



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from:	Presidency
to:	Delegations
Subject:	Proposal for a Council Regulation entrusting the European Central Bank with specific tasks concerning the functioning of the European Systemic Risk Board

Delegations will find attached the text of the above-mentioned Regulation, which has been adapted to the text of the ESRB Regulation (doc. 12815/1/10 REV 1 EF 90 ECOFIN 476 SURE 38 CODEC 757 + COR 1).

Proposal for a

COUNCIL REGULATION

**entrusting the European Central Bank with specific tasks concerning the functioning of the
European Systemic Risk Board**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, , and in particular Article 127(6) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Central Bank²,

Having regard to the opinion of the European Parliament³,

Whereas:

- (1) The financial crisis has revealed important shortcomings in the financial supervision, which has failed to anticipate adverse macro-prudential developments and prevent the accumulation of excessive risks in the financial sector and has in particular highlighted the weaknesses of the existing macro-prudential oversight.

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ C , , p. .

- (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 European 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 2009⁴, 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 as a basis for action.
- (5) In its Communication entitled "European Financial Supervision" of 27 May 2009⁵, 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 could be fully established.

⁴ COM(2009) 114.

⁵ COM(2009) 252.

- (6) By Regulation (EC) No .../2009 of the European Parliament and of the Council⁶, a European Union level macro prudential oversight of the financial system and a European Systemic Risk Board (ESRB) are established.
- (7) Given its expertise on macro-prudential issues, the European Central Bank (ECB) can make a significant contribution to the effective macro-prudential oversight of the EU financial system.
- (7a) The Secretariat of the ESRB should be ensured by the ECB, and to this effect, the ECB should provide sufficient human and financial resources. The staff of the Secretariat should therefore be subject to the Conditions of Employment for Staff of the ECB. In particular, according to the preamble of the Decision of the ECB of 9 June 1998, on the adoption of the Conditions of Employment for Staff of the ECB as amended on 31 March 1999, the staff of the ECB should be recruited on the broadest possible geographical basis from among nationals of the Member States of the European Union.
- (8) The Council concluded on 9 June 2009 that the ECB should provide analytical, statistical, administrative and logistical support to the ESRB. As it is the task of the ESRB to cover all aspects and areas of financial stability, the ECB should involve national central banks and supervisors to provide their specific expertise. The option foreseen by the Treaty on the Functioning of the European Union (TFEU) to confer specific tasks concerning policies relating to prudential supervision upon the ECB should therefore be exercised, by conferring on the ECB the task of ensuring the Secretariat to the ESRB.

⁶ OJ L , , p. .

- 8a. The ECB should be entrusted with the task of providing statistical support to the ESRB. The collection and processing of information as set out in this Regulation and as necessary for the performance of the tasks of the ESRB should therefore benefit under Article 5 of the Statute of the European System of Central Banks (ESCB) and of the ECB and under Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank. Accordingly, confidential statistical information collected by the ECB or the ESCB should be shared with the ESRB. At the same time, this Regulation should be without prejudice to Regulation EC no 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics.
- (9) The Secretariat should prepare the meetings of the ESRB and support the work of the General Board, the Steering Committee and the Advisory Technical Committee and the Advisory Scientific Committee of the ESRB. On behalf of the ESRB, the Secretariat should collect all information necessary for the achievement of the tasks of the ESRB.

HAS ADOPTED THIS REGULATION:

Article 1
Membership

The President and Vice President of the European Central Bank shall be Member of the General Board of the European Systemic Risk Board, hereinafter referred to as "the ESRB" as set up by Regulation XXXX.

Article 2
Support of the ESRB

The European Central Bank shall ensure a Secretariat, and thereby provide analytical, statistical, logistical and administrative support to the ESRB. The mission of the Secretariat as defined in Article 4(4) of Regulation XXXX, shall include in particular:

- (a) the preparation of the ESRB meetings;
- (b) in accordance with Article 5 of the Statute of the European System of Central Banks and the European Central Bank and Article 5 of this Decision, the collection and processing of information, including statistical information, on behalf and for the benefit of the fulfilment of the tasks of the ESRB;
- (c) the preparation of the analyses necessary to carry out the tasks of the ESRB, drawing on the technical advice from national central banks and supervisors;
- (d) the support to the ESRB in its international cooperation at administrative level with other relevant bodies on macro-prudential issues;
- (e) the support to the work of the General Board, the Steering Committee, the Advisory Technical Committee and the Advisory Scientific Committee.

Article 3
Organisation of the Secretariat

1. The ECB shall ensure sufficient, human and financial resources for the fulfilment of its task of ensuring the Secretariat.
2. The Head of the Secretariat shall be appointed by the ECB, in consultation with the General Board of the ESRB.

Article 4
Management

1. The Chair of the General Board and the Steering Committee shall give directions to the Head of the Secretariat on behalf of the ESRB.
2. The Head of the Secretariat or its representative shall attend the meetings of the General Board, the Steering Committee, the Advisory Technical Committee and the Advisory Scientific Committee of the ESRB.

Article 5
Collection of information on behalf of the ESRB

1. The ESRB shall determine the information necessary for the purpose of the performance of its tasks, as set out in Article 3 of Regulation (EC) No .../2009. In view thereof, the Secretariat shall collect all the necessary information on behalf of the ESRB on a regular and ad hoc basis, in accordance with Article 15 of Regulation (EC) No .../2009 and subject to Article 6.
2. On behalf of the ESRB, the Secretariat shall make available to the European Supervisory Authorities the information on risks necessary for the achievement of their tasks.

Article 6
Confidentiality of data and documents

1. Without prejudice to the application of criminal law, any confidential information received by the Secretariat whilst performing its duties may not be divulged to any person or authority whatsoever outside the ESRB, except in summary or aggregate form, such that individual financial institutions cannot be identified.
2. The Secretariat shall ensure that documents are submitted to the ESRB in a manner which ensures the confidentiality of these documents.
3. The ECB shall ensure the confidentiality of the data received by the Secretariat for the performance of the tasks of the ECB under this Regulation . The ECB shall establish internal mechanisms and adopt internal rules to ensure the protection of data collected by the Secretariat on behalf of the ESRB. The ECB staff shall comply with the applicable rules relating to professional secrecy.
4. Information acquired by the ECB as a result of the application of this Regulation shall be used only for the purposes mentioned in Article 2.

Article 6a
Access to documents

1. The Secretariat shall ensure the application of Decision ECB/2004/3 of 4 March 2004 on public access to European Central Bank documents.
2. The practical arrangements for the application of Decision ECB/2004/3 to documents relating to the ESRB, shall be adopted within six months after the entry into force of this Regulation .

Article 7
Review clause

The Council shall examine this Regulation three years after the date set out in Article 8, on the basis of a report from the Commission and shall determine whether the present Regulation needs to be reviewed after having received an opinion from the ECB and from the European Supervisory Authorities.

Article 8
Entry into force

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

It shall apply from DD/MM/YYYY; [same date as the Regulation].

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

Done at Brussels,

For the Council
The President
