



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Constitutional Affairs

2009/0140(COD)

9.4.2010

OPINION

of the Committee on Constitutional 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: Íñigo Méndez de Vigo

PA_Legam

SHORT JUSTIFICATION

The lack of adequate financial regulation at a European level and the weakness of the market supervisory mechanisms were clearly evident during the economic and financial crisis that hit Europe in 2008, the repercussions of which we are still suffering. The Commission has drawn up four proposals – for whose passage through Parliament the Committee on Economic and Monetary Affairs is responsible – based upon the report by the group of experts presided over by Jacques de Larosiere.

In giving its opinion, the Committee on Constitutional Affairs has sought to examine carefully how the new European Supervisory Authority and the European Systemic Risk Board created in these proposals can best fit into the institutional system. It has also focused on the establishment of harmonised technical standards for financial services, in order to ensure that their actions are consistent on the one hand and to guarantee adequate protection for depositors, investors and consumers in the European Union on the other. The relationship with private-sector institutions has been studied with special care in this opinion, as has the relationship between the European Supervisory Authority and national supervisory authorities. Finally, we have stressed the problems connected with supervision of cross-border institutions.

The 2008 financial crisis demands a European response to European problems: thanks to the new powers granted to it under the Lisbon Treaty, Parliament must play a decisive role in all these matters.

AMENDMENTS

The Committee on Constitutional 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 1 a (new)

Text proposed by the Commission

Amendment

(1a) Long before the financial crisis, the European Parliament called regularly for the reinforcement of the 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 (see García-Margallo y Marfil Report on the Commission communication on implementing the framework for financial markets: Action Plan (2000) , Van den

Burg Report on prudential supervision rules in the European Union (2002) , Van den Burg Report on financial services policy (2005-2010) - White Paper (2007) and Van den Burg & Daianu Report with recommendations to the Commission on Lamfalussy follow-up: future structure of supervision (2008)). In addition, see also Skinner- Solvency II report (2009) and Gauzès-CRA regulation (2009)).

Amendment 2

Proposal for a regulation

Recital 3

Text proposed by the Commission

(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.

Amendment

(3) In its final report presented on 25 February 2009, 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

(The change should apply throughout the text).

Amendment 3

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) In its Communication entitled "European Financial Supervision" of 27 May 2009, the Commission set out a series of reforms to the current arrangements for safeguarding financial stability at **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

Amendment

(5) In its Communication entitled "European Financial Supervision" of 27 May 2009, the Commission set out a series of reforms to the current arrangements for safeguarding financial stability at **Union** level, notably including the creation of a European Systemic Risk Board (ESRB) responsible for macro-prudential oversight. The Council on 9 June 2009 and the European Council at its meeting of 18 and 19 June supported the view of the Commission and welcomed the

Commission's intention to bring forward legislative proposals so that the new framework is in place in the course of 2010. In line with the views of the Commission, it concluded inter alia that the ECB “should provide analytical, statistical, administrative and logistical support to the ESRB, also drawing on technical advice from national *Central Banks* and supervisors”.

Commission's intention to bring forward legislative proposals so that the new framework is in place in the course of 2010. In line with the views of the Commission, it concluded inter alia that the ECB “should provide analytical, statistical, administrative and logistical support to the ESRB, also drawing on technical advice from national *central banks* and supervisors”. ***The support provided to the ESRB by the ECB and the tasks 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.***

Amendment 4

Proposal for a regulation

Recital 5 a (new)

Text proposed by the Commission

Amendment

(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 on 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, especially in cooperating closely with the International Monetary Fund (IMF), the Financial Services Board (FSB) and all the partners of the Group of Twenty (G-20).

Amendment 5

Proposal for a regulation

Recital 6

Text proposed by the Commission

Amendment

(6) The present Community arrangements

(6) A proper functioning of Union and

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.

global financial systems and the mitigation of threats thereto require enhanced consistency between macro and the micro supervision. As stated in the Turner review, "A regulatory response to the global banking crisis", of March 2009, "Sounder arrangements require either increased national powers, implying a less open single market, or a greater degree of European integration". Given the role of a sound financial system in terms of its contribution to competitiveness and growth in the Union and its impact on the real economy, the de Larosière Group, followed by the EU institutions, have opted for a greater degree of European integration.

Amendment 6

Proposal for a regulation Recital 6 b (new)

Text proposed by the Commission

Amendment

(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.

Amendment 7

Proposal for a regulation Recital 6 c (new)

Text proposed by the Commission

Amendment

(6c) A European System of Financial Supervision (ESFS) should be established, gathering the actors of financial supervision both at a national and 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 shall cooperate with trust and full mutual respect, in particular in ensuring that appropriate and reliable information flows between them. At Union level, the network should be composed of the ESRB and three micro-supervisory authorities: the European Supervisory Authority (Banking), established by Regulation (EU) No .../2010, the European Supervisory Authority (Securities and Markets), established by Regulation (EU) No .../2010, and the European Supervisory Authority (Insurance and Occupational Pensions) established by Regulation (EU) No .../2010.

(The changes to the European Supervisory Authorities' names should apply throughout the text.)

Amendment 8

Proposal for a regulation Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) The ESRB should decide whether a recommendation should be kept confidential or made public, bearing in mind that public disclosure can help to foster compliance with the recommendations in certain circumstances.

Amendment 9

Proposal for a regulation Recital 8 b (new)

Text proposed by the Commission

Amendment

(8b) If the ESRB detects a risk which may

seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union, it should be able to issue a warning declaring the existence of an emergency situation. In such a case the ESRB should promptly inform the European Parliament, the Council, the Commission and the European Supervisory Authority (ESA) of its warning. In the event of an emergency, the ESRB should issue emergency warnings.

Amendment 10

Proposal for a regulation

Recital 9

Text proposed by the Commission

(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 Council, the European Securities and Markets Authority established by Regulation (EC) No .../... of the European Parliament and of the Council, and the European Insurance or the Occupational Pension Authority established by Regulation (EC) No .../...of the European Parliament and of the Council.*

Amendment

(9) In order to increase their weight and legitimacy, such warnings and recommendations should be transmitted through *the European Parliament*, the Council and, where appropriate, *the ESA*.

Amendment 11

Proposal for a regulation

Recital 10

Text proposed by the Commission

(10) The ESRB should also monitor compliance with its recommendations,

Amendment

(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).

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), *in particular towards the European Parliament.*

Amendment 12

Proposal for a regulation

Recital 11

Text proposed by the Commission

Amendment

(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.

deleted

Amendment 13

Proposal for a regulation

Recital 12

Text proposed by the Commission

Amendment

(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.

(12) The ESRB should report to the European Parliament and the Council at least **biannually**, and more frequently in the event of widespread financial distress.

Amendment 14

Proposal for a regulation

Recital 18

Text proposed by the Commission

Amendment

(18) Given the integration of international financial markets at international level and the contagion risk of financial crises, the ESRB should coordinate with the

deleted

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.

Amendment 15

Proposal for a regulation Recital 20 a (new)

Text proposed by the Commission

Amendment

(20a) With regard to the de Larosière report, a step-by-step approach is necessary. The European Parliament and the Council should conduct a full-review of the ESFS, the ESRB and the ESA by ...*.

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

Amendment 16

Proposal for a regulation Article 1 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

The ESFS shall comprise:

(a) the ESRB;

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

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

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

(e) the European Supervisory Authority (Joint Committee) provided for by Article 40 of each of Regulation (EC) No .../...

[EBA], No .../... [ESMA], No .../...[EIOPA];

(f) the authorities in the Member States as specified in Article 1(2) of Regulation (EU) No .../... [ESMA], Article 1(2) of Regulation (EU) No .../2009 [EIOPA] and Article 1(2) of Regulation (EU) No .../... [EBA],

(g) the Commission for the purposes of carrying out the tasks referred to in Articles 7 and 9 of Regulations (EU) No.../...[EBA], No .../... [ESMA] and No .../...[EIOPA];

The ESAs referred to in points (b), (c) and (d) shall have their seat in [xxx].

Amendment 17

Proposal for a regulation Article 1 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

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 in ensuring that appropriate and reliable information flows between them.

Amendment 18

Proposal for a regulation Article 3 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) issue warnings where risks are deemed to be significant;

(c) issue warnings where risks are deemed to be significant *and, where appropriate, declare the existence of an emergency situation;*

Amendment 19

Proposal for a regulation

Article 3 – paragraph 2 – point f

Text proposed by the Commission

(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;

Amendment

(f) cooperate closely with **all the other parties to the ESFS** and, where appropriate, provide the European Supervisory Authorities with the information on systemic risks required for the achievement of their tasks;

Amendment 20

Proposal for a regulation

Article 3 – paragraph 2 – point f a (new)

Text proposed by the Commission

Amendment

(fa) participate in the Joint Committee of European Supervisory Authorities;

Amendment 21

Proposal for a regulation

Article 5 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Before taking office, the Chair and first Vice-Chair of the ESRB shall present to the European Parliament, at a public hearing, how they intend to discharge their duties under this Regulation. The second Vice-Chair shall be heard by the European Parliament in his or her role as Chair of one of the European Supervisory Authorities, in accordance with Article XX of Regulations (EC) No .../... [EBA], No .../... [ESMA], No .../...[EIOPA].

Amendment 22

Proposal for a regulation Article 9 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

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

Amendment 23

Proposal for a regulation Article 9 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. Where appropriate, and on an ad hoc basis, one high-level representative from the European Economic Area may be invited to attend the meetings of the General Board.

Amendment 24

Proposal for a regulation Article 13

Text proposed by the Commission

Amendment

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

In performing its tasks, the ESRB shall seek, where appropriate, the advice of relevant *private-sector* stakeholders ***including trade unions, civil society organisations and consumer associations.***

Amendment 25

Proposal for a regulation
Article 15 – paragraph 3

Text proposed by the Commission

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.

Amendment

3. **On request by** the ESRB, the European Supervisory Authorities **shall provide information** 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, national supervisory authorities, national central banks or other authorities of Member States **shall provide the data pursuant to a request by the ESRB.**

Amendment 26

Proposal for a regulation
Article 15 – paragraph 4

Text proposed by the Commission

4. The **ESRB may address a reasoned request to the** European Supervisory Authorities **to** provide data that are not in summary or collective form.

Amendment

4. **Pursuant to a reasoned request by the ESRB,** the European Supervisory Authorities **shall** provide data that are not in summary or collective form.

Amendment 27

Proposal for a regulation
Article 15 – paragraph 5 a (new)

Text proposed by the Commission

5a. Staff of the ESRB may be invited together with the ESAs, to meetings between supervisors and the systemically important financial groups, in particular the colleges of supervisors, and may ask questions and receive first-hand relevant information.

Amendment

Amendment 28

Proposal for a regulation Article 16 – paragraph 3

Text proposed by the Commission

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.

Amendment

3. The warnings or recommendations shall also be transmitted to the **European Parliament**, the Council and, where addressed to one or more national supervisory authority, to the European Supervisory Authorities.

Amendment 29

Proposal for a regulation Article 16 a (new)

Text proposed by the Commission

Amendment

Article 16a

Action in emergency situations

1. In the event of adverse developments which may seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the European Union, the ESRB, acting in accordance with point (b) of Article 3(2) and Article 10 of each of Regulations (EU) No .../... [EBA], No .../... [ESMA] and No .../...[EIOPA], may issue warnings, on its own initiative or following a request by an ESA, the European Parliament, the Council or the Commission, declaring the existence of an emergency situation.

2. As soon as it issues a warning, the ESRB shall simultaneously notify the European Parliament, the Council, the Commission and the relevant ESA.

3. The ESRB shall review the decision referred to in paragraph 1 on its own initiative or following a request by a ESA, the European Parliament, the Council or

the Commission.

Amendment 30

Proposal for a regulation Article 17 – paragraph 1

Text proposed by the Commission

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.

Amendment

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

Amendment 31

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 European Parliament***, the Council and, where relevant, the European Supervisory Authorities concerned.

Amendment 32

Proposal for a regulation Article 17 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Where a recommendation has been made public and has not been followed

and the addressees of the recommendation have failed to explain their inaction, the European Parliament may, after consulting the ESRB and the Council, invite the addressees to be questioned by the European Parliament..

Amendment 33

Proposal for a regulation Article 19 – paragraph 1

Text proposed by the Commission

1. The ESRB shall report at least **annually** to the European Parliament and to the Council.

Amendment

1. The ESRB shall report at least **biannually** to the European Parliament and to the Council.

Amendment 34

Proposal for a regulation Article 19 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The reports referred to in this Article shall be made available to the public.

Amendment 35

Proposal for a regulation Article 19 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 36

Proposal for a regulation Article 19 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The President of the ESRB and the other members of the Steering Committee may, at the request of the European Parliament, be heard by the competent Committees of the European Parliament.

Amendment 37

Proposal for a regulation Article 20

Text proposed by the Commission

Amendment

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.

The European Parliament and 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.

The report should assess, in particular, whether:

- the architecture of the ESFS needs to be simplified and reinforced, in order to increase the coherence between the macro and the micro levels as well as between the ESAs;***
- the regulatory powers of the ESAs need to be increased ;***
- the evolution of the ESFS is consistent with that of the global evolution;***
- there is sufficient diversity and excellence within the ESFS ;***

PROCEDURE

Title	Macro-prudential oversight of the financial system and establishment of a European Systemic Risk Board
References	COM(2009)0499 – C7-0166/2009 – 2009/0140(COD)
Committee responsible	ECON
Opinion by Date announced in plenary	AFCO 7.10.2009
Rapporteur Date appointed	Íñigo Méndez de Vigo 24.11.2009
Discussed in committee	25.1.2010 6.4.2010
Date adopted	7.4.2010
Result of final vote	+: 19 -: 0 0: 2
Members present for the final vote	Carlo Casini, Andrew Duff, Ashley Fox, Matthias Groote, Roberto Gualtieri, Gerald Häfner, Ramón Jáuregui Atondo, Constance Le Grip, David Martin, Jaime Mayor Oreja, Morten Messerschmidt, Paulo Rangel, Algirdas Saudargas, György Schöpflin, Guy Verhofstadt
Substitute(s) present for the final vote	Elmar Brok, Jean-Luc Dehaene, Enrique Guerrero Salom, Anneli Jäätteenmäki, Íñigo Méndez de Vigo, Adrian Severin, Tadeusz Zwiefka
Substitute(s) under Rule 187(2) present for the final vote	Emma McClarkin