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NOTE

from:	General Secretariat
to:	Permanent Representatives Committee/Council
Subject:	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 - Outcome of the European Parliament's first reading (Strasbourg, 20 to 23 September 2010)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU Treaty and the joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for a second reading and conciliation.

¹ OJ C 145, 30.6.2007, p.5.

In this context, the rapporteur, Ms Sylvie GOULARD (FR - ALDE), presented a single compromise amendment (amendment 105) to the proposal for a Regulation, on behalf of the Committee on Economic and Monetary Affairs. This amendment had been agreed during the informal contacts referred to above.

II. VOTE

When it voted on 22 September 2010, the plenary adopted the single compromise amendment (amendment 105) to the proposal for a Regulation and the corresponding legislative resolution, thereby completing the first reading of the European Parliament. No other amendments were adopted. The amendment adopted corresponds to what was agreed between the three institutions and ought therefore to be acceptable to the Council. Consequently, once the legal linguists¹ have scrutinized the text, the Council should be in a position to adopt the legislative act.

The Parliament's legislation resolution does not set out the adopted amendments one by one. Instead, the legislative resolution sets out the text of the Commission's proposal as modified by the amendments. The text of the European Parliament legislative resolution is annexed to this note.

¹ In order to prepare for the Legal/Linguistic Experts' meeting with national experts, delegations with legal-linguistic comments may send them to the coordination secretariat of the Directorate for the Quality of Legislation (secretariat.jl-codecision@consilium.europa.eu) by 12.10.2010.

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

European Parliament legislative resolution of 22 September 2010 on the 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))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2009)0499),
- having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C7-0166/2009),
- having regard to the Commission Communication to Parliament and the Council entitled 'Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures' (COM(2009)0665),
- having regard to Article 294(3) and Article 114 of the Treaty on the Functioning of the European Union,
- having regard to the opinion of the European Central Bank of 26 October 2009¹,
- having regard to the opinion of the European Economic and Social Committee of 22 January 2010²,
- having regard to the undertaking given by the Council representative by letter of 15 September 2010 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

¹ OJ C 270, 11.11.2009, p. 1.

² Not yet published in the Official Journal.

- having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs and the opinions of the Committee on Legal Affairs and the Committee on Constitutional Affairs (A7-0168/2010),
1. Adopts its position at first reading hereinafter set out¹;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ This position replaces the amendments adopted on 7 July 2010 (Texts adopted, P7_TA(2010)0271).

Position of the European Parliament adopted at first reading on 22 September 2010 with a view to the adoption of Regulation (EU) No .../2010 of the European Parliament and of the Council on *European 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 the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Central Bank¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with the ordinary legislative procedure³,

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 ***anticipate adverse macro-prudential developments and to*** prevent the accumulation of excessive risks within the financial system **█** .
- (1a) ***The European Parliament called 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 Plan⁴, of 25 November 2002 on prudential supervision rules in the Union⁵, of 11 July 2007 on financial services policy (2005-2010) – White Paper⁶, of 23 September 2008 with recommendations to the Commission on hedge funds and private equity⁷, of 9 October 2008 with recommendations to the Commission on Lamfalussy follow-up: future structure of supervision⁸, 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***

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 22 September 2010.

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. xx.***

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.***

Credit Rating Agencies¹

- (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 the citizen 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 of 4 March 2009 entitled "Driving European Recovery", 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 Union and to use the de Larosière Report as a basis for action.
- (5) In its Communication of 27 May 2009 entitled "European Financial Supervision", 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 2009 supported the view of the Commission and welcomed the Commission's intention to put forward legislative proposals for the new framework to be in place in the course of 2010. In line with the views of the Commission, the Council concluded, inter alia, that the European Central Bank (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 Stability 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 to the G-20.***
 - (5c) ***The report of 7 November 2009 presented to the G-20 Finance Ministers and Central Bank Governors entitled "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***

¹ ***Texts adopted, P6_TA(2009)0279.***

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 and should consider a wide range of additional factors such as, among others, the complexity of specific structures and business models, the degree of financial autonomy, intensity and scope of supervision, transparency of financial arrangements and linkages that may affect the overall risk of institutions.

- (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 contribute to ensuring financial stability and mitigating 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.*
- (6) **The present Union arrangements place too little emphasis on macro-prudential oversight and on inter-linkages between developments in the broader macro-economic environment and the financial system. 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. A proper functioning of Union and global financial systems and the mitigation of threats thereto require enhanced consistency between macro and micro supervision.**
- (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 for the first five years after the entry into force of this Regulation. In addition, the accountability requirements should be increased and the ESRB bodies should be able to draw on 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 (European Banking Authority), established by Regulation (EU) No .../2010 [EBA], the European Supervisory Authority (European Securities and Markets Authority), established by Regulation (EU) No .../2010 [ESMA], and the European Supervisory Authority*

(European Insurance and Occupational Pensions Authority) established by Regulation (EU) No .../2010 [EIOPA] (hereinafter collectively referred to as the "ESAs").

- (7) The **Union** needs a specific body responsible for macro-prudential oversight across the Union financial system, which would identify risks to financial stability and, where necessary, issue risk warnings and recommendations for action to address such risks. Consequently, **the ESRB** should be established as a new independent body, **covering all financial sectors as well as guarantee schemes. The ESRB should be** responsible for conducting macro-prudential oversight at the Union level **and should have no legal personality.**
- (7a) **The ESRB should comprise a General Board, a Steering Committee, a Secretariat, an Advisory Technical Committee and an Advisory Scientific Committee. The establishment of the Advisory Technical Committee should take into account existing structures with a view to avoiding any duplication. The composition of the Advisory Scientific Committee should take into account adequate rules of conflict of interests adopted by the General Board.**
- (8) The ESRB should **█** issue warnings and, **where it deems necessary, recommendations either of a general or a specific nature, which should be addressed in particular to the Union as a whole or to one or more Member States, or to one or more of the ESAs, or to one or more national supervisory authorities** with a specified timeline for the relevant policy response.
- (8a) **The ESRB should elaborate a colour code should in order to allow interested parties better to assess the nature of the risk.**
- (8b) **If the ESRB detects a risk which could seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the Union's financial system, it should promptly inform the Council of the situation. If the ESRB deems that an emergency situation may arise, it should contact the Council and provide an assessment of the situation. The Council should then assess the necessity of adopting a decision addressed to the ESAs determining the existence of an emergency situation. In this process, due protection of confidentiality is of the utmost importance.**
- (9) In order to increase their influence and legitimacy, such warnings and recommendations should **also be transmitted in accordance with strict confidentiality rules to the Council, and the Commission** and, where **addressed to one or more national supervisory authorities, to the ESAs. The deliberations of the Council should be prepared by the Economic and Financial Committee (EFC) in accordance with its role as defined in the TFEU. In order to prepare the Council discussions and provide timely policy advice to it, the EFC should be informed regularly and should receive the texts of the warnings and recommendations as soon as they have been adopted.**
- (10) The ESRB should also monitor compliance with its **warnings and** 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 **and provide an adequate justification in case of inaction █** ("act or explain" mechanism). **If the ESRB considers that the reaction is inadequate, it should inform, subject to strict confidentiality rules, the addressees, the Council and, where appropriate, the European Supervisory Authority concerned.**

- (11) The ESRB should decide, *on a case-by-case basis and after having informed the Council sufficiently in advance so that it is able to react*, 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. *Where appropriate, the European Parliament and the Council should be able to invite the ESRB to examine specific issues related to financial stability.*
- (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. *National supervisors should be involved in providing their specific expertise.* 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 ESAs should be members with voting rights. *One representative of the national competent authorities of every Member State should attend meetings of the General Board without voting rights. In a spirit of openness, fifteen independent persons should provide the ESRB with external expertise through the Advisory Scientific Committee.*
- (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 President of the *EFC will reflect* the role of Member States' finance ministries *and the Council* in safeguarding financial stability *and performing economic and financial oversight.*
- (15) It is essential that the members of the ESRB perform their duties impartially and consider only the financial stability of the 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 those data as required.
- (16a) *The measures for the collection of information set out in this Regulation are necessary for the performance of the tasks of the ESRB and should be without prejudice to the legal framework of the European Statistical System (ESS) in the field of statistics. This Regulation should therefore be without prejudice to Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics¹ and to Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection*

¹ *OJ L 87, 31.3.2009, p. 164.*

of statistical information by the European Central Bank¹.

- (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, including 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.
- (18) Given the integration of international financial markets at international level and the contagion risk of financial crises, the ESRB should coordinate with the IMF and the newly established FSB, 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 **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 ESAs. 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.
- (19a) *The Court of Justice in its judgment of 2 May 2006 in Case C-217/04 (United Kingdom/European Parliament and Council)² held that “nothing in the wording of Article 95 EC [now Article 114 TFEU] implies that the addressees of the measures adopted by the Community legislature can only be the individual Member States. The legislature may deem it necessary to provide for the establishment of a Community body responsible for contributing to the implementation of a process of harmonisation in situations where, in order to facilitate the uniform implementation and application of acts based on that provision, the adoption of non-binding supporting and framework measures seems appropriate”. The ESRB contributes to the financial stability necessary for further financial integration in the internal market by monitoring systemic risks and issuing warnings and recommendations where appropriate. These tasks are closely linked to the objectives of the Union legislation concerning the internal market for financial services. The ESRB should therefore be established on the basis of Article 114 TFEU.*
- (20) Since *the objective of this Regulation, namely* 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, *and can therefore be better achieved at Union level*, the **Union** may adopt measures in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty *on European Union*. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve *that objective*.

¹ OJ L 318, 27.11.1998, p. 8.

² Not yet published.

(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
Establishment

1. A European Systemic Risk Board (hereinafter the '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 (European Securities and Markets Authority) established by Regulation (EU) No .../2010 [ESMA];*

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

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

(e) *the Joint Committee of the European Supervisory Authorities (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];*

(f) *the competent or supervisory authorities in the Member States as specified in the Union acts listed in Article 1(2) of Regulation (EU) No .../2010 [ESMA], of Regulation (EU) No .../2010 [EIOPA] and of Regulation (EU) No .../2010 [EBA].*

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*

* ***OJ please insert date: three years after the entry into force of this Regulation.***

[ESMA] and of Regulation [EU] No .../2010 [EIOPA], as well as any other undertaking or entity in the Union whose main business is of a similar nature;

- (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. *It shall* contribute to the 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) *determining* and/or *collecting* and *analysing* all the *relevant and necessary* information, for the purposes of the *objectives* described in paragraph 1;
 - (b) *identifying* and *prioritising systemic* risks;
 - (c) *issuing* warnings where *such systemic* risks are deemed to be significant *and, where appropriate, making them public*;
 - (d) *issuing* recommendations for remedial action *in response to the risks identified and*, where appropriate, *making them public*;
 - (da) *issuing a confidential warning addressed to the Council when the ESRB determines 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 the Council with an assessment of the situation, in order for it to determine the need to adopt a decision addressed to the ESAs determining the existence of an emergency situation*;
 - (e) *monitoring* the follow-up to warnings and recommendations;
 - (f) *cooperating* closely with *all the other parties to the ESFS and*, where appropriate, *providing* the *ESAs* with the information on systemic risks required for the achievement of their tasks. *The ESRB shall, in particular, and in collaboration with the ESAs, develop a common set of quantitative and qualitative indicators (risk dashboard) to identify and measure systemic risk*;
 - (fa) *participating, where appropriate, in the Joint Committee*;

- (g) *coordinating* with international *financial organisations*, particularly the IMF and the FSB as well as the relevant bodies in third countries on matters related to macro-prudential oversight;
- (h) *carrying* 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, *an Advisory Scientific Committee and an Advisory Technical 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.
4. The Secretariat shall *be responsible for the day-to-day business of the ESRB. It shall provide high-quality* analytical, statistical, administrative and logistical support to the ESRB under the direction of its Chair *and the Steering Committee* in accordance with Council *Regulation (EU) No .../2010 [ESRB]. It shall also draw on technical advice from the ESAs, national central banks and national supervisors*.
5. The █ Advisory *Scientific and Technical Committees* referred to in *Articles 11a and 12* shall provide advice and assistance on issues relevant to the work of the ESRB █.

Article 5
Chairmanship

1. *The ESRB shall be chaired by the President of the ECB for a term of five years after the entry into force of this Regulation. For the subsequent terms, the Chair of the ESRB shall be designated in accordance with the modalities determined on the basis of the review provided in Article 20.*
 - 1a. The first Vice-Chair shall be elected by and from the Members of the General Council of the ECB for a term of five years, with regard to the need for a balanced representation of Member States overall and between those within and outside the euro area. The first Vice-Chair may be re-elected once.*
 - 1b. The second Vice-Chair shall be the Chair of the Joint Committee as appointed pursuant to Article 41(3) of Regulation (EU) No .../2010 [ESMA], of Regulation (EU) No .../2010 [EIOPA] and of Regulation (EU) No .../2010 [EBA].*
 - 1c. The Chair and the 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 *a Member* of the General Council of the ECB elected as *first* Vice-Chair ends before the completion of the five-year term or if for any reason the *first* Vice Chair *is* unable to discharge *his or her* 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 ■ 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 Commission;
 - (d) the Chairperson of the European *Supervisory* Authority (*European Banking Authority*);
 - (e) the Chairperson of the European *Supervisory Authority* (*European* Insurance and Occupational Pensions *Authority*);
 - (f) the Chairperson of the European *Supervisory Authority* (*European* Securities and Markets *Authority*);
 - (fa) *the Chair and the two Vice-Chairs of the Advisory Scientific Committee*;
 - (fb) *the Chair of the Advisory Technical Committee*.
2. The following 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*;
 - (b) the President of the Economic and Financial Committee (EFC).
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 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 Union as a whole*. They shall *not* seek nor

take instructions from the Member States, *the Union institutions or any other public or private body*.

1a. No Member of the General Board (whether voting or non-voting) shall have a function in the financial industry.

2. *Neither* the Member States, *the Union institutions nor any other public or private body* shall 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, the Advisory *Scientific Committee, the Advisory* Technical Committee, the ESAs and the competent national supervisory authorities of the Member States), shall not to disclose information covered by professional secrecy, even after their duties have ceased.

2. Information received by Members of the ESRB may be used only 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, no confidential information received by the persons referred to in paragraph 1 whilst performing their duties, shall 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 ESAs, *agree on and establish* specific confidentiality procedures *in order* to safeguard information *regarding* individual financial institutions and information from which 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 take place 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 period *of at least three months* 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 financial organisations carrying out activities directly related to the tasks of the ESRB may be invited to attend the meetings of the General Board.

3b. Participation in the work of the ESRB may be open to high-level representatives of the relevant authorities from third countries, in particular from EEA countries strictly limited to

issues of particular relevance for them. Arrangements may be made by the ESRB specifying, in particular, the nature, scope and procedural aspects of the involvement of those third countries in the work of the ESRB. Such arrangements may provide for representation, on an ad-hoc basis, as an observer, on the General Board and should concern only items of relevance for them, excluding in any way any case where the situation of individual financial institutions or Member States may be 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 shall be required 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 referred to in Article 6(4) shall provide for adequate notice for convening an extraordinary meeting.***
- 3a. By derogation from paragraph 2, a majority of two-thirds of the votes cast shall be required to adopt a recommendation or 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 overall and between 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 Commission;
 - (e) the Chairperson of the European ***Supervisory*** Authority (***European Banking Authority***);
 - (f) the Chairperson of the European ***Supervisory*** Authority (***European Insurance and Occupational Pensions Authority***);
 - (g) the Chairperson of the European ***Supervisory*** Authority (***European Securities and Markets Authority***);

- (h) the President of the EFC;
- (ha) the Chair of the Advisory Scientific Committee and*
- (hb) the Chair of the Advisory Technical 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 11a *Advisory Scientific Committee*

1. The Advisory Scientific Committee shall be composed of the Chair of the Advisory Technical Committee and 15 experts representing a wide range of skills and experiences proposed by the Steering Committee and approved by the General Board for a four-year, renewable mandate. The nominees shall 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.

2. The Chair and the two vice-Chairs of the Advisory Scientific Committee shall be appointed by the General Board following a proposal from the Chair of the General Board and they shall both have thorough expertise and knowledge, e.g. by virtue of their academic background in the sectors of banking, securities markets or insurance and occupational pensions. The chairmanship of the Advisory Scientific Committee should rotate between those three persons.

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.

5. Where appropriate, the Advisory Scientific Committee shall organise 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.

6. The Advisory Scientific Committee shall be provided with all necessary means in order to successfully complete its tasks.

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 **Supervisory** Authority (**European Banking Authority**);

- (d) a representative of the European *Supervisory Authority (European Insurance and Occupational Pensions Authority)*;
- (e) a representative of the European *Supervisory Authority (European Securities and Markets Authority)*;
- (f) two representatives of the Commission;
- (g) a representative of the EFC; *and*
- (ga) a representative of the Advisory Scientific Committee.*

The supervisory authorities of each Member State shall choose one representative in the Committee. *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.*

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.

4a. The Advisory Technical Committee shall be provided with all necessary means in order to successfully complete its tasks.

Article 13 Other sources of advice

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



Chapter III Tasks

Article 15 Collection and exchange of information

1. The ESRB shall provide the ESAs with the information on █ risks necessary for the achievement of their tasks.

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

3. *Subject to Article 21(2) of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [ESMA] and of Regulation (EU) No .../2010 [EIOPA], the ESRB may request*

information from the ESAs, *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. **If those data remain unavailable, the ESRB may request it from the Member State concerned, without prejudice to the prerogatives respectively conferred on the Council, the Commission (Eurostat), the ECB, the Eurosystem and the ESCB in the field of statistics and data collection.***

4. *If 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 addressees of the request, provided that the addressees have 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 of either a general or a 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 ESAs, 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 also 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.*

3. *The warnings or recommendations shall, **at the same time as they are transmitted to the addressees in accordance with paragraph 2**, also be transmitted **according to strict confidentiality rules** to the Council and **the Commission and**, where addressed to one or more national supervisory authority, to the ESAs.*

4. *In order to enhance the awareness of risks in the Union economy and to prioritise such risks, **the ERSB, 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 shall indicate, on a case-by-case basis, and where appropriate, to which category the risk belongs.

Article 17

Follow-up of the ESRB recommendations

1. Where a recommendation referred to in point (d) of Article 3(2) is addressed to ***the Commission***, one or more Member States, one or more European Supervisory Authority, or one or more national supervisory authority, the addressees shall communicate the actions undertaken in response to the recommendations to the ESRB ***and to the Council*** and ***provide adequate justification for any inaction (“act or explain”)***. Where relevant, ***the ESRB*** shall, ***subject to strict confidentiality rules, inform the ESAs without delay of the answers received.***

2. If the ESRB decides that its recommendation has not been followed or that the addressee(s) have failed to explain their inaction appropriately, it shall, ***subject to strict confidentiality rules***, inform the ***addressees, the Council*** and, where relevant, the European Supervisory Authority concerned.

2a. If the ESRB has made a decision under paragraph 2 on a recommendation made public following the procedure set by Article 18(1), the European Parliament may invite the ESRB Chair to present it and the addressee(s) may request to participate in an exchange of views.

Article 18

Public warnings and recommendations

1. The General Board of the ESRB shall decide on a case-by-case basis, ***after having informed the Council sufficiently in advance so that it is able to react***, whether a warning or a recommendation should be made public. ***Notwithstanding Article 10(3), a quorum of two-thirds shall always apply in respect of decisions taken under this paragraph.***

2. If the General Board of the ESRB decides to make a warning or recommendation public, it shall inform the addressees in advance.

2a. The addressees of warnings and recommendations made public by the ESRB shall also be provided with the right of making public their views and reasoning in response thereto.

4. Where the General Board of the ESRB decides not to make a warning or a recommendation public, the addressees and, where appropriate, the Council and the ESAs shall take all the measures necessary for the protection of their confidential nature. ■

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 the General Board of the ESRB decides to make public in accordance with Article 18. 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 Chair of the ESRB to attend a hearing of the competent Committees of the European Parliament.

2b. The Chair of the ESRB shall hold confidential oral discussions at least twice a year and more often if deemed appropriate, behind closed doors with the Chair and Vice-Chairs of the Economic and Monetary Affairs Committee of the European Parliament on the ongoing activity of the ESRB. An agreement shall be concluded between the European Parliament and the ESRB on the detailed modalities of organising those meetings, with a view to ensuring full confidentiality in accordance with Article 8. The ESRB shall provide a copy of the agreement to the Council.

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 missions and organisation of the ESRB need to be reviewed after having received an opinion from the ECB *and the ESAs*.

They shall in particular review the modalities of designation or election of the Chair of the ESRB.

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

* ***OJ please insert date: three years after the entry into force of this Regulation.***