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(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 26 October 2009

on a 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 and a proposal for a Council decision entrusting the European Central Bank with specific tasks concerning the functioning of the European Systemic Risk Board

(CON/2009/88)

(2009/C 270/01)

Introduction and legal basis

On 6 October 2009 the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on: (i) a 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 ⁽¹⁾ (hereinafter the proposed regulation); and (ii) a proposal for a Council decision entrusting the European Central Bank with specific tasks concerning the functioning of the European Systemic Risk Board ⁽²⁾ (hereinafter the proposed decision).

The ECB's competence to deliver an opinion on the proposed regulation is based on Article 105(4) of the Treaty establishing the European Community since the proposed regulation contains provisions affecting the European System of Central Banks' (ESCB) contribution to the smooth conduct of policies relating to the prudential supervision of credit institutions and the stability of the financial system, as referred to in Article 105(5) of the Treaty. As regards the proposed decision, the ECB's competence to deliver an opinion is based on Article 105(6) of the Treaty. Since both texts relate to the establishment, organisation and functioning of the European Systemic Risk Board (ESRB), and despite the distinct legislative procedures applying to these texts, the ECB has, for the sake of simplicity, adopted a single opinion on the two proposals.

The observations contained in this opinion are without prejudice to the future ECB opinion on the three draft proposals for Regulations of the European Parliament and of the Council establishing a European Banking Authority, a European Insurance and Occupational Pensions Authority and a European Securities and Markets Authority ⁽³⁾, which form part of the legislative package adopted by the Commission on 23 September 2009 reforming European financial supervision.

In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

⁽¹⁾ COM(2009) 499 final.

⁽²⁾ COM(2009) 500 final.

⁽³⁾ COM(2009) 501 final, COM(2009) 502 final and COM(2009) 503 final.

General observations

1. The ECB broadly supports the regulation and decision proposed by the Commission, which are aimed at establishing a new body responsible for the conduct of macro-prudential oversight in the EU, namely the ESRB. In the ECB's view, the recent financial crisis has demonstrated the need to strengthen the macro-prudential approach to regulation and supervision of the financial system as a whole. It has also demonstrated the need to assess the various sources of systemic risk and their consequences for the financial system in a comprehensive and timely manner. The ESRB, by identifying and assessing systemic risks, by issuing early warnings and recommendations where such risks are significant and by monitoring the follow-up, can significantly contribute to the stability of the EU financial system as a whole.
2. The Ecofin Council on 9 June 2009 concluded 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'. This followed the recommendations of the report by the High-Level Group on Financial Supervision in the EU chaired by Jacques de Larosière of 25 February 2009 and the Communication from the Commission of 27 May 2009, which suggests that the ECB should ensure the Secretariat of the ESRB. On 18 and 19 June, the European Council noted that the Communication and the Ecofin conclusions set the way forward for the establishment of a new framework for macro- and micro-prudential supervision and supported the creation of the ESRB.
3. The ECB has decided that it stands ready to ensure the Secretariat of the ESRB and to support the ESRB and suggests referring to this in a recital of the proposed regulation. The ECB is prepared to bring to the benefit of the ESRB, with the participation of all the members of the ECB's General Council, the macroeconomic, financial and monetary expertise of all EU central banks. This contribution will be underpinned by the activities of the ECB and ESCB in the areas of financial stability monitoring, macroeconomic analysis, collection of statistical information, and by the overall synergies in terms of expertise, resources and infrastructure in the context of existing central banking activities in the EU.
4. The involvement of the ECB and ESCB in the ESRB will not alter the primary objective of the ESCB under Article 105(1) of the Treaty, which is to maintain price stability. In this respect, the ECB notes that its supporting activities for the ESRB will neither affect the ECB's institutional, functional and financial independence nor the the ESCB's performance of its tasks under the Treaty and the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the Statute of the ESCB), in particular its financial stability and oversight tasks ⁽¹⁾.
5. In the area of statistics, the ECB is prepared to provide the necessary information to the ESRB relating to the macroeconomic and macro-financial environment and has the necessary expertise to do so. This includes in particular information on market conditions and market infrastructures. Micro-prudential information will be provided by the three new European supervisory authorities.

Specific observations

6. Regarding the procedure for the issuance and follow-up of risk warnings and recommendations, the ECB fully supports the proposed regulation ⁽²⁾, which provides that the ESRB risk warnings and recommendations will be directly transmitted to the respective addressees, with parallel transmission to the Ecofin Council. Changes to these provisions that would lead to an 'indirect route' for the transmission of risk warnings and recommendations would undermine the effectiveness and timeliness of the recommendations as well as the independence and credibility of the ESRB. Moreover, it is important that the procedures relating to the communication of the ESRB with other EU institutions and committees will not hinder the effective and timely fulfilment of the ESRB's tasks.

⁽¹⁾ Article 105(2) fourth indent and Articles 105(4) and (5) of the Treaty, and Article 3.1 fourth indent, Article 3.3, Articles 4 and 22, and Article 25.1 of the Statute of the ESCB.

⁽²⁾ Articles 16, 17 and 18 of the proposed regulation.

7. Regarding the organisational aspects of the ESRB, the ECB considers it particularly important that the composition of the ESRB's Steering Committee adequately reflects that of the ESRB's General Board. On the latter, 29 voting members will be central bankers, while the four other voting members will be a member of the Commission and the chairs of the three new European supervisory authorities. It is essential that the composition of the Steering Committee reflects that of the General Board in order to ensure that the Committee is representative of the Board, whose meetings it is meant to prepare. Therefore, the inclusion of five central bank members (in addition to the chair and vice-chair of the ESRB) alongside the above four other voting members is a minimum threshold to ensure such an appropriate balance together with sufficient representation of the euro area and non-euro area national central banks. Accordingly, the ECB strongly supports the Commission's proposal that seven of the Steering Committee members will be drawn from the ECB's General Council⁽¹⁾. However, as the composition of the euro area will change with time, it would not be advisable to lay down in a legal act a specific, immutable allocation of seats between euro area and non-euro area central banks. Lastly, the ECB supports the Commission's approach under which only the chair of the ESRB gives directions to the head of the secretariat⁽²⁾.
8. The chair and the vice-chair of the ESRB's General Board should be elected on the basis of the same procedures and by the same group of voting members, as the vice-chair should be fully able to deputise for the chair, if necessary. Consequently, the vice-chair should also be elected, as stated in the Commission's proposal, by and from the members of the General Board who are also members of the General Council of the ECB. Different procedures for the election of the chair and vice-chair would add undue complications and could give the unwarranted impression that they represent different groups within the ESRB.
9. Regarding the composition of the ESRB's General Board, the ECB supports the Commission's proposal that the president and vice-president of the ECB be voting members of the ESRB's General Board. This is in line with the principle that the ECB's General Council provides the basis for the voting members of the General Board⁽³⁾. Moreover, the inclusion of the vice-president of the ECB would be in line with the European Council Presidency Conclusions of 18 and 19 June 2009 according to which the vice-president could vote in the election of the chair of the ESRB as a member of the General Council of the ECB. Indeed, if he were not a member of the ESRB's General Board, the vice-president would be prevented from voting in this election.
10. The ESRB is a Community body, whose tasks concern the EU financial system and include making recommendations and taking appropriate actions in order to address systemic risks and safeguard the system's stability and whose members are drawn from all EU Member States. However, in view of the systemic importance of certain European non-EU countries for the EU financial system, it may be considered appropriate to invite representatives from these countries to attend some of the ESRB's meetings and/or the technical committees as observers when relevant issues are being discussed.

The ECB recommends that the following articles of the proposed regulation and of the proposed decision be amended. Specific drafting proposals are provided and explained in the Annex.

Done at Frankfurt am Main, 26 October 2009.

The President of the ECB

Jean-Claude TRICHET

⁽¹⁾ Article 11(1) of the proposed regulation.

⁽²⁾ Article 4(1) of the proposed decision. The chair of the ESRB chairs both the General Board and the Steering Committee.

⁽³⁾ The ECB's General Council comprises the ECB President, Vice-President and the Governors of the EU national central banks.

ANNEX

Drafting proposals

Text proposed by the Commission	Amendments proposed by the ECB ⁽¹⁾
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Amendment 1

Recital 5 of the proposed regulation

Recital 5	Recital 5
<p>'In its Communication entitled "European Financial Supervision" [...] 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".'</p>	<p>'In its Communication entitled "European Financial Supervision" [...] 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 ECB has decided that it stands ready to ensure the Secretariat of the ESRB and to support the ESRB. The support provided to the ESRB by the ECB as well as the tasks conferred upon the ESRB must be without prejudice to the principle of the independence of the ECB in the performance of its tasks pursuant to the Treaty.'</p>

Explanation:

The ECB's Governing Council has decided that the ECB stands ready to ensure the Secretariat of the ESRB and to support the ESRB and considers it appropriate to mention this in recital 5 of the proposed regulation.

The last sentence of recital 5 of the proposed regulation clarifies that the ECB's performance of its tasks will not be hampered by its support of the ESRB, nor by the tasks of the ESRB itself since, unlike the ESRB, the ECB is established by the Treaty. This is particularly important in view of the principle of central bank independence.

Amendment 2

Article 3(1) of the proposed regulation

Article 3	Article 3
<p>'1. The ESRB shall be responsible for the macro-prudential oversight of the financial system within the Community in order to 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.'</p>	<p>'1. The ESRB shall be responsible for the macro-prudential oversight of the financial system within the Community in order to prevent or mitigate systemic risks within the financial system, so as to avoid episodes of widespread financial distress, and contribute to a the smooth functioning of the Internal Market. and ensure a sustainable contribution of the financial sector to economic growth.'</p>

Explanation:

The ECB is of the view that ensuring a sustainable contribution to economic growth is not the motivation behind macro-prudential oversight. Therefore, the reference to this notion should be withdrawn from the above article.

Amendment 3

Article 4(1) of the proposed regulation

Article 4	Article 4
<p>'1. The ESRB shall have a General Board, a Steering Committee and a Secretariat.'</p>	<p>'1. The ESRB shall have a General Board, a Steering Committee, and a Secretariat and an Advisory Technical Committee.'</p>

Explanation:

The proposed regulation and decision need to put in place the key institutional aspects of the ESRB, including the Advisory Technical Committee (ATC). Both the proposed regulation and the proposed decision point out the leading role of the ECB and of national central banks in macro-prudential oversight ⁽²⁾. This article of the proposed regulation should be amended to clarify that the ATC is part of the organisational structure of the ESRB (see also below Amendments 5 and 7).

Text proposed by the Commission	Amendments proposed by the ECB (1)
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Amendment 4

Article 4(4) of the proposed regulation

<p>Article 4</p> <p>'4. The Secretariat shall provide analytical, statistical, administrative and logistical support to the ESRB under the direction of the Chair of the General Board in accordance with Council Decision XXXX/EC/2009.'</p>	<p>Article 4</p> <p>'4. In accordance with Council Decision XXXX/EC/2009 entrusting the ECB with specific tasks concerning the functioning of the ESRB, the Secretariat will be ensured by the ECB, which will shall provide analytical, statistical, administrative and logistical support to the ESRB, also drawing on technical advice from national central banks and supervisors under the direction of the Chair of the General Board.</p>
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Explanation:

The amendment is necessary to bring the proposed regulation in line with the Ecofin Council conclusions of 9 June 2009 and the proposed decision. Without it, the role of the ECB in supporting the ESRB would be omitted from the text of the proposed regulation. This would not be in line with past declarations and decisions, including in particular:

- the de Larosière report that stated 'within the EU, the ECB, as the heart of the ESCB, is uniquely placed for performing this task, i.e. identifying macro prudential risks';
- the Commission Communication of 27 May 2009;
- the Ecofin Council conclusions of 9 June 2009 stating 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'; and
- approval of the above conclusions by the European Council of 18 and 19 June 2009.

Amendment 5

Article 4(5) of the proposed regulation

<p>Article 4</p> <p>'5. The ESRB shall be supported by the Advisory Technical Committee referred to in Article 12, which shall provide advice and assistance on issues relevant to the work of the ESRB, where requested.'</p>	<p>Article 4</p> <p>'5. The ESRB shall be supported by the Advisory Technical Committee referred to in Article 12, which shall provide advice and assistance on issues relevant to the work of the ESRB, where requested.</p>
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Explanation:

This article of the proposed regulation should be amended to clarify that the ATC assists the ESRB on a permanent basis. The rules of procedure of the ESRB will include the provisions applicable to the advisory role of the ATC (see also Amendments 3 and 7 relating to the ATC).

Amendment 6

Article 7 of the proposed regulation

<p>'Article 7</p> <p>Impartiality</p> <p>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 shall neither seek nor take instructions from Member States.</p> <p>2. Member States shall not seek to influence the members of the ESRB in the performance of their ESRB tasks.'</p>	<p>'Article 7</p> <p>Impartiality and independence</p> <p>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 Community as a whole. They shall neither seek nor take instructions from Member States, Community institutions or any other public or private body.</p> <p>2. Member States, Community institutions or any other public or private body shall not seek to influence the members of the ESRB in the performance of their ESRB tasks.'</p>
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Text proposed by the Commission	Amendments proposed by the ECB (1)
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Explanation:

This article should be amended to ensure the independence of the members of the ESRB from interference by other Community bodies or any other body. This is without prejudice to the exercise by the ECB of the supporting tasks entrusted to the ECB for the benefit of the ESRB, and which cannot be qualified as instructions.

Amendment 7

Article 12(3) of the proposed regulation

<p>Article 12</p> <p>'3. The Committee shall perform the tasks referred to in Article 4(5) at the request of the chair of the General Board.'</p>	<p>Article 12</p> <p>'3. The Committee shall perform the tasks referred to in Article 4(5) at the request of the Chair of the General Board.'</p>
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Explanation:

The purpose of the amendment is to clarify that the ATC assists the ESRB on a permanent basis, not only when requested, in accordance with the ESRB rules of procedure (see also Amendments 3 and 5 relating to the ATC).

Amendment 8

Article 13 of the proposed regulation

<p>'Article 13</p> <p>In performing its tasks, the ESRB shall seek, where appropriate, the advice of relevant private sector stakeholders.'</p>	<p>'Article 13</p> <p>In performing its tasks, the ESRB shall seek, where appropriate, the advice views of relevant private sector stakeholders.'</p>
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Explanation:

The proposed terminology better reflects the nature of the role of private sector stakeholders.

Amendment 9

Recital 8 of the proposed decision

<p>Recital 8</p> <p>'The Council concluded on 9 June 2009 that the ECB should provide analytical, statistical, administrative and logistical support to the ESRB. The option foreseen by the Treaty to confer specific tasks concerning policies relating to prudential supervision upon the ECB should therefore be exercised, by conferring on the ECB the task of ensuring the Secretariat to the ESRB.'</p>	<p>Recital 8</p> <p>'The Council concluded on 9 June 2009 that the ECB should provide analytical, statistical, administrative and logistical support to the ESRB. The option foreseen by the Treaty to confer specific tasks concerning policies relating to prudential supervision upon the ECB should therefore be exercised, by conferring on the ECB the task of ensuring the Secretariat to the ESRB. The support provided to the ESRB by the ECB as well as the tasks conferred upon the ESRB must be without prejudice to the principle of the independence of the ECB in the performance of its tasks pursuant to the Treaty.'</p>
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Explanation:

The amendment to the proposed recital clarifies that the ECB's performance of its tasks will not be hampered by its support of the ESRB, nor by the tasks of the ESRB itself since, unlike the ESRB, the ECB is established by the Treaty. This is particularly important in view of the principle of independence.

Text proposed by the Commission

Amendments proposed by the ECB (1)

Amendment 10

New recital 8a of the proposed decision

'No current text'

Recital 8a

'(8a) The macro-prudential supervisory tasks of the ESRB aim at preventing or at least mitigating systemic risks within the financial system. While the ESRB is not in charge of supervising specific individual undertakings providing financial services, the oversight tasks of the ESRB and the support provided by the ECB are related to the financial system as a whole, with an emphasis on interlinkages across the various sectors of the financial system.'

Explanation:

Taking into account the nature and objectives of the macro-prudential oversight functions attributed to the ESRB and of the support provided by the ECB to the ESRB, the new proposed recital clarifies, in the context of the application of Article 105(6) of the Treaty, that macro-prudential supervision covers the financial system as a whole.

Amendment 11

Article 2 of the proposed decision

Article 2

'The European Central Bank shall ensure the Secretariat and shall therefore provide analytical, statistical, logistical and administrative support to the ESRB.

[...]

(b) In accordance with Article 5 of this Decision, the collection and processing of information, including statistical information, on behalf and for the benefit of the fulfilment of the ESRB tasks;

Article 2

'The European Central Bank shall ensure the Secretariat and shall ~~therefore~~ provide analytical, statistical, logistical and administrative support to the ESRB.

[...]

(b) In accordance with **Article 5 of the Statute of the European System of Central Banks and of the European Central Bank and** Article 5 of this Decision, the collection and processing of information, including statistical information, on behalf and for the benefit of the fulfilment of the ESRB tasks;

Explanation:

The deletion of the term 'therefore' brings the text in line with the Ecofin Council conclusions of 9 June 2009.

Article 2(b) of the proposed decision relates to the statistical support that the ECB is called upon to provide to the ESRB. The amendment proposed will enable the Secretariat to obtain confidential data collected by the ECB/ESCB on behalf and for the benefit of the ESRB.

Amendment 12

Article 4 of the proposed decision

'Article 4

Management

[...]

'Article 4

~~Management~~ **Functioning of the Secretariat**

[...]

Explanation:

The proposed title reflects more accurately the content of Article 4 of the proposed decision, and uses terminology that better respects the internal administrative competences of the ECB.

Text proposed by the Commission

Amendments proposed by the ECB ⁽¹⁾**Amendment 13**

Article 4(2) of the proposed decision

Article 4

'2. The Head of the Secretariat or its representative shall attend the General Board and the Steering Committee meetings of the ESRB.'

Article 4

'2. The Head of the Secretariat or its representative shall attend the General Board, ~~and~~ the Steering Committee **and the Advisory Technical Committee** meetings of the ESRB.'

Explanation:

The proposed amendment aims at reflecting the proposed structure of the ESRB as defined in Article 4(1) of the proposed regulation.

⁽¹⁾ Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.

⁽²⁾ See recital 13 of the proposed regulation and recital 7 of the proposed decision.