



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Legal Affairs

2009/0140(COD)

21.1.2010

DRAFT OPINION

of the Committee on Legal Affairs

for the Committee on Economic and Monetary Affairs

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))

Rapporteur: Evelyn Regner

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SHORT JUSTIFICATION

1. The Commission proposal on the ESRB

The Commission proposal forms part of a package to improve the EU's supervisory framework based on recommendations by the Larosière group, which is intended to eliminate the weaknesses which have come to light in the existing supervisory framework as a result of the current financial crisis.

The ESRB would be the cornerstone of an integrated EU supervisory structure and would thus contribute to better functioning of the internal market. It is conceived as a completely new and - in this form - unprecedented European body, without legal personality. It is intended to develop a European macro-prudential perspective to address the problem of fragmented individual risk analysis at national level, to enhance the effectiveness of early warning mechanisms and to allow risk assessments to be translated into action by the relevant authorities.

According to the Commission proposal, the ESRB would comprise a General Board, a Steering Committee and a Secretariat, the latter being provided by the European Central Bank. The membership of its General Board – its governing body – would include the Governors of all the national central banks. The regulation establishing the ESRB is to be supplemented by a Council decision authorising the European Central Bank (ECB) to ensure the secretariat of the ESRB.

2. The rapporteur's position

The rapporteur welcomes the establishment of the ESRB. The crisis has shown micro-supervision by the national authorities to be insufficient to enable systemic risks to be identified and averted swiftly enough. It is important to establish a European system (of macro-supervision) to monitor, assess and where necessary avert potential risks to financial stability and which can issue early warnings concerning systemic risks and propose practical measures to tackle them. It should be possible to observe and assess interaction between macroeconomic trends and the financial system from a broad perspective. It is also worthwhile to step up cooperation with the IMF, the Financial Stability Board and relevant bodies in third countries. Monitoring of systemic risks will increase the stability of financial markets, reduce the likelihood of fresh financial crises and thus increase the attractiveness of the European financial market as an operational location.

The rapporteur proposes a few amendments to clarify and improve the proposed supervisory structure. As a matter of principle, the mandate of the ESRB should be clearly confined to the financial sector and must not encroach upon wage policy and fiscal policy. All the objectives of the EU as laid down in Article 3 of the Treaty on European Union must be appropriately taken into account in assessing risks.

Voting within the General Board should adhere strictly to the principle of 'one member one vote', as provided for by Article 10 of the Commission proposal: there should not be any weighting of votes.

As for the Steering Committee, she proposes that it should include five representatives of the national central banks, as balanced representation of the latter on the Steering Committee is needed for macro-prudential oversight, to avoid the committee's being dominated by people who do not represent banks of issue.

Over and above this, consideration should be given to further involvement of economic-policy stakeholders in the Steering Committee, particularly the inclusion of one representative of each side of industry at European level.

With regard to the gathering and exchange of information, the new body must be able to perform its duties independently, without relying on national authorities. Rapid and regular access to data must therefore be ensured.

Maximum transparency should be ensured. Analyses should as a standard practice be public: any need for secrecy must be substantiated in detail and secrecy permitted only on condition that a separate decision is taken concerning it. The data from the analyses should be publicly accessible, albeit in an appropriate anonymous form, which could help to improve the quality of recommendations.

The European Parliament should have the same powers as the Council and Commission: in particular, it should be able to commission examinations by the ESRB.

The ESRB's accountability must be clearly regulated. However, it should be borne in mind that the present proposal provides only for non-binding recommendations, while no executive tasks are transferred to the ESRB.

In sum, the proposed system of oversight is a first step towards the long-term objective of a harmonised European system of oversight, with a central European authority for major cross-border financial/credit institutions or groups which are large enough to have systemic implications acting as a regulatory authority. In the case of groups of credit institutions with systemic implications, the European supervisory authorities should be the relevant authorities, while, in accordance with the subsidiarity principle, purely national institutions should be supervised purely at national level.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation

Recital 7

Text proposed by the Commission

Amendment

(7) The Community needs a specific body

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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.

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. ***The analyses of the ESRB should be confined to the financial sector and should not concern wage policy or fiscal policy issues.***

Or. de

Amendment 2

Proposal for a regulation Recital 11

Text proposed by the Commission

(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.***

Amendment

(11) The ESRB should decide whether a ***warning or*** recommendation should be kept confidential or made public, bearing in mind that, ***in the interests of maximum transparency, the principle of*** public disclosure ***should be set aside only exceptionally.***

Or. de

Amendment 3

Proposal for a regulation Article 3 – paragraph 1

Text proposed by the Commission

1. The ESRB shall be responsible for the macro-prudential oversight of the financial system within the Community in order to

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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.

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, *as well as to attain the objectives referred to in Article 3 of the Treaty on European Union.*

Or. de

Amendment 4

Proposal for a regulation

Article 11 – paragraph 1 – point c

Text proposed by the Commission

(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.

Amendment

(c) five *chairmen of national central banks*. 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.

Or. de

Amendment 5

Proposal for a regulation

Article 12 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) one representative of the European federation of employees and one representative of the European federation of employers;

Or. de

Amendment 6

Proposal for a regulation Article 17 – paragraph 2

Text proposed by the Commission

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.

Amendment

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, **the Commission** and, where relevant, the European Supervisory Authorities concerned.

Or. de

Amendment 7

Proposal for a regulation Article 18 – paragraph 1

Text proposed by the Commission

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.

Amendment

1. The General Board of the ESRB shall decide **not to make** a warning or a recommendation public on a case- by-case basis. By derogation to Article 10(2), a qualified majority of two-thirds of the votes is needed **for a decision not** to make a warning or recommendation public.

Or. de

Justification

A provision giving the ESRB a free hand in deciding whether to keep analyses secret is unenforceable, given the size of the body concerned. Above all, however, it would not accord with the principle of full accountability to the people of Europe, who will ultimately have to live with the consequences of successful or failed stabilisation operations.

Amendment 8

Proposal for a regulation

Article 18 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The data on which the analyses of the ESRB are based shall be made publicly accessible in anonymous form.

Or. de

Amendment 9

Proposal for a regulation

Article 19 – paragraph 2

Text proposed by the Commission

Amendment

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

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

Or. de