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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) 500 final}
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{COM(2009) 502 final}
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EXPLANATORY MEMORANDUM

1. Context of the proposal

The current financial crisis has highlighted weaknesses in the EU's supervisory framework, which remains fragmented along national lines despite the substantial progress achieved in financial-market integration and the increased importance of cross-border entities. Against this background, President Barroso requested a group of high level experts, chaired by the former Managing Director of the International Monetary Fund (IMF), Mr. Jacques de Larosière, to make recommendations with a view to establishing a more efficient, integrated and sustainable supervisory framework.

The key recommendations of the de Larosière group focus on:

- (i) Establishing a European Systemic Risk Board (ESRB) that would be responsible for macro-prudential oversight of the financial system within the Community in order to prevent or mitigate systemic risks, to avoid episodes of widespread financial distress, contribute to a smooth functioning of the Internal Market and ensure a sustainable contribution of the financial sector to economic growth.
- (ii) Establishing a European System of Financial Supervisors (ESFS), consisting of a network of national financial supervisors working in tandem with new European Supervisory Authorities (ESAs), created by the transformation of existing European supervisory committees¹ in a European Banking Authority (EBA), a European Securities and Markets Authority (ESMA), and a European Insurance and Occupational Pensions Authority (EIOPA). The ESFS should be built on shared and mutually-reinforcing responsibilities, combining nationally-based supervision of firms with specific tasks at the European level. The ESFS would also foster harmonised rules and coherent supervisory practice and enforcement.

In March 2009, the Commission and European Council broadly endorsed the recommendations of the de Larosiere Group. On 27 May 2009, the Commission published a Communication on Financial Supervision in the EU, describing in detail how these recommendations could be put into effect, focusing in particular on the establishment of the proposed ESFS and ESRB. The Ecofin Council of 9 June 2009 adopted detailed conclusions, in which it agreed with the objectives laid down in the Commission Communication and stressed that financial stability, regulation and supervision in the EU must be enhanced in an ambitious way. The European Council of 18-19 June 2009 subsequently confirmed that the May Commission Communication and the Ecofin Council conclusions established the way forward in establishing a new framework for micro- and macro-prudential supervision. The European Council requested that the Commission should present all necessary proposals by early autumn 2009 at the latest so that the new framework would be fully in place in the course of 2010.

¹ These are the Committee of European Banking Supervisors (CEBS), the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) and the Committee of European Securities Regulators (CESR).

2. Consultation of the interested parties

The Commission conducted two open consultations on the overall package, i.e., both on the ESFS and the ESRB. A first consultation was conducted following publication of the report of the de Larosiere Group and extended from 10 March to 10 April 2009 as input to the Commission communication on Financial Supervision in Europe published on 27 May 2009. A summary of the 116 public submissions received can be found on:

http://ec.europa.eu/internal_market/consultations/docs/2009/fin_supervision/summary_en.pdf

A second consultation was conducted over the period from 27 May to 15 July 2009, whereby all financial services sector operators and their representative bodies, regulators, supervisors, other interested parties to were invited to comment on the more detailed reforms presented in the May 2009 Communication. The responses received were for the greater part supportive of the suggested reforms, with comments on detailed aspects of the proposed ESRB and ESFS. A summary of the public submissions received can be found on:

http://ec.europa.eu/internal_market/consultations/docs/2009/fin_supervision_may/replies_summary_en.pdf

3. Impact assessment

The May 2009 Communication was accompanied by an impact assessment analysing the main policy options for establishing the ESFS and ESRB. A second impact assessment has nevertheless been made in respect of the more detailed aspects of the proposal and is available on the Commission website.

4. Legal elements of the proposal

Only with arrangements in place that properly acknowledge the interdependence between micro- and macro-prudential risks can all stakeholders, e.g. financial institutions, investors and consumers, have sufficient confidence to engage in cross-border financial activities. Too often in the past, the focus of prudential supervision has been exclusively at the micro-level, with supervisors assessing the balance sheets of individual financial institutions without due consideration for interactions between institutions and between institutions and the broader financial system. Providing this broader perspective is the responsibility of macro-prudential supervisors. These supervisors shall monitor and assess potential financial-stability risks 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 would be an essential building block for an integrated EU supervisory structure necessary to promote timely and consistent policy responses among the Member States thus preventing diverging approaches and so improve the functioning of the Internal Market.

The ESRB is established on the basis of Article 95 of the EC Treaty as a body without legal personality. This legal basis allows the ESRB to have the core features outlined above and to have a mandate covering the whole financial sector without exceptions.. It allows moreover the ESRB, together with the ESFS, to form a common innovative framework for financial supervision, while maintaining a clear distinction of responsibilities between the ESRB and the other bodies.

The Regulation establishing the ESRB is completed by a Council decision which confers on the European Central Bank (ECB) the task of ensuring the Secretariat of the ESRB. Accordingly, the ECB will provide the administrative, logistical, statistical and analytical support to the ESRB. This decision will implement for the first time Article 105(6) of the Treaty, which foresees the possibility for the Council, acting unanimously on a proposal from the Commission and after consulting the ECB and receiving the assent of the European Parliament to confer upon the ECB specific tasks related to prudential supervision.

5. Budgetary implications

The budgetary cost related to the ESRB will be borne by the ECB and will not have any direct implication for the Community budget. The cost of such support will depend on the extent to which the existing staff and resources of the ECB can be used to fulfil the tasks of the Secretariat of the ESRB.

6. Detailed explanation of the proposal

A Council Regulation is required to establish the ESRB as a new European body, independent from existing structures.

6.1. Establishment of the ESRB

The ESRB is an entirely new European body with no precedent, which shall be responsible for macro-prudential oversight. The objective of the ESRB shall be threefold:

- It shall develop a European macro-prudential perspective to address the problem of fragmented individual risk analysis at national level;
- It shall enhance the effectiveness of early warning mechanisms by improving the interaction between micro-and macro-prudential analysis. The soundness of individual firms was too often supervised in isolation with little focus on the degree of interdependence within the financial system;
- It shall allow for risk assessments to be translated into action by the relevant authorities.

Given the wide scope and the sensitivity of its missions, the ESRB shall not be conceived as a body with legal personality and binding powers but rather as a body drawing its legitimacy from its reputation for independent judgements, high quality analysis and sharpness in its conclusions.

The main decision-making body of the ESRB will be the General Board.

The composition of the General Board is a key issue for the effectiveness of the ESRB. The choice is made to ensure a significant representation of central Banks. In most Member States, central banks have some degree of responsibility for macro-prudential oversight of the financial sector. Because of this responsibility and acquired expertise, central banks are well-placed to contribute to the analysis of the impact on financial stability of the inter-linkages between the financial sector and the broader macroeconomic environment.

The analytical work and logistical support to the ESRB will be provided by a Secretariat, which will be ensured by the European Central Bank. Granting the Secretariat to the ECB will allow the ESRB to exploit the ECB's in-depth macro-prudential expertise and its central role

in the EU monetary system. In cooperation with national central banks, the European Central Bank compiles and disseminates a wide range of monetary statistics and indicators regarding financial institutions. The European Central Bank and the Eurosystem monitor cyclical and structural developments in the euro area/EU banking sector as well as in other financial sectors to assess the possible vulnerabilities in the financial sector and its resilience to potential shocks.

6.2. Tasks and powers of the ESRB

The ESRB will not have any binding powers to impose measures on Member States or national authorities. It has been conceived as a "reputational" body with a high level composition that should influence the actions of policy makers and supervisors by means of its moral authority. To this end, it will not only provide high quality assessment of the macro-prudential situation but it may also issue risk warnings and recommendations which identify the potential unbalances in the financial system which are likely to increase systemic risks and the appropriate remedial actions. The ESRB will have a broad scope of activity, not limited to a specific type of entity or market. Warnings and recommendations may address any aspect of the financial system which may generate a systemic risk. It will also cooperate with the relevant international financial institutions (IMF, FSB...) and third countries bodies on issues related to macro-prudential oversight. This proposal being based on Article 95 of the Treaty, it is relevant for the European Economic Area (EEA). The modalities of cooperation between the EFTA States participating in the EEA and the ESRB will be discussed in the EEA Joint Committee.

6.2.1. Warnings and recommendations

An essential role of the ESRB is to identify risks with a systemic dimension and prevent or mitigate their impact on the financial system within the EU. To this end, the ESRB may issue risk warnings. These warnings should prompt early responses to avoid the build-up of wider problems and eventually a future crisis. If necessary, the ESRB may also recommend specific actions to address any identified risks.

ESRB recommendations will not be legally binding. However, the addressees of recommendations cannot remain passive towards a risk which has been identified and are expected to react in some way. If the addressee agrees with a recommendation, it must communicate all the actions undertaken to follow what is prescribed in the recommendation. If the addressee does not agree with a recommendation and chooses not to act, the reasons for inaction must be properly explained. Hence, recommendations issued by the ESRB cannot be simply ignored.

The ESRB shall decide on a case by case basis whether warnings and recommendations should be made public. On the one hand, the publication of a recommendation may increase the pressure for the prompt corrective actions. On the other hand, it could trigger adverse financial-market reactions. Given the sensitive judgement to be made in deciding on the publication of warnings and recommendations, such decisions should be made on a case by case basis. Moreover, it seems appropriate that warnings and recommendations should not be made public unless a qualified majority of two-thirds of the General Board decides otherwise.

The addressees of warnings and recommendations can be the Community as a whole, one or more Member States, one or more European Supervisory Authorities, and one or more national supervisory authorities. All warnings and recommendations must be transmitted to

the Council, while those related to supervisory issues should also be transmitted to the relevant ESA. The transmission to the Council and to the ESAs of warnings and recommendations is not intended as a way to water down their content, but aims on the contrary at increasing the moral pressure on the addressee to act or explain and offering the possibility to the Council to comment it.

6.2.2. Access to information

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. The ESRB should therefore have access to all the information necessary to perform its duties while preserving the confidentiality of these data. The ESRB will be able to rely on the broad set of data already collected through the Eurosystem by the ECB on Monetary and Financial Institutions. Additionally to fulfil its tasks and ensure the necessary consistency between the micro-supervisors and the ESRB, the ESRB, through its secretariat, will also be able to request the ESAs to provide information in summary or collective form. Should this information be not available (or not made available), the ESRB will have the possibility to request data directly from national supervisory authorities, national central banks (NCBs) or other authorities of Member States. The regulation furthermore creates a general obligation on the ESAs, the NCBs and the Member States to provide to the ESRB all the information needed for the fulfilment of its tasks, thus guaranteeing a wide access to the data needed for the macro-prudential analysis.

As some individual institutions can be systemic in nature (because of their size, their interconnectedness with other financial institutions or their risk profile), the ESRB – through its secretariat - shall also have access to individual data upon a reasoned request to the ESAs.

6.3. Relationship with the ESFS

The proposed framework for EU supervision can only work if the ESRB and ESFS cooperate efficiently. Indeed, the objective of the reform is to ensure a smoother interaction of supervision at the macro-prudential and micro-prudential levels. In fulfilling its role as macro-prudential supervisor, the ESRB will need a timely flow of harmonised micro-level data, while micro-prudential supervision by national authorities will benefit from the ESRB's insights into the macro-prudential environment. The Regulations also specify the procedures to be followed by the ESAs to act upon recommendations by the ESRB and how the ESAs should use their powers to ensure timely follow-up to recommendations addressed to one or more competent national supervisory authorities.

6.4. Confidentiality

The Members of the General Board of the ESRB and the staff working for the ESRB shall be subject to the obligation of professional secrecy. Any confidential information received by Members of the General Board or by the persons who work in connection with the ESRB shall not be released outside except in summary or collective form so that individual institutions cannot be identified. These confidentiality rules apply notably to the ECB staff as the ECB will provide the Secretariat to the ESRB. In this respect, information acquired by the ECB in its role of Secretariat to the ESRB, shall only be used for the fulfilment of ESRB tasks. In line with the existence practice in the EU institutions, the persons who have worked in connection with the ESRB will still be bound by the obligation of confidentiality, even after their duties have ceased.

The addressees, the Council and the ESAs shall also take the measures necessary for the protection of the confidential nature of the warnings and recommendations.

6.5. The internal organisation of the ESRB

The ESRB shall be composed of: (i) a General Board; (ii) a Steering Committee and (iii) a Secretariat.

6.5.1. *The General Board*

The General Board is the decision making body of the ESRB and as such, will be responsible for the adoption of the warnings and recommendations described in section 6.2.1 of this explanatory memorandum.

The members of the General Board with voting rights are:

- the Governors of national central banks;
- the President and the vice-President of the ECB;
- a Member of the European Commission;
- the Chairpersons of the three European Supervisory Authorities.

The members of the General Board without voting rights are:

- one high level representative per Member State of the competent national supervisory authorities;
- the President of the Economic and Financial Committee.

The representative of the national supervisory authorities may rotate depending on the matters that are being discussed (this rotation will be needed in a large number of Member States, where there are different bodies for supervising for instance the financial and the insurance sector).

The members of the Board shall act impartially. This implies that when performing activities related to the ESRB, they shall neither follow instructions nor take into account the individual interests of any Member State. Impartiality is a crucial requirement, as the interests of an individual Member State may not always coincide with the ESRB's main objective, maintaining financial stability in the European Union as a whole.

The members of the General Board with voting rights shall each have one vote. The decisions of the General Board will be adopted by simple majority, (except for the decision to make a warning or recommendation public, which requires a qualified majority of two-thirds of the votes. In line with the common practice, a quorum is needed for the votes.)

The General Board shall meet at least 4 times per year. The meetings shall be convened on the initiative of the Chair or at the request of one third of the Members with voting rights.

6.5.2. *Chairperson*

The Chair will be elected for 5 years from among the Members of the General Board of the ESRB which are also Members of the General Council of the ECB. The Chair will preside the General Board as well as the Steering Committee and instruct the Secretariat of the ESRB on behalf of the General Board. The Chair shall be able to convene extraordinary meetings of the General Board on its own initiative. As regards voting modalities within the General Board, the Chair will have a casting vote in the event of a tie. The Chair shall represent the ESRB externally.

6.5.3. *The Steering Committee*

Given the size of the General Board –which will comprise a total of 61 members-, a Steering Committee will assist the decision-making process of the General Board. The Steering Committee will prepare the meetings of the General Board, review the documents to be discussed and monitor the progress of the ESRB's on-going work.

The Steering Committee will comprise the Chair and Vice-Chair of the General Board, the Chairpersons of the three ESAs, the President of the EFC, the Member of the Commission and five members of the General Board which are also members of the General Council of the ECB (12 members).

6.5.4. *The Secretariat*

The ECB will ensure the Secretariat to the ESRB. The Secretariat will receive instructions directly from the Chair of the General Board.

The Head of the Secretariat will be appointed by the ECB, in consultation with the General Board of the ESRB. The Secretariat will provide analytical, statistical, administrative and logistical support to the ESRB, including the preparation of the meetings, the collection and processing of qualitative and quantitative information destined to the ESRB, the conduct of analysis and assessments necessary for the fulfilment of the ESRB tasks. The Secretariat will also provide support to the work of the Advisory Technical Committee (see 6.5.5.).

6.5.5 *The Advisory Technical Committee and other sources of advice*

The role of the Advisory Technical Committee (hereinafter, referred to as the "ATC") is to provide advice and assistance to the General Board on the issues that are within the scope of the ESRB, on request from the latter.

The members of the ATC are:

- one representative of each national central bank
- one representative from the ECB
- one representative of the national supervisory authority per Member State
- one representative of each European Supervisory Authority
- two representatives of the European Commission

- one representative of the EFC.

The Chair of the ATC shall be appointed by the General Board on a proposal from its Chair. The representative of the national supervisory authorities may rotate depending on the matters that are being discussed.

6.6. Reporting obligations

The ESRB shall be accountable to the European Parliament and to the Council and shall therefore report to them at least annually. The European Parliament and the Council may also require the ESRB to report more often.

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission²,

Having regard to the opinion of the European Central Bank³,

Having regard to the opinion of the European Economic and Social Committee⁴,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁵,

Whereas:

- (1) The financial crisis has revealed important shortcomings in financial supervision, which has failed to prevent the accumulation of excessive risks within the financial system and has in particular highlighted the weaknesses of the existing macro-prudential oversight.
- (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 Group recommended, among other things, the establishment of a Community level body charged with overseeing risk in the financial system as a whole.
- (4) In its Communication entitled "Driving European Recovery" of 4 March 2009⁶, 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

² OJ C , , p. .
³ Decision XXXX

⁴ OJ C , , p. .

⁵ OJ C , , p. .

⁶ COM(2009) 114.

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.

- (5) In its Communication entitled "European Financial Supervision" of 27 May 2009⁷, the Commission set out a series of reforms to the current arrangements for safeguarding financial stability at the EU 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".
- (6) The present Community arrangements place too little emphasis on macro-prudential oversight. Responsibility for macro-prudential analysis remains fragmented, and is conducted by various authorities at different levels with no mechanism to ensure that macro-prudential risks are adequately identified and that warnings and recommendations are issued clearly, followed up and translated into action.
- (7) The Community needs a specific body responsible for macro-prudential oversight across the EU financial system, which would identify risks to financial stability and, where necessary, issue risk warnings and recommendations for action to address such risks. Consequently, a European Systemic Risk Board (ESRB) should be established as a new independent body, responsible for conducting macro-prudential oversight at the European level.
- (8) The ESRB should, where appropriate, issue warnings and recommendations of a general nature concerning the Community as a whole, individual Member States or groups of Member States, with a specified timeline for the relevant policy response.
- (9) In order to increase their weight and legitimacy, such warnings and recommendations should be transmitted through the Council and, where appropriate, the European Banking Authority established by Regulation (EC) No .../... the European Parliament and of the Council⁸, the European Securities and Markets Authority established by Regulation (EC) No .../... of the European Parliament and of the Council⁹, and the European Insurance or the Occupational Pension Authority established by Regulation (EC) No .../...of the European Parliament and of the Council¹⁰.
- (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 act on them unless inaction can be adequately justified ("act or explain" mechanism).

⁷ COM(2009) 252.

⁸ OJ L , , p. .

⁹ OJ L , , p. .

¹⁰ OJ L , , p. .

- (11) 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.
- (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 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, while one national supervisor per Member State should attend as Member 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 Community, while the presence of the Chairman of the Economic and Financial Committee reflects the role of finance ministries in safeguarding financial stability.
- (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. 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. 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 Community legislation...) and give them a fair opportunity to provide their comments.
- (18) Given the integration of international financial markets at international level and the contagion risk of financial crises, the ESRB should coordinate with the International Monetary Fund and the newly established Financial Stability Board, which are expected to provide early warnings of macro-prudential risks at the global level.
- (19) The establishment of the ESRB should contribute directly to achieving the objectives of the Internal Market. The Community macro prudential oversight of the financial system is an integral part of the overall new supervisory arrangements in the Community 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 Community 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 Community financial system cannot be sufficiently achieved by the Member States because of the integration of the European financial markets, the Community 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,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1 *Establishment*

A European Systemic Risk Board, hereinafter referred to as 'ESRB', is established.

Article 2 *Definitions*

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

- (a) 'financial institution' means any undertaking whose main business is to take deposits, grant credits, provide insurance services or other financial services to its clients or members or engage in financial investment or trading activities on its own account.
- (b) 'financial system' means all financial institutions, markets and market infrastructures.

Article 3 *Mission, Objectives and Tasks*

1. The ESRB shall be responsible for the macro-prudential oversight of the financial system within the Community in order to prevent or mitigate systemic risks within the financial system, so as to avoid episodes of widespread financial distress, contribute to a smooth functioning of the Internal Market and 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 information relevant for the mission described in paragraph 1;
 - (b) identify and prioritise such risks;
 - (c) issue warnings where risks are deemed to be significant;
 - (d) issue recommendations for remedial action where appropriate;
 - (e) monitor the follow-up to warnings and recommendations;
 - (f) cooperate closely with the European System of Financial Supervisors and , where appropriate, provide the European Supervisory Authorities with the information on systemic risks required for the achievement of their tasks;
 - (g) coordinate with international institutions, 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 Community legislation.

CHAPTER II ORGANISATION

Article 4 Structure

1. The ESRB shall have a General Board, a Steering Committee and a Secretariat.
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 supporting the preparation of the meetings of the General Board, reviewing the documents to be discussed and monitoring the progress of the ESRB's ongoing work.
4. The Secretariat shall provide analytical, statistical, administrative and logistical support to the ESRB under the direction of the Chair of the General Board in accordance with Council Decision XXXX/EC/2009¹¹.
5. The ESRB shall be supported by the Advisory Technical Committee referred to in Article 12, which shall provide advice and assistance on issues relevant to the work of the ESRB, when requested.

¹¹ OJ L , , p. .

Article 5
Chairmanship

1. The Chair and Vice-Chair of the ESRB shall be elected for a term of 5 years by and from the Members of the General Board who are also members of the General Council of the ECB. They may be re-elected.
2. The Chair shall preside at the meetings of the General Board and the Steering Committee.
3. The Vice-Chair 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 Chair or Vice-Chair ends before the completion of the 5 year term or if for any reason the Chair or Vice Chair are unable to discharge their duties, a new Chair or Vice Chair shall be elected in accordance with paragraph 1.
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;
 - (e) the Chairperson of the European Insurance and Occupational Pensions Authority;
 - (f) the Chairperson of the European Securities and Markets Authority.
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;
 - (b) the President of the Economic and Financial Committee.
3. When the agenda of a meeting contains points pertaining to the competence of several national supervisory authorities in the same Member State, the respective high level representative shall only participate in the discussion on items falling under his or her competence.
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 shall neither seek nor take instructions from Member States.
2. Member States 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 Technical 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.
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 agree with the European Supervisory Authorities on specific confidentiality procedures to safeguard information on 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.
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. 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 without regard to the quorum.

Article 11
Steering Committee

1. The Steering Committee shall be composed of the following:
 - (a) the Chair of the ESRB;
 - (b) the Vice-Chair of the ESRB;
 - (c) five other members of the General Board who are also members of the General Council of the ECB. They shall be elected by and from the Members of the General Board who are also members of the General Council of the ECB for a period of two years.
 - (d) a Member of the European Commission;
 - (e) the Chairperson of the European Banking Authority;
 - (f) the Chairperson of the European Insurance and Occupational Pensions Authority;
 - (g) the Chairperson of the European Securities and Markets Authority;
 - (h) the President of the Economic and Financial Committee.

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 Technical Committee

1. The Advisory Technical Committee shall be composed of the following:
 - (a) a representative of each national central bank and a representative of the ECB;

- (b) one representative per Member State of the competent national supervisory authority;
- (c) one representative of the European Banking Authority;
- (d) one representative of the European Insurance and Occupational Pensions Authority;
- (e) one representative of the European Securities and Markets Authority;
- (f) two representatives of the Commission;
- (g) one representative of the Economic and Financial Committee.

The supervisory authorities of each Member State shall choose one representative in the Committee. When the agenda of a meeting contains points pertaining to the competence of several national supervisory authorities in the same Member State, the respective representative shall participate only for the agenda items falling under his competence.

2. The Chair of the Advisory Technical 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 Technical Committee and the Head of the Secretariat shall participate in the meetings.

Article 13 *Other sources of advice*

In performing its tasks, the ESRB shall seek, where appropriate, the advice of relevant private sector stakeholders.

Article 14 *Access to documents*

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council¹² 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

¹²

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Court of Justice, under the conditions laid down in Articles 195 and 230 of the EC Treaty respectively.

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 national central banks and Member States shall cooperate closely with the ESRB and provide all the information necessary for the fulfilment of its tasks in accordance with Community legislation.
3. The ESRB may request information from the European Supervisory Authorities in summary or collective form, such that individual financial institutions cannot be identified. 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 national supervisory authorities, national central banks or other authorities of Member States.
4. The ESRB may address a reasoned request to the European Supervisory Authorities to provide data that are not in summary or collective form.
5. Before requesting information in accordance with paragraphs 3 and 4, the ESRB shall duly consult the relevant European Supervisory Authority in order to ensure that the request is proportionate.

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.
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 to the Community 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. Recommendations shall include a specified timeline for the policy response. Recommendations may also be addressed to the Commission in respect of the relevant Community legislation.
3. The warnings or recommendations shall also be transmitted to the Council and, where addressed to one or more national supervisory authority, to the European Supervisory Authorities.

4. Any Member of the Board may request a vote on a draft warning or a draft recommendation at any time.

Article 17
Follow-up of the ESRB recommendations

1. Where a recommendation referred to in letter (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 Council and, where relevant, the European Supervisory Authorities shall be informed.
2. If the ESRB decides that its recommendation has not been followed and that the addressees have failed to explain their inaction appropriately, it shall inform the Council and, where relevant, the European Supervisory Authorities concerned.

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 to Article 10(2), a qualified majority of two-thirds of the votes is needed to make a warning or recommendation public.
2. Where the General Board of the ESRB decides to make a warning or recommendation public, it shall inform the addressee(s) in advance.
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. The President of the Council may decide not to circulate a warning or recommendation to the other Members of the Council.

CHAPTER IV
FINAL PROVISIONS

Article 19
Reporting obligations

1. The ESRB shall report at least annually to the European Parliament and to the Council.
2. The ESRB shall also examine specific issues at the invitation of the Council or the Commission.

Article 20
Review clause

The Council shall examine this Regulation on the basis of a report from the Commission three years after its entry into force and shall determine whether the missions and organisation of the ESRB need to be reviewed after having received an opinion from the ECB.

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 Brussels,

For the European Parliament
The President

For the Council
The President