Macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (ESRB)

2009/0140(COD) - 07/07/2010 - Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament adopted amendments, by 612 votes to 40 with 37 abstentions, at first reading under the ordinary legislative procedure (formerly known as the codecision procedure), to 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.

The vote on the legislative resolution was postponed to a future plenary session. The main amendments to the regulation were as follows:

Establishment and seat: the ESRB will have its **seat in Frankfurt**. It will be part of the **European System of Financial Supervisio**n (ESFS), the purpose of which is to ensure the supervision of the Union's financial system.

The ESFS shall comprise: (a) the ESRB; (b) the European Supervisory Authority (Securities and Markets) (ESMA); (c) the European Supervisory Authority (Insurance and Occupational Pensions) (EIOPA); (d) the European Supervisory Authority (Banking) (EBA); (e) the European Supervisory Authority (Joint Committee) established by Regulations on EBA, ESMA and EIOPA; (f) the authorities in the Member States as specified in the Regulations on EBA and ESMA and EIOPA; (g) the Commission, for the purposes of carrying out the tasks referred to in the Regulation on EBA, ESMA and EIOPA.

The ESAs shall have their headquarters in Frankfurt. They may have representations in the most important financial centres of the European Union.

Pursuant to the principle of sincere cooperation in accordance with 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.

Systemic risk: this defined as 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. Mission, objectives and tasks : the amended text states that 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, and contribute to a smooth functioning of the internal market and thereby ensure a sustainable contribution of the financial sector to economic growth.

For this purpose, the ESRB shall carry out the **following tasks**:

- analyse all the relevant information, including legislation with a potential impact on financial stability such as accounting, reorganisation and winding-up rules;
- identify and prioritise systemic risks, and issue warnings where such systemic risks are deemed to be significant and, where appropriate, make them public;

- issue recommendations for remedial action in response to the risks identified and, where appropriate, make them public;
- issue a confidential warning addressed to the Commission when the ESRB deems that an emergency situation may arise. The ESRB shall provide with an assessment of the situation, in order for the Commission to determine the need to adopt a decision addressed to the ESAs determining the existence of an emergency situation;
- in collaboration with the ESAs, develop a common set of quantitative and qualitative indicators (risk dashboard), which will serve as the basis to assign a supervisory rating to cross-border institutions that potentially could pose a systemic risk. Such rating will be reviewed on a regular basis, reflecting material changes of the risk profile of an institution. The supervisory rating will be a critical element for the decision to directly supervise or intervene in an ailing institution.

Structure: the ESRB shall have a General Board, a Steering Committee, a Secretariat and an Advisory Scientific Committee. Members state that 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 Services Board (FSB) and all the partners of the G-20.

Chair: Parliament considers that in the spirit of the de Larosière Report, the President of the ECB should be the Chair of the ESRB. The first Vice-Chair shall be elected by and from the Members of the General Council of the ECB for a term of 5 years, with regard to the need for a balanced representation of Member States, and those within and outside the euro area. He or she may be re-elected once. The second Vice-Chair shall be the Chair of the Joint Committee. The Chair and Vice-Chairs shall present to the European Parliament, during a public hearing, how they intend to discharge their duties under this Regulation.

General Board : in addition to the members described in the Commission proposal, Parliament proposes that six independent persons appointed by the Members of the General Board with voting rights on the proposal of the Joint Committee. The nominees must 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. At the time of their nomination, the Joint Committee shall indicate which persons are designated also to serve on the Steering Committee; in carrying out their responsibilities, the persons nominated shall neither seek nor take instructions from any Government, institution, body, office, entity or private person; they shall refrain from any action incompatible with their duties or the performance of their tasks.

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

Because banks and financial institutions from third countries that are members of the European Economic Area or the European Free Trade Association may operate within the Union, it should be possible to invite one high-level representative from each of those countries to participate in meetings of the General Board subject to authorisation from their home country.

A majority of two-thirds of the votes shall be required to make a warning or recommendation public.

Members also made amendments to the composition of the **Steering Committee** and the **Advisory Scientific Committee**.

Collection and exchange of information: the amended proposal states that the European Supervisory Authorities, the ESCB, the Commission, the national supervisory authorities and national statistics authorities shall cooperate closely with the ESRB and provide all the information necessary for the fulfilment of its tasks in accordance with European Union legislation.

Before requesting information, the ESRB shall first take account of the existing statistics produced, disseminated and developed by the European Statistical System and the ESCB. 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. When the data is not available at the aforementioned authorities, the ESRB may request the data from the Member State concerned.

Where 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.

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 addressee of the request, provided that the addressee has legal access to the relevant data.

Warnings and recommendations: the warnings or recommendations shall also be transmitted to the European Parliament, the Council, the Commission, the addressees in the regulation and, where addressed to one or more national supervisory authorities, to the ESAs. In order to enhance the awareness of risks in the European 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 will indicate, on a case-by-case basis, and where appropriate, to which category the risk belongs.

Action in emergency situations: in the case 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 may issue an emergency warning. The Commission on its own initiative or at the request of the ESRB, an Authority, the European Parliament or the Council, may adopt a decision addressed to an Authority, determining the existence of an emergency situation. The Commission shall review that decision at appropriate intervals and in any event once a month and shall declare the discontinuation of the emergency situation as soon as appropriate. If the Commission determines the existence of an emergency situation, it shall duly inform the European Parliament and the Council without delay.

Follow-up of the ESRB recommendations: the amended proposal states that where the ESRB decides that an addressee of one of its recommendations has failed to follow or has inappropriately followed that recommendation, and that the addressee has not justified such failure, it shall inform the European Parliament, the Council, and the Commission and, where relevant, the European Supervisory Authorities concerned.

The European Parliament may, where appropriate, invite an addressee for an exchange of views with its competent Committee. This exchange of views, in presence of the ESRB, is notably relevant when national decisions have an effect on one or multiple Member States (spill over effect).

Public warnings and recommendations: Members consider that the addressees of warnings and recommendations released by the ESRB should be provided with the rights of making public its views and reasoning as well in response to the warning and recommendation published by the ESRB. Any data on which the General Board of the ESRB bases its analysis before issuing a warning or a recommendation shall be made public in an appropriately anonymous form. In the event of confidential warnings, information shall be made available within an appropriate period of time, to be defined in the ESRB's rules of procedure.

Reporting obligations and review: 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.

Three years after entry into force of the Regulation, the European Parliament and the Council shall examine the Regulation on the basis of a report from the Commission and shall determine whether the objectives and organisation of the ESRB need to be reviewed after having received an opinion from the ECB.

The report shall assess, in particular, whether:

- it is appropriate to simplify and reinforce the architecture of the ESFS in order to increase the coherence between the macro and the micro levels as well as between the ESAs;
- it is appropriate to increase the regulatory powers of the ESAs;
- the evolution of the ESFS is consistent with that of global developments in this area;
- there is sufficient diversity and excellence within the ESFS;
- accountability and transparency in relation to publication requirements are adequate.