role envisaged for the Banco de España as set out in the draft royal decree.
- 3.2 The ECB understands that the Banco de España shall continue to be the concerned authority in Spain for the purposes of notification to the ECB by the national competent or designated authorities of requirements for capital buffers to be held by credit institutions in addition to own funds requirements and any other measures aimed at addressing systemic or macroprudential risks under Article 5 of Council Regulation (EU) No 1024/2013<sup>11</sup>.

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<sup>8</sup> See Opinion CON/2018/58. All ECB opinions are published on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

<sup>9</sup> Royal Decree-law 22/2018, of 14 December, on the establishment of macroprudential tools, BOE no. 304, 18.12.2018, p. 124062.

<sup>10</sup> This is in line with recital 24 of Regulation (EU) No 1092/2010. This is also reflected, for example, in the fact that under Article 6(1) of Regulation (EU) No 1092/2010 the members of the General Board of the ESRB with voting rights include the President and the Vice-President of the ECB and the Governors of the national central banks of the ESCB. As previously noted by the ECB, given their central role in macro-prudential policy, the General Board should include representatives from all ESCB central banks. See paragraph 2.1 of ECB Opinion CON/2015/4. Recommendation ESRB/2011/3 envisages that the national macroprudential authority can be either a single institution or a board of authorities, but also recommends to Member States to ensure that central banks play a leading role in the macroprudential policy. See ESRB Recommendation on the macro-prudential mandate of national authorities (ESRB/2011/3): Follow-up Report – Overall assessment published on the ESRB website at <https://www.esrb.europa.eu>; see also paragraph 5.2 of Opinion CON/2014/46 and paragraph 2.3 of Opinion CON/2014/21.

<sup>11</sup> See Regulation (EU) No 1024/2013 of the Council 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).

#### **4. Procedure for activation of macroprudential tools**

- 4.1 The draft royal decree provides that the sectoral authorities have an obligation to notify AMCESFI at least seven days in advance of the activation, recalibration or deactivation of macroprudential tools. This notification period may be shortened where advisable under market circumstances or where the measure must be used immediately. In view of the short time frame in which AMCESFI is to issue its opinion, the ECB understands that the issuance of such an opinion, or the lack of it, does not preclude the adoption of the macroprudential tool by the relevant sectoral authority in order to safeguard the independence of that sectoral authority's actions.
- 4.2 The draft royal decree stipulates that AMCESFI must inform the ESRB of recommendations issued by AMCESFI to the sectoral authorities. In order to ensure that AMCESFI's actions complement the ESRB's actions taken at Union level, it is suggested that the requirement to inform contained in Article 18(2) of the draft royal decree be amended to also include warnings addressed to the financial system or financial authorities, in particular if significant cross-border effects are to be expected.

#### **5. Warnings addressed to a group or sub-group of financial sector stakeholders**

The draft royal decree envisages that AMCESFI may issue warnings addressed to a group or sub-group of financial sector stakeholders about activities or issues that could constitute systemic risk factors. The issue of such warnings allows AMCESFI to directly address stakeholders from different sub-sectors within the financial sector. However, directly addressing warnings to groups of financial sector stakeholders could interfere with the macroprudential supervision conducted by the sectoral authorities. Furthermore, it is more consistent with the coordinating role of AMCESFI that those warnings are issued through the relevant sectoral authorities. It is therefore suggested that Article 12 of the draft royal decree be amended so that warnings to groups of financial sector stakeholders are channelled through the relevant sectoral authorities.

This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 28 February 2019.

[signed]

*The President of the ECB*

Mario DRAGHI