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COMMISSION OF THE EUROPEAN COMMUNITIES

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2009/0141 (AVC)

Proposal for a

COUNCIL DECISION

**entrusting the European Central Bank with specific tasks concerning the functioning of
the European Systemic Risk Board**

{ COM(2009) 499 final }

{ COM(2009) 501 final }

{ COM(2009) 502 final }

{ COM(2009) 503 final }

{ SEC(2009) 1234 }

{ SEC(2009) 1235 }

Proposal for a

COUNCIL DECISION

entrusting the European Central Bank with specific tasks concerning the functioning of the European Systemic Risk Board

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 105(6) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Central Bank²,

Having regard to the assent of the European Parliament³,

Whereas:

- (1) The financial crisis has revealed important shortcomings in the financial supervision, which has failed to prevent the accumulation of excessive risks in the financial sector and has in particular highlighted the weaknesses of the existing macro-prudential oversight.
- (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 its citizens and rebuilding trust in the financial system.
- (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.
- (4) In its Communication entitled "Driving European Recovery" of 4 March 2009⁴, 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 EU and to use the report from the de Larosière as a basis for action.
- (5) In its Communication entitled "European Financial Supervision" of 27 May 2009⁵, 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

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ C , , p. .

⁴ COM(2009) 114.

⁵ COM(2009) 252.

the view of the Commission and welcomed the Commission's intention to bring forward legislative proposals so that the new framework can be fully established.

- (6) By Regulation (EC) No .../2009 of the European Parliament and of the Council⁶, a Community level macro prudential oversight of the financial system and a European Systemic Risk Board (ESRB) are established.
- (7) Given its expertise on macro-prudential issues, the European Central Bank (ECB) can make a significant contribution to the effective macro-prudential oversight of the EU financial sector.
- (8) 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.

HAS ADOPTED THIS DECISION:

Article 1
Membership

The President and the Vice-President of the European Central Bank shall be Members of the General Board of the European Systemic Risk Board, hereinafter referred to as "the ESRB" as set up by Regulation XXXX.

Article 2
Support of the ESRB

The European Central Bank shall ensure the Secretariat and shall therefore provide analytical, statistical, logistical and administrative support to the ESRB. The mission of the Secretariat as defined in Article 4(4) of Regulation XXXX, shall include in particular:

- (a) The preparation of the ESRB meetings;
- (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;
- (c) The preparation of analysis necessary to carry out the ESRB tasks;
- (d) The support to the ESRB in its international cooperation at administrative level with other relevant bodies on macro-prudential issues;
- (e) The support to the work of the Advisory Technical Committee.

Article 3
Organisation of the Secretariat

1. The ECB shall ensure sufficient human and financial resources for the fulfilment of its task of ensuring the Secretariat.
2. The Head of the Secretariat shall be appointed by the ECB, in consultation with the General Board of the ESRB.

⁶ OJ L , , p. .

Article 4
Management

1. The Chair of the General Board shall give directions to the Head of the Secretariat on behalf of the ESRB.
2. The Head of the Secretariat or its representative shall attend the General Board and the Steering Committee meetings of the ESRB.

Article 5
Collection of information on behalf of the ESRB

1. The ESRB shall determine the information necessary for the purpose of the performance of the tasks of the ESRB. In view thereof, the Secretariat shall collect that information on a regular and ad hoc basis, subject to the confidentiality provisions of Article 6.
2. The Secretariat may request information, in individual, summary or collective form, relating to financial institutions or markets relevant for the tasks of the ESRB from the European Supervisory Authorities and, in the cases specified in Article 15 of Regulation (EC) No .../2009, the national supervisory authorities, the national central banks or other authorities of the Member States.
3. This collection of information on behalf of the ESRB may include Community, euro area and national aggregated and individual data the latter upon reasoned request. Before a request for data is made, the Secretariat shall first take account of the existing statistics produced, disseminated and developed by both the European Statistical System and the ESCB and then consult the relevant European Supervisory Authority, in order to ensure that the request is proportionate.
4. The Secretariat shall make available to the European Supervisory Authorities the information on systemic risks required to the exercise of their tasks.

Article 6
Confidentiality of data and documents

1. Without prejudice to the application of criminal law, any confidential information received by the Secretariat whilst performing its duties may not be divulged to any person or authority whatsoever outside the ESRB, except in summary or aggregate form, such that individual financial institutions cannot be identified.
2. The Secretariat shall ensure the confidentiality of documents submitted to the ESRB and to the Steering Committee of the ESRB, and of the proceedings of those bodies.
3. The ECB shall ensure the confidentiality of the data received for the performance of its tasks under this Decision. The ECB shall establish internal mechanisms and adopt internal rules to ensure the protection of data collected on behalf of the ESRB. The ECB staff shall comply with the applicable rules relating to professional secrecy.
4. Information acquired by the ECB as a result of the application of this Decision shall be used only for the purposes mentioned in Article 2.

Article 7
Review clause

The Council shall examine this Decision three years after the date set out in Article 8, on the basis of a report from the Commission and shall determine whether the present Decision needs to be reviewed after having received an opinion from the ECB.

Article 8
Applicability

This Decision shall apply from DD/MM/YYYY; [same date as the Regulation].

Article 9
Addressee

This Decision is addressed to the European Central Bank.

Done at Brussels,

For the Council
The President