



## **Agreement**

**between**

**the European Banking Authority**

**and**

**the European Insurance and Occupational Pension Authority**

**and**

**the European Securities and Markets Authority**

**and**

**the European Systemic Risk Board**

**on**

**The establishment at the ESRB Secretariat of specific confidentiality procedures in order to safeguard information regarding individual financial institutions and information from which individual financial institutions can be identified**

THE EUROPEAN SYSTEMIC RISK BOARD,

THE EUROPEAN SUPERVISORY AUTHORITY (EUROPEAN BANKING AUTHORITY-EBA),

THE EUROPEAN SUPERVISORY AUTHORITY (EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY-EIOPA),

THE EUROPEAN SUPERVISORY AUTHORITY (EUROPEAN SECURITIES AND MARKETS AUTHORITY-ESMA),

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 Board<sup>1</sup>, and in particular Article 8(2) and (4) and Article 15 thereof,

Having regard to Council Regulation (EU) No 1096/2010 of 17 November 2010 conferring specific tasks upon the European Central Bank concerning the functioning of the European Systemic Risk Board<sup>2</sup>, and in particular Articles 5 and 6 thereof,

Whereas:

(1) Article 15 of the Regulation (EU) No 1092/2010 envisages submission of institution-specific information on an ad-hoc basis from the European Supervisory Authorities (hereinafter collectively referred to as ESAs) to the European Systemic Risk Board (hereinafter referred to as ESRB).

(2) The above mentioned requests, based on justified and proportionate terms, should stem from and be decided by the General Board of the ESRB.

(3) It is expected that the above mentioned requests will come with a clear and well-defined purpose and be limited to the issue at stake.

(4) Both the high sensitivity of that information and the negative effects that any leakage could cause explain and justify the special procedures the ESRB Secretariat is establishing for their handling in accordance with Article 8(4) of Regulation (EU) No 1092/2010.

(5) In order to fully safeguard the confidentiality of the information, officers of the relevant institutions who will be granted access to the information will be identified ex-ante, always with the explicit agreement of the ESA submitting the information.

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<sup>1</sup> OJ L 331, 15.12.2010, p. 1.

<sup>2</sup> OJ L 331, 15.12.2010, p. 162.

(6) The ESRB and the ESAs understand that the high sensitivity of the information also implies that ESAs and any other institution involved define similar procedures to those presented below, according to Article 36(2) of the respective ESAs Regulations<sup>3</sup>.

(7) Pursuant to Article 8(2) of Regulation (EU) No 1092/2010 and to Article 6(4) of Council Regulation (EU) No 1096/2010, which imply the establishment of a Chinese wall between the ESRB and the ECB, information provided will not be used for any other purpose of any kind but the delivery of the task established by the ESRB General Board,

HAVE AGREED, ON 25<sup>TH</sup> NOVEMBER 2011, ON WHAT FOLLOWS:

## **1. Scope of the Agreement**

1. This Agreement defines specific confidentiality procedures in order to safeguard information regarding individual financial institutions, provided from each ESA to the ESRB.
2. This Agreement sets out general principles and measures for exchanging, storing and accessing such information.

## **2. Definition**

1. For the purposes of this Agreement the term '*information regarding individual financial institutions*' means information on individual financial institutions and information from which individual financial institutions can be identified. Information that has already been made public by the financial institutions themselves, or by regulatory or other official bodies, is excluded from the procedures provided below.

## **3. Procedures related to gathering information regarding individual financial institutions**

1. The request to ESAs for information regarding individual financial institutions shall be based on a

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<sup>3</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12). Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48). Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

formal decision of the ESRB General Board. The decision may indicate the relevant institutions to which members of the ESRB General Board belong, that would have access to the information.

2. To implement the decision, the necessary technical details shall be specified in Terms of Reference to be agreed upon by the parties involved so as to ensure a clear understanding on the content of the information requested. The Terms of Reference shall also contain the complete set of names of officers of the relevant institutions who will have access to the information.

#### **4. Measures related to procedures to protect information under this Agreement**

The following protection measures shall be in place at the ESRB Secretariat:

##### *1. Measures applying when exchanging information*

- appropriate measures to ensure that information is protected against access by any third party during the exchange;
- appropriate measures to ensure the integrity and completeness of information sent and received;
- appropriate measures to ensure that the sender and the receiver(s) are the ones they claim to be.

##### *2. Measures applying for the storage and access*

- appropriate measure to ensure the integrity of the information (e.g. any modification must be auditable);
- appropriate measures to ensure that availability is ensured (e.g. back-up facility);
- appropriate measures to ensure that access is only made by authorised persons, to make it clear which is the period for access, and to ensure that an audit trail is kept and that confidentiality is maintained;
- a transparent authorisation process (e.g. describing who grants access to whom, when).

The protection measures shall be documented and made available to the provider of the information exchanged, upon its request.

#### **5. Procedures related to the protection of the information regarding individual financial institutions at the ESRB Secretariat**

##### *Exchange of information*

1. The ESRB Secretariat has created a separate area in the ESRB's electronic collaboration tool (DARWIN) for each information exchange, to which access shall be restricted to individual users from the ESRB Secretariat and the ESA involved. This special area (DARWIN folder) contains substructures for each institution providing the micro data, defined according to the nature of the

submitted information.

2. Any encrypted file with the information regarding individual financial institutions shall be uploaded by EBA, EIOPA or ESMA in a special area prepared by the ESRB Secretariat for this purpose, mentioned in Sub-Paragraph 1 above. Access rights to this special area shall be granted only to nominated ESRB Secretariat staff. DARWIN provides an audit trail of all access. The data stored will remain encrypted.

*Storage and access*

3. Once there, unless otherwise specified in Terms of Reference, the default procedure followed will be that the file is downloaded following strict protection measures on a secure local workstations separated from any other network and connected with each other only, to be established securely in the ESRB Secretariat. The secure local network will only be connected to the internal network briefly for the sole purpose of transferring the information.
4. Information regarding individual financial institutions shall not be incorporated into any other statistical database.
5. Decrypted copies of the file and unencrypted copies of data created during the work session will be removed from the secure local network at the end of the project. As the file originally transmitted from the ESA will be stored in DARWIN, there is no need for back-up in the secure local network.
6. Without prejudice to the procedure provide for above, if needed and agreed upon, information regarding individual financial institutions can be also shared by the ESRB and the ESA involved by having ESRB Secretariat staff temporarily allocated to the ESA. In that case, information regarding individual financial institutions would be accessible only at the premises of the ESA involved.

*Procedures to provide access*

7. Limited number of staff working on ESRB tasks shall get access, for justified business reasons, to information provided. The Head of the ESRB Secretariat is the only officer who can grant access to information regarding individual financial institutions under Paragraph 3 above. The Terms of Reference shall contain the names of staff having access and the business justification. Any uncertainties shall be jointly discussed by the Parties in an amicable spirit, with a view to ensuring full confidentiality in the fulfilment of the ESRB tasks.

8. Staff access to the data shall be bound by means of signing a special confidentiality declaration with the ESRB Secretariat requiring that the data will not be divulged and will not be used for purposes other than the one for which the ESRB General Board agreed to exchange such information.

**6. Procedures related to the analytical use of information regarding individual financial institutions**

1. The Terms of Reference following each decision of the General Board shall specify the reports to be produced based on the information regarding individual financial institutions as well as the reporting channel to be followed within the ESRB. The reports shall always respect the confidentiality agreements in place.

**7. Final provisions.**

1. The Parties are committed to ensure full confidentiality of information regarding individual financial institutions, pursuant to this Agreement. To that aim, each Party shall keep the other Parties informed about any threats to the confidentiality measures hereby established.
2. Acknowledging that serious breaches of confidentiality may result in the termination of this Agreement, the Parties to it undertake that, in case of leakages or of any other alleged breach of the confidentiality, they shall jointly assess the situation and take all the actions that are necessary to remedy and restore the mutual trust which is necessary to the transmission of the information regarding individual financial institutions.
3. This Agreement shall be subject to a joint examination by all the Parties to the Agreement in one year, in view of the feedback obtained once used in practice.

Done in four copies in the English language.

In witness thereof, the undersigned, being fully authorised thereto, have on behalf of the Parties signed the present Agreement

On behalf of the European Systemic Risk Board (ESRB),

[SIGNED]

Mario Draghi

Chair of the ESRB

On behalf of the European Banking Authority (EBA),

[SIGNED]

Andrea Enria

Chairperson of the EBA

On behalf of the European Insurance and Occupational Pensions Authority (EIOPA),

[SIGNED]

Gabriel Bernardino

Chairperson of the EIOPA

On behalf of the European Securities and Markets Authority (ESMA),

[SIGNED]

Steven Maijoor

Chairperson of the ESMA