

Wednesday 7 July 2010

2. The report and any accompanying proposals, as appropriate, shall be forwarded to the European Parliament and to the Council.

Article 67

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2011, **with the exception of Article 62 and Article 63(1) and (2), which shall apply as of the date of entry into force. The Authority shall be established on the date of application.**

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at,

For the European Parliament
The President

For the Council
The President

Macro-prudential oversight of the financial system and establishment of a European Systemic Risk Board *I**

P7_TA(2010)0271

Proposal for a regulation of the European Parliament and of the Council on Community macro prudential oversight of the financial system and establishing a European Systemic Risk Board (COM(2009)0499 – C7-0166/2009 – 2009/0140(COD))

(2011/C 351 E/37)

(Ordinary legislative procedure: first reading)

The proposal was amended on 7 July 2010 as follows ⁽¹⁾:

AMENDMENTS BY PARLIAMENT (*)

to the Commission proposal

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on *Union* macro-prudential oversight of the financial system and establishing a European Systemic Risk Board

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of European Union, and in particular Article 114 thereof,

⁽¹⁾ The matter was then referred back to committee pursuant to Rule 57(2), second subparagraph (A7-0168/2010).

(*) Political amendments: new or replacement text is marked in **bold italics** and deletions are indicated by the symbol **■**.

Wednesday 7 July 2010

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Central Bank ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

- (1) **Financial stability is a precondition for the real economy to provide jobs, credit and growth.** The financial crisis has revealed important shortcomings in financial supervision, which has failed to prevent the accumulation of excessive risks within the financial system. **The crisis has huge consequences for the tax payers, for many Union citizens who are now unemployed and for many small and medium size enterprises (SMEs). The Members States cannot afford to bail out financial institutions, in the event of a new crisis on the same scale, without breaching the rules of the Stability and Growth Pact.**
- (1a) **Long before the financial crisis, the European Parliament was already calling regularly for the reinforcement of a true level playing field for all actors at the Union level while pointing out significant failures in the Union's supervision of ever more integrated financial markets (in its resolutions of 13 April 2000 on the Commission communication on implementing the framework for financial markets: Action Plan ⁽⁴⁾, of 21 November 2002 on prudential supervision rules in the European Union ⁽⁵⁾, of 11 July 2007 on financial services policy (2005-2010) – White Paper ⁽⁶⁾, of 23 September 2008 with recommendations to the Commission on hedge funds and private equity ⁽⁷⁾, of 9 October 2008 with recommendations to the Commission on Lamfalussy follow-up: future structure of supervision ⁽⁸⁾, of 22 April 2009 on the amended proposal for a directive of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) ⁽⁹⁾ and of 23 April 2009 on the proposal for a regulation of the European Parliament and of the Council on Credit Rating Agencies ⁽¹⁰⁾).**
- (2) In November 2008, the Commission mandated a High Level Group chaired by Mr Jacques de Larosière (the 'de Larosière Group') to make recommendations on how to strengthen European supervisory arrangements with a view to better protecting its citizens and rebuilding trust in the financial system.
- (3) In its final report presented on 25 February 2009 (**the de Larosière Report**), the de Larosière Group recommended, among other things, the establishment of a **Union** level body charged with overseeing risk in the financial system as a whole.
- (4) In its Communication entitled 'Driving European Recovery' of 4 March 2009, the Commission welcomed and broadly supported the recommendations of the de Larosière Group. At its meeting of 19 and 20 March 2009, the European Council agreed on the need to improve the regulation and supervision of financial institutions within the EU and to use the report from the de Larosière Group as a basis for action.

⁽¹⁾ OJ C 270, 11.11.2009, p. 1.

⁽²⁾ Opinion of 22 January 2010 (not yet published in the Official Journal).

⁽³⁾ Position of the European Parliament of

⁽⁴⁾ OJ C 40, 7.2.2001, p. 453.

⁽⁵⁾ OJ C 25 E, 29.1.2004, p. 394.

⁽⁶⁾ OJ C 175 E, 10.7.2008, p. 392.

⁽⁷⁾ OJ C 8 E, 14.1.2010, p. 26.

⁽⁸⁾ OJ C 9 E, 15.1.2010, p. 48.

⁽⁹⁾ Texts adopted, P6_TA(2009)0251.

⁽¹⁰⁾ Texts adopted, P6_TA(2009)0279.

Wednesday 7 July 2010

- (5) In its Communication entitled 'European Financial Supervision' of 27 May 2009, the Commission set out a series of reforms to the current arrangements for safeguarding financial stability at **Union** level, notably including the creation of a European Systemic Risk Board (ESRB) responsible for macro-prudential oversight. The Council on 9 June 2009 and the European Council at its meeting of 18 and 19 June supported the view of the Commission and welcomed the Commission's intention to bring forward legislative proposals so that the new framework is in place in the course of 2010. In line with the views of the Commission, it concluded inter alia that the ECB 'should provide analytical, statistical, administrative and logistical support to the ESRB, also drawing on technical advice from national central banks and supervisors'. **The support provided by the ECB to the ESRB as well as the tasks conferred upon and assigned to the ESRB should be without prejudice to the principle of the independence of the ECB in the performance of its tasks pursuant to the Treaty on the Functioning of the European Union (TFEU).**
- (5a) *Given the integration of international financial markets, there is a need for a strong commitment on the part of the Union at the global level. The ESRB should draw expertise from a high-level scientific committee and take on all the global responsibilities required in order to ensure that the voice of the Union is heard on financial stability matters, in particular in cooperating closely with the International Monetary Fund (IMF), the Financial Services Board (FSB) and all the partners of the Group of Twenty (G-20).*
- (5b) *The ESRB should contribute, inter alia, towards implementing the recommendations of the IMF, the FSB and the Bank for International Settlements (BIS) to the G-20, in the initial consideration of their report on Guidance to Assess the Systemic Importance of Financial Institutions, Markets and Instruments published in October 2009 which states that systemic risk must be dynamic to take into account the evolution of the financial sector and of the global economy. Systemic risk may be seen as a risk of disruption to financial services that is caused by an impairment of all or parts of the financial system and has the potential to have serious negative consequences for the real economy.*
- (5c) *The report on Guidance to Assess the Systemic Importance of Financial Institutions also states that the assessment of systemic risk is likely to vary depending on the economic environment. It will also be conditioned by the financial infrastructure and crisis management arrangements, and the capacity to deal with failures when they occur. Institutions may be systemically important for local, national or international financial systems and economies. The key criteria helping to identify the systemic importance of markets and institutions are size (the volume of financial services provided by the individual component of the financial system), substitutability (the extent to which other components of the system can provide the same services in the event of a failure) and interconnectedness (linkages with other components of the system). An assessment based on those three criteria should be complemented with reference to financial vulnerabilities and the capacity of the institutional framework to deal with financial failures.*
- (5d) *The ESRB's task should be to monitor and assess systemic risk in normal times for the purpose of mitigating the exposure of the system to the risk of failure of systemic components and enhancing the financial system's resilience to shocks. In this respect, the ESRB should ensure financial stability and mitigate the negative impacts on the internal market and the real economy. In order to accomplish its objectives, the ESRB should analyse all the relevant information, in particular relevant legislation with a potential impact on financial stability, such as accounting, bankruptcy and bail-out rules.*
- (6) *A proper functioning of Union and global financial systems and the mitigation of threats thereto require enhanced consistency between macro and the micro supervision. As stated in the Turner review, 'A regulatory response to the global banking crisis', of March 2009, 'Sounder arrangements require either increased national powers, implying a less open single market, or a greater degree of European integration'. Given the role of a sound financial system in terms of its contribution to competitiveness and growth in the Union and its impact on the real economy, the Union institutions, as recommended in the de Larosière Report, have opted for a greater degree of European integration.*

Wednesday 7 July 2010

- (6a) *This newly designed system of macro supervision requires credible and high-profile leadership. Therefore, given its key role and its international and internal credibility, and in the spirit of the de Larosière Report, the President of the ECB should be the Chair of the ESRB. In addition, the accountability requirements should be increased as well as the enlargement of the composition of the ERSB bodies to encompass a wide range of experience, backgrounds and opinions.*
- (6b) *The de Larosière Report also states that macro-prudential supervision is not meaningful unless it can somehow impact on supervision at the micro-level whilst micro-prudential supervision cannot effectively safeguard financial stability without adequately taking account of macro-level developments.*
- (6c) *A European System of Financial Supervision (ESFS) should be established, gathering the actors of financial supervision both at a national and at the Union level, to act as a network. Pursuant to the principle of sincere cooperation in accordance with Article 4(3) of the Treaty on European Union, the parties to the ESFS should cooperate with trust and full mutual respect, in particular to ensure that appropriate and reliable information flows between them. At the Union level, the network should comprise the ESRB and three micro-supervisory authorities: the European Supervisory Authority (Banking), established by Regulation (EU) No .../2010, the European Supervisory Authority (Securities and Markets), established by Regulation (EU) No .../2010, and the European Supervisory Authority (Insurance and Occupational Pensions) established by Regulation (EU) No .../2010.*
- I**
- (7a) *The ESRB should comprise a General Board, a Steering Committee, a Secretariat, and an Advisory Scientific Committee.*
- (8) *The ESRB should, where appropriate, issue **and make public** warnings and recommendations of a general nature concerning the **Union** as a whole, individual Member States or groups of Member States, with a specified timeline for the relevant policy response. **Where such warnings or recommendations are addressed to individual, or a group of, Member States, it may be possible for the ESRB to propose appropriate support measures. Where appropriate, the Commission on its own initiative or at the request of the ESRB, an Authority, the European Parliament or the Council, may adopt a decision addressed to an Authority, determining the existence of an emergency situation***
- (8a) *The ESRB should decide whether a recommendation should be kept confidential or made public, bearing in mind that public disclosure can help to foster compliance with the recommendations in certain circumstances.*
- (8b) *A colour code should be elaborated by the ESRB, in order to allow interested parties better to assess the nature of the risk.*
- (9) *In order to increase their weight and legitimacy, such warnings and recommendations should be transmitted through **the European Parliament, the Council, the Commission, the addressees** and, where appropriate, the **ESAs**.*
- (10) *The ESRB should also monitor compliance with its recommendations, based on reports from addressees, in order to ensure that its warnings and recommendations are effectively followed. Addressees of recommendations should adequately **justify any failure in duly complying with the ESRB recommendations** (the 'act-or-explain mechanism'), **in particular towards the European Parliament. The ESRB should be able to have recourse to the European Parliament and to the Council in cases where it is not satisfied with the addressees' response to the recommendations.***

Wednesday 7 July 2010

I

- (12) The ESRB should report to the European Parliament and the Council at least annually, and more frequently in the event of widespread financial distress.
- (13) The ECB and the national central banks should have a leading role in macro-prudential oversight because of their expertise and existing responsibilities in the area of financial stability. The participation of micro-prudential supervisors in the work of the ESRB is essential to ensure that assessment of macro-prudential risk is based on complete and accurate information about developments in the financial system. Accordingly, the chairpersons of the European Supervisory Authorities should be members with voting rights. **In a spirit of openness, six independent persons, who should not be members of an ESA, chosen on the basis of their general competence and commitment to the Union and their diverse backgrounds in academic fields or in the private sector, in particular in SMEs, trade-unions or as providers or consumers of financial services and offering all guarantees in terms of independence and confidentiality, should be members of the General Board. One representative of the national competent authorities of every Member State should attend meetings of the General Board** without voting rights.
- (14) The participation of a Member of the Commission will help to establish a link with the macro-economic and financial surveillance of the **Union**, while the presence of the Chairman of the Economic and Financial Committee reflects the role of finance ministries in safeguarding financial stability.
- (14a) **Because banks and financial institutions from third countries that are members of the European Economic Area or the European Free Trade Association may operate within the Union, it should be possible to invite one high-level representative from each of those countries to participate in meetings of the General Board subject to authorisation from their home country.**
- (15) It is essential that the members of the ESRB perform their duties impartially and only consider the financial stability of the European Union as a whole. **Where a consensus cannot be reached**, voting on warnings and recommendations within the ESRB should not be weighted and decisions should as a rule be taken by a simple majority.
- (16) The interconnectedness of financial institutions and markets implies that the monitoring and assessment of potential systemic risks should be based on a broad set of relevant macro-economic and micro-financial data and indicators. **Those systemic risks include risks of disruption to financial services caused by a significant impairment of all or parts of the Union's financial system that have the potential to have serious negative consequences for the internal market and the real economy. Any type of financial institution and intermediary, market, infrastructure and instrument has the potential to be systemically significant.** The ESRB should therefore have access to all the information necessary to perform its duties while preserving the confidentiality of these data as required.
- (17) Market participants can provide valuable input to the understanding of the evolutions affecting the financial system. Where appropriate, the ESRB should therefore consult private sector stakeholders (financial sector representatives, consumer associations, user groups in the financial services area established by the Commission or **Union** legislation ...) and give them a fair opportunity to provide their comments. **Furthermore, given that there is no rigid definition of systemic risk and that the assessment of systemic risk may vary depending on the economic environment, the ESRB should ensure a wide range of experiences and skills among its staff and advisors.**

I

Wednesday 7 July 2010

- (19) The establishment of the ESRB should contribute directly to achieving the objectives of the Internal Market. The **Union** macro prudential oversight of the financial system is an integral part of the overall new supervisory arrangements in the **Union** as the macro-prudential aspect is closely linked to the micro-prudential supervisory tasks attributed to the European Supervisory Authorities. Only with arrangements in place that properly acknowledge the interdependence between micro- and macro-prudential risks can all stakeholders have sufficient confidence to engage in cross-border financial activities. The ESRB should monitor and assess risks to financial stability arising from developments that can impact on a sectoral level or at the level of the financial system as a whole. By addressing such risks, the ESRB should directly contribute to an integrated **Union** supervisory structure necessary to promote timely and consistent policy responses among the Member States, thus preventing diverging approaches and improving the functioning of the Internal Market.
- (20) Since an effective macro-prudential oversight of the **Union** financial system cannot be sufficiently achieved by the Member States because of the integration of the European financial markets, the **Union** may adopt measures in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives,
- (20a) ***As suggested in the de Larosière Report, a step-by-step approach is necessary and the European Parliament and the Council should conduct a full review of the ESFS, the ESRB and the ESAs by ... (*)***,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1 ■

1. A European Systemic Risk Board, hereinafter referred to as 'ESRB', is established. ***It shall have its seat in Frankfurt.***

1a. ***The ESRB shall be part of the European System of Financial Supervision (ESFS), the purpose of which is to ensure the supervision of the Union's financial system.***

1b. ***The ESFS shall comprise:***

(a) *the ESRB;*

(b) *the European Supervisory Authority (Securities and Markets) established by Regulation (EU) No .../2010 [ESMA];*

(c) *the European Supervisory Authority (Insurance and Occupational Pensions) established by Regulation (EU) No .../2010 [EIOPA];*

(d) *the European Supervisory Authority (Banking) established by Regulation (EU) No .../2010 [EBA];*

(e) *the European Supervisory Authority (Joint Committee) provided for by Article 40 of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [ESMA] and of Regulation (EU) No .../2010 [EIOPA];*

(*) *three years after the entry into force of this Regulation.*

Wednesday 7 July 2010

- (f) *the authorities in the Member States as specified in Article 1(2) of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [ESMA] and of Regulation (EU) No .../2010 [EIOPA];*
- (g) *the Commission, for the purposes of carrying out the tasks referred to in Articles 7 and 9 of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [ESMA] and of Regulation (EU) No .../2010 [EIOPA].*

The ESAs referred to in points (b), (c) and (d) shall have their headquarters in Frankfurt.

They may have representations in the most important financial centres of the European Union.

1c. Pursuant to the principle of sincere cooperation in accordance with Article 4(3) of the Treaty on European Union, the parties to the ESFS shall cooperate with trust and full mutual respect, in particular to ensure that appropriate and reliable information flows between them.

Article 2

Definitions

For the purpose of this Regulation, the following definitions shall apply:

- (a) *'financial institution' means any undertaking covered by the legislation referred to in Article 1(2) of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [ESMA] and of Regulation (EU) No .../2010 [EIOPA], and any other undertaking or entity operating in the Union, whose financial activities may pose a systemic risk even if they have no direct links with the public at large;*
- (b) *'financial system' means all financial institutions, markets, products and market infrastructures;*
- (ba) *'systemic risk' means a risk of disruption in the financial system with the potential to have serious negative consequences for the internal market and the real economy. All types of financial intermediaries, markets and infrastructure may be potentially systemically important to some degree.*

Article 3

Mission, Objectives and Tasks

1. The ESRB shall be responsible for the macro-prudential oversight of the financial system within the **Union** in order to **contribute to the prevention or mitigation of systemic risks to financial stability in the Union that arise from developments** within the financial system **and taking into account macro-economic developments**, so as to avoid **periods** of widespread financial distress, **and** contribute to a smooth functioning of the internal market and **thereby** ensure a sustainable contribution of the financial sector to economic growth.
2. For the purposes of paragraph 1, the ESRB shall carry out the following tasks:
 - (a) determine and/or collect, as appropriate, and analyse all the **relevant** information, **including legislation with a potential impact on financial stability such as accounting, reorganisation and winding-up rules**, for the **objectives** described in paragraph 1;
 - (b) identify and prioritise **systemic** risks;

Wednesday 7 July 2010

- (c) issue warnings where **such systemic** risks are deemed to be significant **and, where appropriate, make them public**;
- (d) issue recommendations for remedial action **in response to the risks identified and**, where appropriate, **make them public**;
- (da) **issue a confidential warning addressed to the Commission when the ESRB deems that an emergency situation as defined in Article 10 of Regulation (EU) No .../2010 [ESMA], of Regulation (EU) No .../2010 [EIOPA] and of Regulation (EU) No .../2010 [EBA] may arise. The ESRB shall provide with an assessment of the situation, in order for the Commission to determine the need to adopt a decision addressed to the ESAs determining the existence of an emergency situation.**
- (e) monitor the follow-up to warnings and recommendations;
- (f) cooperate closely with **all the other parties to the ESFS** and, where appropriate, provide the ESAs with the information on systemic risks required for the achievement of their tasks; **in particular the ESRB shall, in collaboration with the ESAs, develop a common set of quantitative and qualitative indicators (risk dashboard), which will serve as the basis to assign a supervisory rating to cross-border institutions that potentially could pose a systemic risk.**

Such rating will be reviewed on a regular basis, reflecting material changes of the risk profile of an institution. The supervisory rating will be a critical element for the decision to directly supervise or intervene in an ailing institution;

- (fa) **participate, where appropriate, in the Joint Committee;**
- (g) coordinate with international financial organisations, particularly the International Monetary Fund and the Financial Stability Board as well as the relevant bodies in third countries on matters related to macro-prudential oversight;
- (h) carry out other related tasks as specified in **Union** legislation.

CHAPTER II

ORGANISATION

Article 4

Structure

1. The ESRB shall have a General Board, a Steering Committee, a Secretariat **and an Advisory Scientific Committee**.
2. The General Board shall take the decisions necessary to ensure the performance of the tasks entrusted to the ESRB.
3. The Steering Committee shall assist in the decision-making process of the ESRB by **preparing** the meetings of the General Board, reviewing the documents to be discussed and monitoring the progress of the ESRB's ongoing work.

Wednesday 7 July 2010

4. The Secretariat **shall be responsible for the day-to-day business of the ESRB and all staff matters**. It shall provide **high-quality** analytical, statistical, administrative and logistical support to the ESRB under the direction of the Chair of the General Board in accordance with Council **Regulation (EU) No .../2010 [ESRB]**. **It shall also draw on technical advice from ESAs, national central banks and national supervisors.**

5. The **Advisory Scientific** Committee referred to in Article 12 shall provide advice and assistance on issues relevant to the work of the ESRB.

Article 5

Chairmanship

1. The Chair of the ESRB shall be **the President of the ECB**.

1a. The first Vice-Chair shall be elected by and from the Members of the General Council of the ECB for a term of 5 years, with regard to the need for a balanced representation of Member States, and those within and outside the euro area. He or she may be re-elected once.

1b. The second Vice-Chair shall be the Chair of the Joint Committee as appointed pursuant to Article [XX] of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [ESMA], and of Regulation (EU) No .../2010 [EIOPA].

1c. The Chair and Vice-Chairs shall present to the European Parliament, during a public hearing, how they intend to discharge their duties under this Regulation.

2. The Chair shall preside at the meetings of the General Board and the Steering Committee.

3. The **Vice-Chairs, in order of precedence**, shall preside at the General Board and/or the Steering Committee when the Chair cannot participate in a meeting.

4. If the term of office of the Members of the General Council of the ECB elected as **first** Vice-Chair ends before the completion of the 5 year term or if for any reason the **first** Vice Chair is unable to discharge their duties, a new **first** Vice-Chair shall be elected in accordance with **paragraph 1a**.

5. The Chair shall represent the ESRB externally.

Article 6

General Board

1. The following persons shall be Members of the General Board with voting rights:

(a) the President and the Vice-President of the ECB;

(b) the Governors of the national central banks;

(c) a Member of the European Commission;

(d) the Chairperson of the European Banking Authority;

Wednesday 7 July 2010

- (e) the Chairperson of the European Insurance and Occupational Pensions Authority;
 - (f) the Chairperson of the European Securities and Markets Authority;
- (fa) six independent persons appointed by the Members of the General Board with voting rights on the proposal of the Joint Committee; the nominees must not be Members of the ESAs and shall be chosen on the basis of their general competence as well as for their diverse backgrounds in academic fields or other sectors, in particular in small and medium size enterprises, trade-unions or as providers or consumers of financial services; at the time of their nomination, the Joint Committee shall indicate which persons are designated also to serve on the Steering Committee; in carrying out their responsibilities, the persons nominated shall neither seek nor take instructions from any Government, institution, body, office, entity or private person; they shall refrain from any action incompatible with their duties or the performance of their tasks.*
- 2. The following persons shall be Members of the General Board without voting rights:
 - (a) one high level representative per Member State of the competent national supervisory authorities, **in accordance with paragraph 3 of this Article**;
 - (b) the President of the Economic and Financial Committee.
 - 3. **With regard to the representation of** national supervisory authorities **█**, the respective high level representatives shall **rotate depending on the item discussed, unless the national supervisory authorities have agreed on a common representative.**
 - 4. The General Board shall establish the Rules of Procedure for the ESRB.

Article 7

Impartiality

1. When participating in the activities of the General Board and of the Steering Committee or when conducting any other activity relating to the ESRB, the Members of the ESRB shall perform their duties impartially and **solely in the interest of the European Union as a whole. They** shall neither seek nor take instructions from Member States, **Union institutions or any other public or private body.**

1a. Members of the General Board who are also members of the General Council of the ECB shall act independently when performing their duties.

2. **The Member States, the European Union institutions or any other public or private body shall not** seek to influence the members of the ESRB in the performance of their ESRB tasks.

Article 8

Professional secrecy

1. Members of the General Board of the ESRB and any other persons who work or who have worked for or in connection with the ESRB (including the relevant staff of central banks, Advisory **Scientific** Committee, ESAs and competent national supervisory authorities of the Member States), shall be required not to disclose information covered by professional secrecy, even after their duties have ceased.

Wednesday 7 July 2010

2. Information received by Members of the ESRB may only be used in the course of their duties and in performing the tasks set out in Article 3(2).

3. Without prejudice to Article 16 and the application of criminal law, any confidential information received by the persons referred to in paragraph 1 whilst performing their duties, may not be divulged to any person or authority whatsoever, except in summary or aggregate form, such that individual financial institutions cannot be identified.

4. The ESRB shall, **together** with the European Supervisory Authorities, **agree** on **and establish** specific confidentiality procedures **in order** to safeguard information **regarding** individual financial institutions, or information where individual financial institutions can be identified.

Article 9

Meetings of the General Board

1. Ordinary plenary meetings of the General Board shall be convened by the Chair of the General Board and shall occur at least four times a year. Extraordinary meetings may be convened at the initiative of the Chair of the General Board or at the request of at least one third of the Members with voting rights.

2. Each Member shall be present in person at the meetings of the General Board and may not be represented.

3. By way of derogation from paragraph 2, a Member who is prevented from attending the meetings for a prolonged period may appoint an alternate. That Member may also be replaced by a person who has been formally appointed under the rules governing the institution concerned for the substitution of representatives on a temporary basis.

- 3a. Where appropriate, high-level representatives from international institutions carrying out other related activities may be invited to attend the meetings of the General Board.**

- 3b. Where appropriate, and on an ad hoc basis, one high-level representative of a third country, in particular a member country of the European Economic Area or the European Free Trade Association, may be invited to attend meetings of the General Board, depending on the item discussed.**

4. The proceedings of the meetings shall be confidential.

Article 10

Voting modalities of the General Board

1. Each Member of the General Board with a voting right shall have one vote.

2. **Without prejudice to the voting procedures set out in Article 18(1), the** General Board shall act by a simple majority of Members present with voting rights. In the event of a tie, the Chair shall have the casting vote.

3. A quorum of two-thirds of the Members with voting rights is needed for any vote to be taken by the General Board. If the quorum is not met, the Chair may convene an extraordinary meeting at which decisions may be taken **with a quorum of one third. The rules of procedure shall set an adequate notice applicable for convening an extraordinary meeting.**

Wednesday 7 July 2010

3a. By derogation from paragraph 2, a majority of two-thirds of the votes shall be required to make a warning or recommendation public.

Article 11

Steering Committee

1. The Steering Committee shall be composed of the following:
 - (a) the Chair of the ESRB;
 - (b) the **first** Vice-Chair of the ESRB;
 - (ba) the Vice-President of the ECB;**
 - (c) **four** other members of the General Board who are also members of the General Council of the ECB, **with regard to the need for a balanced representation of Member States and those within and outside the euro area.** They shall be elected by and from **among** the Members of the General Board who are also members of the General Council of the ECB for a period of **three years**;
 - (d) a Member of the European Commission;
 - (e) the Chairperson of the European **Supervisory** Authority (**Banking**);
 - (f) the Chairperson of the European **Supervisory** Authority (**Insurance and Occupational Pensions**);
 - (g) the Chairperson of the European **Supervisory** Authority (**Securities and Markets**);

■

(ha) three of the six independent persons referred to in Article 6(1)(fa).

Any vacancy for an elected Member of the Steering Committee shall be filled by the election of a new Member by the General Board.

2. Meetings of the Steering Committee shall be convened by the Chair at least quarterly, before each meeting of the General Board. The Chair may also convene ad-hoc meetings.

Article 12

Advisory **Scientific** Committee

1. The Advisory **Scientific** Committee shall be composed of the following:
 - (a) **nine experts with acknowledged competence and guaranteed independence proposed by the Steering Committee, who shall represent a wide range of experiences and skills and who shall be approved by the General Board for a four-year, renewable mandate in carrying out their responsibilities, the persons nominated shall neither seek nor take instructions from any Government, institution, body, office, entity or private person; they shall refrain from any action incompatible with their duties or the performance of their tasks;**

■

Wednesday 7 July 2010

- (c) one representative of the European **Supervisory** Authority (**Banking**);
- (d) one representative of the European **Supervisory** Authority (**Insurance and Occupational Pensions**);
- (e) one representative of the European **Supervisory** Authority (**Securities and Markets**);
- (f) two representatives of the Commission;
- (g) one representative of the Economic and Financial Committee.

I

2. The Chair of the Advisory **Scientific** Committee shall be appointed by the General Board following a proposal from the Chair of the General Board.
3. The Committee shall perform the tasks referred to in Article 4(5) at the request of the Chair of the General Board.
4. The ESRB Secretariat shall support the work of the Advisory **Scientific** Committee and the Head of the Secretariat shall participate in the meetings.

4a. Where appropriate, the Advisory Scientific Committee shall organize consultations at an early stage with stakeholders such as market participants, consumer bodies, academic experts, in an open and transparent manner, while keeping in mind the confidentiality requirement.

4b. The Advisory Scientific Committee shall be provided with all necessary means in order to successfully complete its tasks, in particular analytical and ICT tools.

Article 13

Other sources of advice

In performing its tasks, the ESRB shall seek, where appropriate, the **views** of relevant private **or public** sector stakeholders, **particularly, but not exclusively, the members of the ESAs.**

Article 14

Access to documents

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents⁽¹⁾ shall apply to documents held by the ESRB.
2. The General Board shall adopt the practical arrangements for implementing Regulation (EC) No 1049/2001 within six months after the entry into force of this Regulation.
3. Decisions taken by the ESRB pursuant to Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the Ombudsman or of an action before the Court of Justice, under the conditions laid down in **Articles 228 and 263 TFEU** respectively.

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

Wednesday 7 July 2010

CHAPTER III

TASKS

Article 15

Collection and exchange of information

1. The ESRB shall provide the European Supervisory Authorities with the information on systemic risks necessary for the achievement of their tasks.

2. The European Supervisory Authorities, **the ESCB, the Commission, the national supervisory authorities and national statistics authorities** shall cooperate closely with the ESRB and provide all the information necessary for the fulfilment of its tasks in accordance with **European Union** legislation.

3. **Subject to Article 21(2) of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [ESMA], of Regulation (EU) No .../2010 [EIOPA]**, the ESRB may request information from the European Supervisory Authorities, **as a rule** in summary or collective form such that individual financial institutions cannot be identified. █

3a. Before requesting information in accordance with this Article, the ESRB shall first take account of the existing statistics produced, disseminated and developed by the European Statistical System and the ESCB.

3b. If the requested data are not available to those Authorities or are not made available in a timely manner, the ESRB may request the data from the ESCB, national supervisory authorities or national statistics authorities. When the data is not available at the aforementioned authorities, the ESRB may request the data from the Member State concerned.

3c. Where the ESRB requests data that is not in summary or collective form, the reasoned request shall explain why data on the respective individual financial institution is deemed to be systemically relevant, and necessary, considering the prevailing market situation.

█

5. Before each request for information which is not in summary or collective form, the ESRB shall duly consult the relevant European Supervisory Authority in order to ensure that the request is justified and proportionate. **If the relevant European Supervisory Authority does not consider the request to be justified and proportionate, it shall, without delay, send the request back to the ESRB and ask for additional justification. After the ESRB has provided the relevant European Supervisory Authority with such additional justification, the requested data shall be transmitted to the ESRB from the addressee of the request, provided that the addressee has legal access to the relevant data.**

Article 16

Warnings and recommendations

1. When significant risks to the achievement of the objective in Article 3(1) are identified, the ESRB shall provide warnings and, where appropriate, issue recommendations for remedial action, **including, where appropriate, for legislative initiatives.**

2. Warnings or recommendations issued by the ESRB in accordance with points (c) and (d) of Article 3(2) may be either of a general or specific nature and shall be addressed in particular to the **Union** as a whole or to one or more Member States, or to one or more of the European Supervisory Authorities, or to one or more national supervisory authorities. **In case a warning or a recommendation is addressed to one or more supervisory authorities, the Member State concerned shall be informed thereof.** Recommendations shall include a specified timeline for the policy response. Recommendations may also be addressed to the Commission in respect of the relevant **Union** legislation.

Wednesday 7 July 2010

3. The warnings or recommendations shall also be transmitted to the **European Parliament**, the Council, **the Commission**, **the addressees in accordance with paragraph 2**, and, where addressed to one or more national supervisory **authorities**, to the **ESAs**.

4. *In order to enhance the awareness of risks in the European economy and to prioritise such risks, the ESRB, in close cooperation with the ESFS, shall elaborate a colour-coded system corresponding to situations of different risk levels.*

Once the criteria of such classification have been elaborated, its warnings and recommendations will indicate, on a case-by-case basis, and where appropriate, to which category the risk belongs.

Article 16a

Action in emergency situations

In the case of adverse developments which may seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the European Union, the ESRB may issue an emergency warning.

The Commission on its own initiative or at the request of the ESRB, an Authority, the European Parliament or the Council, may adopt a decision addressed to an Authority, determining the existence of an emergency situation. The Commission shall review that decision at appropriate intervals and in any event once a month and shall declare the discontinuation of the emergency situation as soon as appropriate.

If the Commission determines the existence of an emergency situation, it shall duly inform the European Parliament and the Council without delay.

Article 17

Follow-up of the ESRB recommendations

1. Where a recommendation referred to in **point (d)** of Article 3(2) is addressed to one or more Member States, one or more European Supervisory Authorities, or one or more national supervisory authorities, the addressees shall communicate the actions undertaken in response to the recommendations to the ESRB or explain why they have not acted. The **European Parliament**, **the Council** and, where relevant, the European Supervisory Authorities shall be informed.

2. *Where the ESRB decides that **an addressee of one of its recommendations** has **failed to follow or has inappropriately followed that recommendation**, and that the **addressee has not justified such failure**, it shall inform **the European Parliament**, the Council, **the Commission** and, where relevant, the European Supervisory Authorities concerned.*

2a. Where the ESRB has made a decision under paragraph 2, the European Parliament may, where appropriate, invite an addressee for an exchange of views with its competent Committee. This exchange of views, in presence of the ESRB, is notably relevant when national decisions have an effect on one or multiple Member States (spill over effect).

Article 18

Public warnings and recommendations

1. The General Board of the ESRB shall decide whether a warning or a recommendation should be made public on a case- by-case basis. By derogation **from** Article 10(2), a majority of two-thirds of the votes is needed to make a warning or recommendation public. **Notwithstanding Article 10(3), a quorum of two-third shall always apply in respect of decisions taken under this paragraph.**

Wednesday 7 July 2010

2. Where the General Board of the ESRB decides to make a warning or recommendation public, it shall inform the addressee(s) in advance.

2a. The addressees of warnings and recommendations released by the ESRB should be provided with the rights of making public its views and reasoning as well in response to the warning and recommendation published by the ESRB.

3. Where the general Board of the ESRB decides not to make a warning or a recommendation public, the addressee and where appropriate, the Council and the European Supervisory Authorities, shall take all the measures necessary for the protection of their confidential nature. ▀

3a. Any data on which the General Board of the ESRB bases its analysis before issuing a warning or a recommendation shall be made public in an appropriately anonymous form. In the event of confidential warnings, information shall be made available within an appropriate period of time, to be defined in the ESRB's rules of procedure.

CHAPTER IV

FINAL PROVISIONS

Article 19

Accountability and reporting obligations

1. At least annually, **but more frequently in the event of widespread financial distress, the ESRB Chair shall be invited to an annual hearing in the European Parliament, marking the publication of the ESRB's annual report** to the European Parliament and ▀ the Council. **Those hearings shall be made in a different context from the monetary dialogue between the European Parliament and the President of the ECB.**

1a. The reports referred to in this Article shall contain the information that in accordance with Article 18, the General Board of the ESRB decides should be made public. The reports shall be made available to the public.

2. The ESRB shall also examine specific issues at the invitation of **the European Parliament**, the Council or the Commission.

2a. The European Parliament may request the President of the ESRB and the other members of the Steering Committee to attend a hearing of the competent Committees of the European Parliament.

Article 20

Review clause

The European Parliament and the Council shall, by ... (*), examine this Regulation on the basis of a report from the Commission and shall determine whether the **objectives** and organisation of the ESRB need to be reviewed after having received an opinion from the ECB.

The report shall assess, in particular, whether:

(a) it is appropriate to simplify and reinforce the architecture of the ESFS in order to increase the coherence between the macro and the micro levels as well as between the ESAs;

(b) it is appropriate to increase the regulatory powers of the ESAs;

(*) **three years after the entry into force of this Regulation.**

Wednesday 7 July 2010

(c) *the evolution of the ESFS is consistent with that of global developments in this area;*

(d) *there is sufficient diversity and excellence within the ESFS;*

(e) *accountability and transparency in relation to publication requirements are adequate.*

Article 21

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...,

For the European Parliament
The President

For the Council
The President

European Banking Authority *I**

P7_TA(2010)0272

Proposal for a regulation of the European Parliament and of the Council establishing a European Banking Authority (COM(2009)0501 – C7-0169/2009 – 2009/0142(COD))

(2011/C 351 E/38)

(Ordinary legislative procedure: first reading)

The proposal was amended on 7 July 2010 as follows ⁽¹⁾:

AMENDMENTS BY PARLIAMENT (*)

to the Commission proposal

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
establishing a European **Supervisory** Authority (**European Banking Authority**)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

⁽¹⁾ The matter was then referred back to committee pursuant to Rule 57(2), second subparagraph (A7-0166/2010).

(*) Amendments: new or replacement text is marked in **bold italics** and deletions are indicated by the symbol **■**.