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EUROPEAN CENTRAL BANK

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## LEGAL WORKING PAPER SERIES

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# CENTRAL BANK INVOLVEMENT IN MACRO-PRUDENTIAL OVERSIGHT

Daniel Głuch, Lucia Škovranová and Mikael Stenström



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**NOTE:** This Legal Working Paper should not be reported as representing the views of the European Central Bank (ECB). The views expressed are those of the authors and do not necessarily reflect those of the ECB.

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## **ABSTRACT**

*This working paper addresses the institutional arrangements for the performance of macro-prudential oversight of the financial system in the European Union with focus on the functions of the central banks. The first section of the paper outlines the evolution of the EU's supervisory arrangements which led to the establishment of the European Systemic Risk Board (ESRB) as the body responsible for EU macro-prudential oversight. This section also describes the ESRB's institutional links to the European System of Central Banks (ESCB), which comprises the European Central Bank (ECB) and the national central banks (NCBs) of the EU Member States. In the second section, the paper describes the supporting role played by the ECB and the NCBs in the performance of the ESRB's functions. Such support is provided at each stage of the macro-prudential oversight process, which comprises: (i) risk surveillance by the collection of market data; (ii) risk identification and evaluation by analytical reviews of the information collected; and (iii) risk mitigation by actions such as issuing risk warnings and recommendations. In the third section, the paper's analysis of the institutional arrangements at the EU level is complemented by a review of the main current models for cooperation at the national level between national macro-prudential authorities and their respective NCBs. In conclusion, the paper points to the need to establish robust legal safeguards to ensure the effectiveness of central bank involvement in the performance of macro-prudential oversight of the financial system, including establishing reliable data collection channels and respect for central bank independence.*

# 1. ESTABLISHMENT OF THE ESRB AS AN EU MACRO-PRUDENTIAL OVERSEER

## 1.1 Evolution of the EU supervisory arrangements

The present financial crisis has highlighted the shortcomings of the previous arrangements for financial supervision in the EU and the relevance of macro-prudential oversight of the financial system as an important complement to the micro-prudential supervision of individual financial institutions. The macro-prudential approach to supervision<sup>1</sup> addresses the financial system as a whole and involves the monitoring, assessment and mitigation of systemic risk within the financial system. The financial crisis has revealed that macro-financial factors, such as the interconnectedness of markets and institutions and financial globalisation, play an important role in determining the size, nature and propagation of systemic risk. Systemic risk<sup>2</sup> has been recognised as a partly endogenous phenomenon, rooted in the collective behaviour of financial institutions and their interconnectedness as well as the interaction between financial markets and the macro-economy. In the years leading up to the crisis, financial innovations in the banking sector, such as securitisation, extensive re-use of collateral and the increased use of derivative instruments, enabled credit institutions to disperse their risks to the capital markets and beyond<sup>3</sup>. Moreover, particularly in Europe, foreign banks' shares of domestic European markets increased substantially<sup>4</sup>. Macro-prudential policies are intended to prevent, or at least to contain, the build-up of financial imbalances and to ensure that the financial system is able to withstand the unwinding of imbalances and is resilient to shocks<sup>5</sup>.

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<sup>1</sup> P. Clement, 'The term "macroprudential": origins and evolution', Bank for International Settlements, 1 March 2010; Bank for International Settlements, Committee for Global Financial System, 'Macroprudential instruments and frameworks: a stocktaking of issues and experiences', May 2010. See also G. Galati and R. Moessler, 'Macroprudential policy - a literature review', Bank for International Settlements, Working Paper No 337, February 2011.

<sup>2</sup> ECB, 'The concept of systemic risk', *Financial Stability Review*, December 2009, and J. C. Trichet, President of the ECB, 'Systemic risk', lecture organised by Clare College, University of Cambridge, Cambridge, 10 December 2009. See also IMF, 'Detecting systemic risk', *Global Financial Stability Report 2009*, p. 1. 'Systemic risk' is defined in Article 2(c) of Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board 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, [whereby] all types of financial intermediaries, markets and infrastructure may be potentially systemically important to some degree'. See also J. C. Trichet, President of the ECB, introductory statement at the Hearing by the Economic and Monetary Affairs Committee of the European Parliament, 28 September 2009: 'Systemic risk concerns the possibility that the functioning of the financial system can be threatened or materially impaired as a result of the collective behaviour of market participants, investors and financial institutions; it derives, in particular, from their interactions in financial markets and from the close links between the supply of credit and the macro-economy.'

<sup>3</sup> See, for example, Bank for International Settlements, 'Global financial crisis', *Annual Report 2008/2009* of 29 June 2009, p. 16; ECB, 'Risk management lessons in the financial turmoil', *Financial Stability Review*, December 2009, p. 135; International Monetary Fund, 'Stabilizing the global financial system and mitigating the spillover risk', *Global Financial Stability Report 2009*, p. 1.

<sup>4</sup> ECB, 'Internationalisation of the EU banking sector' in *EU banking structures*, October 2008, p. 11.

<sup>5</sup> See Recommendation ESRB/2011/3 on the macro-prudential mandate of national authorities, sub-recommendation A, which defines the objective of the macro prudential policy as: 'to contribute to the safeguard of the stability of the financial system as a whole, including by strengthening the resilience of the financial system and decreasing the build up of systemic risks, thereby ensuring a sustainable contribution of the financial sector to economic growth' (OJ C 41, 14.2.2012, p. 1).

The need for macro-prudential oversight of the financial system was identified in a number of the comprehensive reviews of the legal and regulatory systems intended to support financial stability that were carried out in response to the financial crises, both at the international level<sup>6</sup> and by individual EU Member States<sup>7</sup>. In the EU, a High-Level Group on Financial Supervision in the EU was set up in October 2008; it produced its report in February 2009 (the ‘de Larosière Report’)<sup>8</sup>. On the basis of the recommendations in the de Larosière Report, in September 2009 the European Commission presented legislative proposals with a view to establishing new EU-wide authorities for micro-prudential and macro-prudential financial oversight<sup>9</sup>. The proposals were subject to consultation with the ECB<sup>10</sup> and were considered by the European Parliament and the Council of the European Union before adoption by the Economic and Financial Affairs Council (ECOFIN) in November 2010.

The legislation entered into force on 16 December 2010 and established the European System of Financial Supervision (ESFS). This upgraded the previous Union supervisory arrangements by establishing the European Systemic Risk Board (ESRB) as the Union-level macro-prudential financial supervisor. It also established three micro-prudential European Supervisory Authorities (ESAs): (i) the European Banking Authority (EBA)<sup>11</sup>; (ii) the European Securities and Markets Authority (ESMA)<sup>12</sup>; and (iii) the European Insurance and Occupational Pensions Authority (EIOPA)<sup>13</sup>. This legislation is

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<sup>6</sup> G20 Leaders Statement, ‘The Global Plan for Recovery and Reform’, London, 2 April 2009; and G20 Progress Report on the actions to promote financial regulatory reform issued by the US chair of the Pittsburgh G-20 Summit, 25 September 2009.

<sup>7</sup> See *The Turner Review: a regulatory response to the global banking crises*, Financial Services Authority, United Kingdom, March 2009; *New Financial Order: Recommendations by the Issing Committee*, Part I (October 2008) and Part II (March 2009), published as White Papers No 1 and No 2, Centre for Financial Studies, University of Frankfurt, Germany; and the report of the High-Level Committee on a New Financial Architecture, chaired by Alexandre Lamfalussy, Belgium, June 2009.

<sup>8</sup> Report of the High-Level Group on Financial Supervision in the EU, February 2009.

<sup>9</sup> For details on the de Larosière Report and the legislative procedure, see F. Recine and P. G. Teixeira ‘Towards a new regulatory model for the single European financial market’, *Revue Trimestrielle de Droit Financier* (4/2009).

<sup>10</sup> Opinion of the European Central Bank of 11 November 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) (OJ C 270, 11.11.2009, p. 1); and Opinion of the European Central Bank on three 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 (CON/2010/5) (OJ C 13, 20.1.2010, p. 1).

<sup>11</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

<sup>12</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

<sup>13</sup> Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

directly applicable in all EU Member States and is linked to an ‘omnibus’ directive amending a number of EU directives in respect of the powers of the three ESAs<sup>14</sup>.

At the same time, a policy was adopted to build on the financial stability role of the ESCB central banks and to entrust them with a supporting role in macro-prudential oversight of the financial system<sup>15</sup>. This is in line with the conclusions of the de Larosière Report, which stated that central banks have a key role to play in a sound macro-prudential system and that they should be given an explicit formal mandate to assess high-level macro-financial risks and to issue warnings where required. Central banks would need powers to obtain from national supervisors all the information necessary for this purpose<sup>16</sup>.

## **1.2 Legal and institutional framework for the ESRB**

### *(a) Institutional arrangements*

Under European Union law, individual credit institutions may conduct banking business in all Member States through branch offices on the basis of a ‘single European passport’, with a system of home and host competent authorities exercising harmonised powers of micro-prudential supervision. Union law does not specify that a particular supervisory body should exercise such powers at national level, and individual Member States are thus free to organise their supervision in accordance with national traditions and preferences. Hence, in the area of micro-prudential supervision, ‘competent authorities’ are those empowered by national law to carry out supervision. In practice, this covers a wide range of regimes. In some Member States, financial supervisors exercise micro-prudential supervision for the whole financial system, while in others there are separate banking supervisors together with other sector-specific supervisory authorities. In many cases, central banks are responsible for financial supervision or for banking supervision, or they cooperate with independent supervisors under various models for such cooperation.

This variety of supervisory approaches is in contrast to the EU’s integrated institutional arrangements for monetary policy for the purpose of maintaining price stability. The current integrated institutional arrangements for monetary policy were established in 1998 in the form of the European System of Central Banks (ESCB), comprising the European Central Bank (ECB) and the national central banks

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<sup>14</sup> Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/41/EC, 2003/71/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (OJ L 331, 15.12.2010, p. 120).

<sup>15</sup> L. Papademos, ‘Financial stability and macro-prudential supervision: objectives, instruments and the role of the ECB’, speech delivered at the conference: *The ECB and its Watchers XI*, Frankfurt, 4 September 2009.

<sup>16</sup> For instance, Council Regulation (EC) No 2533/98 concerning the collection of statistical information by the European Central Bank (OJ L 318, 27.11.1998, p. 8) was amended at the end of 2009 to clarify that the ECB can ask for data for financial stability purposes.

(NCBs) of the EU Member States. It became operational on 1 January 1999 with the introduction of the euro and a single monetary policy for the euro area. The ECB and the 17 NCBs of the euro area (the ‘Eurosystem’) have sole responsibility for defining and implementing monetary policy for the euro.

The legislation for the macro-prudential oversight of the financial system consists of two regulations which are binding and directly applicable in the Member States. The first establishes the ESRB<sup>17</sup> (the ‘ESRB Regulation’), and the second allocates specific tasks to the ECB in support of the ESRB<sup>18</sup> (the ‘Regulation on ECB support’). The ESRB Regulation is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU), on the adoption of harmonisation measures which have as their object the establishment and functioning of the internal market, and establishes the ESRB as a new EU body without legal personality and with the objective of contributing to the prevention and mitigation of systemic risks. The Regulation on ECB support is based on Article 127(6) TFEU<sup>19</sup>, and it acknowledges that, in view of its expertise on macro-prudential issues, the ECB can make a significant contribution to the effective macro-prudential oversight of the Union’s financial system<sup>20</sup>. At its inaugural meeting on 20 January 2011, the General Board of the ESRB established the Rules of Procedure of the ESRB<sup>21</sup> (the ‘ESRB Rules of Procedure’); this is an internal ESRB legal instrument on the functioning of its constituent bodies.

The main components of the ESRB are: (i) the General Board, which is its decision-making body; (ii) the Steering Committee, which assists the decision-making process; (iii) the Advisory Technical Committee (ATC) and the Advisory Scientific Committee (ASC), which provide advice and assistance on issues relevant to the work of the ESRB; and (iv) the Secretariat, which is provided by the ECB and is accountable to the ESRB’s Chair and its Steering Committee<sup>22</sup>. There is a more detailed description of the ESRB and its substructures in the Annex to this paper.

*(b) Objectives and tasks*

The ESRB has responsibility for the macro-prudential oversight of the financial system within the European Union. Its objectives are to contribute to the prevention or mitigation of systemic risks to financial stability and to the smooth functioning of the internal market, thereby ensuring a sustainable

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<sup>17</sup> Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).

<sup>18</sup> Council Regulation (EU) No 1096/2010 of 17 November 2010 conferring specific tasks on the European Central Bank concerning the functioning of the European Systemic Risk Board (OJ L 331, 15.12.2010, p. 162).

<sup>19</sup> According to Article 127(6) TFEU, the Council may confer specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions and other financial institutions other than insurance undertakings.

<sup>20</sup> Recital 7 of the Regulation on ECB support.

<sup>21</sup> Decision of the European Systemic Risk Board of 20 January 2011 adopting the Rules of Procedure of the European Systemic Risk Board (ESRB/2011/1) (OJ C 58, 24.2.2011, p. 4).



contribution of the financial sector to economic growth<sup>23</sup>. The interconnectedness of financial institutions and markets means that the monitoring and assessment of potential risks must be based on a broad set of macroeconomic and financial data and indicators.

In order to achieve those objectives, the ESRB is required to<sup>24</sup>: (a) determine and/or collect and analyse all relevant and necessary information; (b) identify and prioritise systemic risks; (c) issue warnings where systemic risks are deemed to be significant and, where appropriate, make those warnings public; (d) issue recommendations for remedial action in response to the risks identified and, where appropriate, make those recommendations public; (e) in an emergency, give a confidential warning to the Council together with an assessment of the situation, to enable the Council to assess whether to address a decision to the ESAs declaring the existence of an emergency; (f) monitor the follow-up to warnings and recommendations; (g) cooperate closely with all other parties to the ESFS; (h) participate in the Joint Committee, as appropriate; (i) coordinate its actions with those of international financial organisations, particularly the International Monetary Fund (IMF) and the Financial Stability Board (FSB); and (j) carry out other related tasks specified in Union legislation.

*(c) Tools*

Effective macro-prudential oversight of the financial system will require adequate arrangements for institutional decision-making that are independent of particular financial sectors and financial centres, and with a capacity to take necessary and often difficult decisions, in particular when there is a need to swim against the tide. While a range of macro-prudential supervisory instruments is available in principle, the choice of the appropriate tools for addressing emerging systemic risks remains a challenge, requiring further analysis to identify the most effective instruments for implementing macro-prudential policies.

There must be an effective framework for both macro and micro-supervisory and regulatory responses. This must include actions by micro-prudential supervisors, such as early warnings, stress-testing, cross-border supervisory coordination, and cooperation between regulators and legislators for the quick adaptation of rules. The new macro-prudential approach to supervision and regulation must be integrated with the existing micro-prudential structures. Macro and micro-prudential supervision are complementary and are part of the overall financial supervisory framework. There must be effective cooperation and information-sharing between the institutions involved in micro and macro-prudential supervision. Macro-prudential soft law could take the form of general guidelines or specific recommendations on the use of certain prudential tools – macro-prudential instruments. For example, macro-prudential recommendations could involve instruments such as the adjustment of capital

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<sup>22</sup> Article 4 of the ESRB Regulation.

<sup>23</sup> Article 3 of the ESRB Regulation.

<sup>24</sup> Ibid., Article 3(2).

requirements or requirements for additional capital buffers in the banking system as a whole, or it could entail guidance on leverage ratios and liquidity management<sup>25</sup>.

At a general level, it is possible to identify a series of steps for the management of systemic risk: (1) identification of data and macro-systemic indicators; (2) monitoring; (3) assessment and analysis; (4) prioritisation; (5) warnings and recommendations; (6) monitoring and follow-up of the implementation of policies and recommendations.

The ESRB does not only provide high quality macro-prudential assessments, it may also issue risk warnings<sup>26</sup> identifying potential imbalances in the financial system which are likely to increase systemic risks and issue recommendations for appropriate remedial actions. Risk warnings should prompt early responses to avoid the build-up of wider problems which may eventually become crises. If necessary, the ESRB may also recommend specific actions to address identified risks. Warnings and recommendations may address any aspect of the financial system which may generate a systemic risk. Warnings and recommendations may be public or confidential, they may be general or specific, and they may be addressed to the Union as a whole, to one or more Member States, to one or more of the ESAs, or to one or more of the national supervisory authorities. Recommendations may also be addressed to the European Commission in respect of Union legislation.

The ESRB's recommendations are not legally binding and hence questions have been raised in academic literature as to whether they have an appropriate effect<sup>27</sup>. However, the ESRB is not a classic 'soft law' body as it is anchored in the EU institutional framework. It is thought that its close connection to bodies which have formal powers may enhance the ESRB's effectiveness. On the other hand, this link to 'hard law' bodies may mean that the ESRB does not have the flexibility commonly associated with soft law bodies. At this stage, it is too early to say exactly how the ESRB's soft law will function in practice, and any analysis of its effects may be limited by the potentially confidential nature of its warnings and recommendations.

While the ESRB's recommendations are not binding, their addressees cannot remain passive with regard to an identified risk and they are expected to react in some way. If the addressee agrees with a recommendation, it must state what actions it is taking to follow the recommendation. If the addressee does not agree with a recommendation and chooses not to act, it must explain the reasons for its inaction, in line with the 'comply or explain' principle<sup>28</sup>. Hence, the ESRB's recommendations cannot simply be ignored. If the ESRB considers that one of its recommendations has not been followed or

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<sup>25</sup> L. Papademos, 'Financial stability and macro-prudential supervision: objectives, instruments and the role of the ECB', speech delivered at the conference: *The ECB and its Watchers XI*, Frankfurt, 4 September 2009.

<sup>26</sup> Article 16 of the ESRB Regulation.

<sup>27</sup> E. Ferran and K. Alexander, 'Can soft law bodies be effective? Soft systemic risk oversight bodies and the special case of the European Systemic Risk Board', University of Cambridge Faculty of Law Research Paper No 36/2011.

<sup>28</sup> Article 17 of the ESRB Regulation.

that an explanation for non-compliance is not convincing, it must, subject to strict rules on confidentiality, inform the addressee(s), the Council of Ministers and, where relevant, the ESA concerned. In most cases the warnings and recommendations will be sent to the relevant addressee and to the Council, but after having informed the Council the General Board may decide that a warning or recommendation should be made public<sup>29</sup>. The quality of the ESRB's work is expected to provide a significant incentive to act and to follow-up on its recommendations.

*(d) Specific macro-prudential instruments*

The specific macro-prudential instruments adopted must be able to help achieve the macro-prudential goals. These can be broadly defined as the preservation of financial stability by reducing the pro-cyclicality of the financial sector and improving its resilience to adverse shocks<sup>30</sup>. Several taxonomies of macro-prudential instruments have been produced by academics, and all tend to distinguish asset-side tools, liability-side tools and bank capital-oriented tools<sup>31</sup>. Among the more specific instruments for addressing pro-cyclicality are counter-cyclical capital buffers, presently being finalised in the context of the EU's implementation of Basel III and the revision of the Capital Requirements Directive<sup>32</sup>. Counter-cyclical capital buffers are intended to address the common tendency of credit institutions to relax lending standards and take risks by over-leveraging during economic booms and then drastically reducing their lending as the economy slows down and borrowers become insolvent and the credit institution's capital base is depleted. Banks could be asked to build up more capital per unit of risk during economic booms, which they could run down during subsequent downturns before reaching the binding constraints of capital regulation.

Another instrument with similar effects would be putting a variable ceiling on the loan-to-value ratio for collateralised loans. Unlike the existing fixed ceilings, this would allow the authorities to closely monitor borrowers' access to credit, depending on their appreciation of systemic risks affecting all or part of the economy. There are examples of such measures in the proposed Mortgage Credit Directive<sup>33</sup>.

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<sup>29</sup> Article 18 of the ESRB Regulation.

<sup>30</sup> For more details on specific macro-prudential measures and the relationship between macro-prudential policies and monetary policy, see L. Bini Smaghi, 'Macro-prudential supervision and monetary policy – linkages and demarcation lines', speech delivered in Vienna, 23 May 2011.

<sup>31</sup> Hyun Song Shin, 'Adapting Macroprudential Policies To Global Liquidity Conditions', Central Bank of Chile Working Papers, No 671, July 2012, available at <http://www.bcentral.cl/estudios/documentos-trabajo/pdf/dtbc671.pdf>. See, in particular the taxonomy of macro-prudential tools on p. 20.

<sup>32</sup> Proposal for a Regulation of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms (COM(2011) 452 final).

<sup>33</sup> Proposal for a Directive of the European Parliament and of the Council on credit agreements relating to residential property (COM(2011) 142 final).

From a broader perspective, there is a macro-prudential component in other types of measures that increase the resilience of the financial system, such as the introduction of robust procedures for bank resolution<sup>34</sup> or imposing bank levies to fund dedicated bank resolution funds<sup>35</sup>.

Macro-prudential policies will also need to pay particular attention to systemically important financial institutions (SIFIs). Given the global scope of the activities of the largest SIFIs, global coordination will be necessary<sup>36</sup>. The Financial Stability Board has undertaken international coordination work in this respect, confirming the real commitment of the global community (centred around the G20 countries) to decisively tackle systemic risks in global financial markets<sup>37</sup>.

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<sup>34</sup> ECB, 'The new European framework for financial crisis management and resolution', *Monthly Bulletin*, January 2011, p. 85.

<sup>35</sup> ECB, 'Financial resolution arrangements to strengthen financial stability: bank levies, resolution funds and deposit guarantee schemes', *Financial Stability Review*, June 2011, p. 149.

<sup>36</sup> Financial Stability Board, 'Reducing the moral hazard posed by systemically important financial institutions. FSB recommendations and timelines', 20 October 2010; and 'Consultative Document. Effective resolution of systemically important financial institutions. Recommendations and timelines', 19 July 2011.

<sup>37</sup> ECB, 'The financial crisis and the strengthening of the global policy coordination', *Monthly Bulletin*, January 2011, p. 87.

## 2. THE ECB'S SUPPORT FOR THE ESRB

### 2.1 Financial stability mandate

According to Article 127(2) TFEU, one of the basic central banking tasks of the ESCB is to define and implement the monetary policy of the Union. While this provision refers to the ESCB, which includes all the NCBs in the EU, the provision should be read as a reference to the Eurosystem, i.e. the ECB and the NCBs of the Member States that have adopted the euro<sup>38</sup>. Other basic tasks of the Eurosystem include the conduct of foreign exchange operations, the holding and management of official foreign reserves and the promotion of the smooth operation of payment systems<sup>39</sup>. The ECB also has the exclusive right to authorise the issue of euro banknotes<sup>40</sup>. Moreover, Article 5 of the Statute of the European System of Central Banks and of the European Central Bank (the 'Statute of the ESCB'), annexed as Protocol No 4 to the Treaty, states that the ECB, assisted by the NCBs, shall collect the necessary statistical information from the competent national authorities or directly from economic agents; and Article 6 of the Statute of the ESCB refers to the ECB's role in international cooperation and participation in international organisations, as well as the NCBs' participation as far as Eurosystem tasks are concerned<sup>41</sup>.

In addition, Article 127(5) TFEU contains a financial stability mandate requiring the ESCB to contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system. As with the ESCB's tasks set out in Article 127(2) TFEU, this reference to the financial stability mandate of the ESCB should be read as reference to the mandate of the Eurosystem<sup>42</sup>. Article 127(4) TFEU and Article 4 of the Statute of the ESCB refer to the ECB's advisory function and establish that the ECB must be consulted on any proposed Union act and draft national legislative provisions in its fields of competence<sup>43</sup>. The financial stability mandate is further referred to in Article 25.1 of the Statute of the ESCB with regard to consultation of the ECB on matters of financial stability<sup>44</sup>, and it is also reflected in the Eurosystem Mission Statement, which reiterates the aim to safeguard financial stability. Finally, Article 127(6) TFEU authorises the Council, acting unanimously, to confer specific tasks upon the

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<sup>38</sup> See the derogation set out in Article 139(2)(c) TFEU.

<sup>39</sup> Article 127(2) TFEU.

<sup>40</sup> Article 128(1) TFEU.

<sup>41</sup> See the derogation specified in Article 42.1 of the Statute of the ESCB.

<sup>42</sup> Article 139(2)(c) TFEU and Article 42.1 of the Statute of the ESCB.

<sup>43</sup> The framework for consultations of the ECB by national authorities is set out in Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

<sup>44</sup> According to Article 25.1 of the Statute of the ESCB, the ECB may offer advice to and be consulted by the Council, the Commission and the competent authorities of the Member States on the scope and implementation of Community legislation relating to the prudential supervision of credit institutions and to the stability of the financial system.

ECB concerning policies relating to prudential supervision of credit institutions and other financial institutions, with the exception of insurance undertakings.

Traditionally, one of the components of the financial stability mandate of central banks, including the ECB, has been systemic risk analysis. This can be seen, for example, in the series of triennial central bank conferences organised by the G10 Committee on the Global Financial System between the mid-1990s and early 2000s<sup>45</sup>. The European Monetary Institute, the forerunner of the ECB, also contributed to systemic risk work in this context, participating alongside the US Federal Reserve, the Bank of England, the Bank of Japan and many other central banks<sup>46</sup>. Moreover, from the outset, the ECB drew up a research agenda on financial stability and systemic risk, and in 2004 the ECB started to publish a biannual Financial Stability Report. The main objective of this Report is to help identify potential vulnerabilities at an early stage, and to raise awareness among market participants with a view to promoting preventive and remedial policies. This suggests that central banks are well placed to play an important role in macro-prudential oversight and that, within the EU, the ECB is a logical choice as a provider of analytical support to the ESRB. The EU regulatory reform reflects this practice by giving central banks and their macro-prudential analyses an important statutory role in the new architecture for European financial supervision.

Building on the financial stability mandate of the ECB, Article 2 of the Regulation on ECB support requires the ECB to ensure the provision of a Secretariat for the ESRB, and thereby provide it with analytical, statistical, logistical and administrative support. The use of the word ‘thereby’ in referring to the Secretariat of the ESRB suggests that, despite it not being a legal entity, the Secretariat is the channel for any analytical, statistical, logical or administrative support from the ECB to the ESRB. This includes: (a) preparation for ESRB meetings; (b) the collection and processing of information, including statistical information in accordance with Article 5 of the Regulation on ECB support and Article 5 of the Statute of the ESCB; (c) the preparation of analyses, drawing on technical advice from NCBs and national supervisors; (d) support for the ESRB in its international cooperation on macro-prudential issues; and (e) support for the work of the General Board, the Steering Committee, the Advisory Technical Committee and the Advisory Scientific Committee.

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<sup>45</sup> L. Bini Smaghi, Executive Board member of the ECB, ‘Macro-prudential supervision’, speech delivered at the conference: *Financial Supervision in an Uncertain World*, Venice, 25-26 September 2009.

<sup>46</sup> See, for example, O. de Bandt and P. Hartmann (1998), ‘What is systemic risk today?’, in *Risk Measurement and Systemic Risk*, Proceedings of the Second Joint Central Bank Research Conference, hosted by the Bank of Japan, Tokyo, 1997.

## 2.2 Collection of information and statistical support

Determining, collecting and analysing all the relevant and necessary information is at the top of the list of the ESRB's tasks<sup>47</sup> that are necessary for achieving its objectives<sup>48</sup>. In order to carry out its core tasks, the ESRB needs to be accurately informed about developments within the financial system and it must be in a position to process the information received. Collection and analysis of the necessary information is a day-to-day task of the ESRB, carried out by the Secretariat. Statistical information has a prominent place among the various kinds of information collected. Statistical support by the Secretariat goes beyond the mere collection of existing statistical data. The Secretariat may also process statistical data and compile statistics on its own or in collaboration with the ESAs. One particular product of the Secretariat mandated by Article 3(2)(g) of ESRB Regulation is the common set of quantitative and qualitative indicators (the 'risk dashboard') published after each quarterly meeting of the General Board.

Two main questions arise about the collection of statistical information by the Secretariat: what kind of information should be collected and from which sources? Statistical information has been collected and compiled both at national level and EU level since the time prior to the establishment of the ESRB. The ESRB can therefore take advantage of existing statistics made available by other institutions with statistical mandates. In fact, rules governing the collection of information by the ESRB<sup>49</sup> require it first to take account of the existing statistics produced, disseminated and developed by the European Statistical System (ESS)<sup>50</sup> and the ESCB.

As required by both the ESRB Regulation<sup>51</sup> and the Regulation on ECB support<sup>52</sup>, the ESRB determined what information is necessary for the performance of its tasks in Decision ESRB/2011/6 of 21 September 2011 on the provision and collection of information for the macro-prudential oversight of the financial system within the Union<sup>53</sup>. The ESRB Regulation means that, as a rule, the ESRB collects information in summary or aggregate form. Decision ESRB/2011/6 only relates to aggregated information<sup>54</sup> required by the ESRB for the performance of its tasks, which is to be provided by the ECB and the ESAs. The ECB and the three ESAs undoubtedly have available to them most of the

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<sup>47</sup> Article 3(2)(a) of the ESRB Regulation.

<sup>48</sup> Article 3(1) of the ESRB Regulation.

<sup>49</sup> Article 15(4) of the ESRB Regulation.

<sup>50</sup> The ESS is the partnership between the Commission (Eurostat), national statistical institutes and other national authorities responsible in each Member State for the development, production and dissemination of European statistics, i.e. relevant statistics necessary for the performance of the activities of the Union.

<sup>51</sup> Article 3(2)(a) of the ESRB Regulation.

<sup>52</sup> Article 5(1) of the Regulation on ECB support.

<sup>53</sup> OJ C 302, 13.10.2011, p. 3.

information that is relevant to the ESRB. In most cases, the information collected by the euro area NCBs under ECB legal acts on statistics must be made available to the ESRB by the ECB pursuant to Annex I to Decision ESRB/2011/6. Likewise, the ESAs must provide specified data collected in cooperation with national supervisory authorities pursuant to Annex II to Decision ESRB/2011/6.

Decision ESRB/2011/6 addresses the provision and collection of (aggregated) statistical information. According to Annex I, the ECB mostly provides the Secretariat with statistics produced by euro area NCBs on the basis of statistical information reported pursuant to the legal acts specified in Annex I<sup>55</sup>. If the ESAs and the ECB do not provide the aggregated information requested, because they do not have it, or if the information is not provided on time, the Secretariat can request it from other institutions, and ultimately from the relevant Member State<sup>56</sup>. The ESRB could, for instance, directly approach NCBs outside the euro area for statistical information which the ECB is unable to provide<sup>57</sup>. Similarly, the ESRB could ask national supervisory authorities for information that the ESAs have failed to provide.

In Decision ESRB/2011/6, the ESRB has specified the sort of aggregated information to be provided by the ECB and ESAs. However, the Decision does not cover all the aggregated information that may be necessary for the ESRB's tasks. In fact, Decision ESRB/2011/6 is an interim solution, only dealing with the aggregated information necessary for the ESRB's activities in the short term, as identified by the ESRB in cooperation with the ECB and the ESAs<sup>58</sup>. Depending on its further experience, the ESRB General Board could adjust the list of information regularly provided by the ECB and ESAs or decide on new regular information providers. In the long term, it is expected that additional information to be provided to the ESRB from various sources will be specified pursuant to existing or new EU legal acts. In this context, the ESRB has commented on a number of legislative initiatives with a view of ensuring that its information requirements are taken into account.

Moreover, the ESRB's ad hoc needs for aggregated information may be met by following the procedure set out in Annex III to Decision ESRB/2011/6. With the help of the ESAs and, if necessary,

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<sup>54</sup> Aggregated information does not allow for the identification of individual financial institutions. The method of aggregation is not specified for datasets provided by the ECB, as the method is already indicated in the respective ECB legal act. The anonymity of individual financial institutions in information provided by the ESAs is preserved as set out at the beginning of Annex II to Decision ESRB/2011/6.

<sup>55</sup> Only monetary financial institutions' balance sheet data and consolidated banking data, mentioned in points 1 and 6 of the Annex I respectively, constitute *statistical information* to be reported.

<sup>56</sup> Article 15(5) of the ESRB Regulation.

<sup>57</sup> Both participating and non-participating NCBs have a duty to assist the ECB with collecting statistical information necessary for the tasks of the ESCB. However, the ECB regulations adopted in this field are only binding on participating NCBs. Each non-participating Member State should design and implement the national measures that the Member State considers appropriate for collecting the statistical information needed to fulfil the ECB's statistical reporting requirements and for the timely preparation of the statistics necessary for them to become participating Member States. Accordingly, non-participating central banks make available to the ECB statistical information collected from their resident reporting agents on a voluntary basis and in line with national legislation. See Recital 17 of Council Regulation (EC) 2533/98.

<sup>58</sup> Recital 6 of Decision ESRB/2011/6.



the ESCB, the ESS, the commercial data providers and international organisations, the Secretariat will first investigate whether ‘fit for purpose data’ or acceptable proxies of sufficient quality already exist and whether the owner’s permission can be obtained to use such data if it is not fully in the public domain. If such information is not available the General Board may decide that an ad hoc survey should be carried out by the ESAs or the ESCB, possibly involving reporting agents.

Since certain financial institutions are systemically relevant, the ESRB may need to obtain statistical information which allows for the identification of individual financial institutions. Under the ESRB Regulation, any request for information on individual financial institutions must be accompanied by an explanation as to why such data is deemed to be systemically relevant and necessary<sup>59</sup>. National supervisory authorities are the most likely addressees of such requests, given that they have the most detailed information on supervised financial institutions. It will be up to the relevant ESA to check whether the request is justified and proportionate. Additional justification may be requested from the ESRB, but, once it is provided, the requested individual data must be sent to the ESRB.

A question arises as to whether the ECB may share individual data with the ESRB. Information that is not in summary or aggregate form constitutes confidential statistical information according to the definition in Article 1(12) of Regulation (EC) No 2533/1998. Article 2(c) of the Regulation on ECB support expressly provides that the Secretariat shall collect and process information, including statistical information, on behalf the ESRB and for the purpose of the fulfilment of its tasks in accordance with Article 5 of the Statute of the ESCB and Article 5 of the Regulation on ECB support. Regulation (EC) No 2533/1998 sets out detailed rules on the collection and processing of statistical information by the ESCB, including the conditions for the use and transmission of confidential statistical information<sup>60</sup>. It follows that confidential statistical information collected by the ESCB may be shared with the ESRB<sup>61</sup> subject to the conditions in Regulation (EC) No 2533/1998. However, Article 15(5) to (7) of the ESRB Regulation requires the ESRB to check first whether the relevant ESA has the individual data. In other words, the ESRB may only make a request to the ESCB, or to other institutions<sup>62</sup>, if the relevant ESA is unable to provide the information.

Finally, given the sensitivity of the confidential information made available to the ESRB, it must be ensured that such information is kept within the ESRB circles and is only used for the performance of ESRB tasks. Compliance with confidentiality rules is a primary concern of the ESRB Secretariat. First, the Secretariat must ensure that confidential information received from data providers is treated appropriately by its staff. Second, the Secretariat must ensure that the information it transmits to other ESRB bodies is treated in a manner which ensures its continued confidentiality.

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<sup>59</sup> Article 15(6) of the ESRB Regulation.

<sup>60</sup> See, in particular, Article 8.

<sup>61</sup> This conclusion is expressly confirmed in Recital 10 of the Regulation on ECB support.

ECB staff members, including staff allocated to the ESRB Secretariat<sup>63</sup>, are bound by a duty of professional secrecy in accordance with Article 37 of the Statute of the ESCB<sup>64</sup>. Since the Secretariat may not divulge confidential information outside the ESRB, a Chinese wall has been established between the ESRB and the ECB.

As mentioned, if the ESRB needs any data on individual institutions for the performance of its tasks, it will first address the ESAs. For that purpose, the ESRB and the ESAs have entered into an Agreement on the establishment at the ESRB Secretariat of specific confidentiality procedures in order to safeguard information regarding individual financial institutions and information from which individual financial institutions can be identified (the 'Agreement')<sup>65</sup>. Information on individual financial institutions may only be granted to persons whose names are listed in certain Terms of Reference agreed between the ESRB and the ESAs. According to the ESRB's Annual Report, it had recourse to the procedures specified in the Agreement on several occasions in 2011<sup>66</sup>.

### **2.3 Administrative and logistical support**

The administrative support provided to the ESRB by its Secretariat includes keeping the records and documents of the ESRB, the administration of the ESRB's website and dealing with the ESRB's correspondence<sup>67</sup>. The ESRB Secretariat has also been charged with processing applications for access to ESRB documents<sup>68</sup>.

The General Board has decided that the rules applicable to public access to the ECB's documents will apply, *mutatis mutandis*, to public access to ESRB documents.<sup>69</sup> Thus, an initial application for access to an ESRB document will be addressed by the Head of the Secretariat<sup>70</sup>. In the event of total or partial refusal, a confirmatory application may be submitted to the General Board<sup>71</sup>. Due to the composition of the General Board, the ESRB may be in possession of documents that have been drawn up by a

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<sup>62</sup> Article 15(5) of the ESRB Regulation.

<sup>63</sup> Staff of the ESRB Secretariat are subject to Decision ECB/1998/4 of 9 June 1998 on the adoption of the Conditions of Employment for Staff of the European Central Bank (OJ L 125, 19.5.1999, p. 32). See, to this end, Recital 8 of the Regulation on ECB support.

<sup>64</sup> Moreover, Article 8 of the ESRB Regulation specifically establishes a duty of professional secrecy for any person who works or who has worked for or in connection with the ESRB.

<sup>65</sup> Available on the ESRB website: [www.esrb.europa.eu](http://www.esrb.europa.eu).

<sup>66</sup> Section 1.2, p. 11.

<sup>67</sup> Article 15(3)(f) of the ESRB Rules of Procedure.

<sup>68</sup> Article 5(2) of Decision ESRB/2011/5 of 3 June 2011 on public access to European Systemic Risk Board documents (OJ C 176, 16.6.2011, p. 3).

<sup>69</sup> Article 1 of Decision ESRB/2011/5. Application of the existing ECB rules to ESRB documents is explicitly required in Article 7(1) of the Regulation on ECB support.

<sup>70</sup> Article 5(3) of Decision ESRB/2011/5.

<sup>71</sup> Article 5(4) of Decision ESRB/2011/5.

third party institution or a body from which the General Board draws its members. In such a case, the Secretariat will either consult that party to assess whether there are any grounds for refusal, or refer the request to the institution or body concerned<sup>72</sup>. Likewise, the General Board will be either consulted on requests for public access to documents drawn up by the ESRB and in the possession of ESRB member institutions or bodies, or it will handle such requests referred to it<sup>73</sup>.

In addition, the ESRB Rules of Procedure specify other administrative and logistical tasks of the Secretariat. For instance, the Secretariat facilitates cooperation within the ESRB and between the ESRB, the ESCB, the other parties to the ESFS, and other relevant institutions at national, European and international level and it ensures efficient communication flows<sup>74</sup>. It also manages the financial, material and human resources allocated to the ESRB by the ECB<sup>75</sup>.

## 2.4 Analytical support

In order to prevent or detect systemic risks, the ESRB's oversight needs to be underpinned by high quality analytical work. The General Board has decided that the staff of the ESRB Secretariat should contribute to a number of the essential tasks of the other four ESRB bodies<sup>76</sup>. The Secretariat carries out its tasks, including analytical work, under the direction of the Chair and the Steering Committee<sup>77</sup>. In addition, the Secretariat's analytical mandate is determined by its role of supporting the work of the Advisory Scientific Committee (ASC)<sup>78</sup>, i.e. the ESRB body of experts charged with analytical and consultative tasks<sup>79</sup>. Since it is envisaged that the ASC's members may be chosen from sectors which may not always provide them with in-depth underlying analyses<sup>80</sup>, the ESRB Secretariat is expected to provide assistance in this regard. To ensure effective support by the Secretariat, the ESRB Regulation expressly provides for the Head of the Secretariat to participate at the ASC's meetings. The Secretariat will also contribute to the performance of the tasks of the Advisory Technical Committee (ATC)<sup>81</sup>, including: the regular review of financial stability conditions in the EU, including the detection of systemic risks; advising on the draft regular reports which the ECB produces for the ESRB; analytical

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<sup>72</sup> Article 3(3) of Decision ESRB/2011/5.

<sup>73</sup> Article 4 of Decision ESRB/2011/5.

<sup>74</sup> Article 15(3)(a) of the ESRB Rules of Procedure.

<sup>75</sup> Article 15(3)(g) of the ESRB Rules of Procedure. According to the ESRB Annual Report 2011, p. 17, in terms of budget, the ECB dedicated 56 full-time equivalent staff to ESRB activities (of which 25 are employed within the Secretariat). The direct costs amounted to EUR 7.1 million, to which indirect costs relating to other support services shared with the ECB (e.g. human resources, IT and general administration) have to be added.

<sup>76</sup> See, in particular, Article 15(3)(b), (c), (d) and (e) of the ESRB Rules of Procedure.

<sup>77</sup> Article 4(4) of the ESRB Regulation.

<sup>78</sup> Article 12(4) of the ESRB Regulation.

<sup>79</sup> See the Mandate of the Advisory Scientific Committee of the European Systemic Risk Board of 20 January 2011.

<sup>80</sup> For instance, members coming from academia, representing small and medium sized enterprises, or trade unions.

and policy preparations for discussions in the Steering Committee and the General Board on warnings and recommendations; regulatory mapping and review (including the quarterly publication of the risk dashboard with its 40 indicators) and the possible development of macro-prudential policy instruments available to the competent authorities of the Member States; regular monitoring of the macro-prudential policy decisions of the competent authorities of the Member States, as well as authorities outside the EU, and discussion of their possible implications for the EU as a whole; and preparation of opinions on directives in the financial area, where the legislation expressly requests the ESRB to make recommendations<sup>82</sup>.

The ESRB Secretariat's analytical tasks are closely related to its day-to-day support for the ESRB bodies. Through its cooperation with the ESRB member institutions, the Secretariat is expected to build up its expertise on macro-supervisory instruments and its ability to evaluate macro-prudential information as a basis for possible ESRB policy recommendations<sup>83</sup>.

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<sup>81</sup> Article 13(4) of the ESRB Regulation.

<sup>82</sup> See the Mandate of the Advisory Technical Committee of the European Systemic Risk Board of 20 January 2011.

<sup>83</sup> Article 15(3)(d) of the ESRB Rules of Procedure.

### 3. THE MACRO-PRUDENTIAL MANDATES OF SELECTED NATIONAL CENTRAL BANKS IN THE EU

The ESRB attaches great importance to the design and effectiveness of the macro-prudential policy frameworks of the Member States. To ensure the effective follow-up to its recommendations and warnings, as well as supporting any policy measures adopted by Member States on their own initiative, the ESRB outlined some guiding principles for national macro-prudential oversight in Recommendation ESRB/2011/3 on the macro-prudential mandate of national authorities<sup>84</sup>. These guiding principles essentially enshrine the ESRB's ideas about how best the Member States should frame the macro-prudential mandates of their designated authorities. Member States that have already entrusted macro-prudential mandates to national committees or councils should make sure that their institutional arrangements and powers are in line with Recommendation ESRB/2011/3. Others should react to the Recommendation by enacting new national rules establishing macro-prudential arrangements.

Recommendation ESRB/2011/3 contains five recommendations:

- *Recommendation A* is that Member States must specify that the ultimate objective of any national macro-prudential mandate must be to: 'contribute to the safeguard of the stability of the financial system as a whole, including by strengthening the resilience of the financial system (first intermediate objective) and decreasing the build of systemic risks (second intermediate objective), thereby ensuring a sustainable contribution of the financial sector to economic growth (final objective)'.
- *Recommendation B* addresses the institutional arrangements and recommends a choice between two models: either a collegial model, where all micro-prudential supervisors and the central bank meet, or a single-institution model (which may include an existing institution such as the central bank) provided that the other supervisors report to it. In either case, Recommendation ESRB/2011/3 requires the central bank to play a leading role in macro-prudential policy, in particular where it already acts as a micro-prudential supervisor<sup>85</sup>. Furthermore, there must be clear reporting and cooperation lines between the national macro-prudential authority and the ESRB.
- *Recommendation C* addresses the tasks of the macro-prudential authority. These consist as a minimum of identifying, monitoring and assessing risks to financial stability and of implementing policies to achieve its objective by preventing and mitigating those risks. As for the data collection provisions in the ESRB Regulation, Recommendation C seeks to ensure that national macro-prudential authorities have the power to obtain all national information relevant for performing their tasks,

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<sup>84</sup> See Recital 5 of Recommendation ESRB/2011/3 on the macro-prudential mandate of national authorities (OJ C 41, 14.2.2012, p. 1).

<sup>85</sup> Ibid., Recommendation B in conjunction with Recital 7.

including information from micro-prudential supervisors. Recommendation C encourages giving national macro-prudential authorities specific powers, including the power to designate the ‘financial institutions and structures that are systemically relevant for the respective Member State’.

- *Recommendation D* addresses the issues of transparency and the accountability to national parliaments of national macro-prudential authorities.

- *Recommendation E* addresses the issue of the operational and financial independence of national macro-prudential authorities.

The implementation of these recommendations will vary according to the roles of the central banks. This section points out the main features of the roles of selected central banks in macro-prudential oversight, representing models ranging from mere support to full concentration of the macro-prudential tasks in the NCB. In three out of four of the cases analysed, the Member State in question has prepared draft legislation on the topic, and this is considered in the analysis.

### 3.1 Germany

The German legislator aims to strengthen the cooperation of the key institutions in the area of financial stability by establishing a Financial Stability Committee (*Ausschuss für Finanzstabilität*, hereinafter the ‘Committee’). New arrangements in the draft Law on the strengthening of German financial supervision<sup>86</sup> (hereinafter the ‘draft law’) have already been submitted to the Federal Parliament. Provisions assigning new responsibilities to the Deutsche Bundesbank are scheduled to enter into force on 1 January 2013.

Pursuant to the draft law, the Committee is organised under the Federal Ministry of Finance<sup>87</sup> (hereinafter the ‘Ministry’) and consists of three representatives from each of the Ministry, the Deutsche Bundesbank (hereinafter the ‘Bundesbank’) and the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*, hereinafter the ‘BaFin’). In addition, the chairman of the management board of the Federal Agency for Financial Market Stabilisation will participate in the Committee as an adviser without voting rights<sup>88</sup>. The composition of the Committee ensures the pooling of expertise from the institutions responsible for financial supervision and financial market regulation. The Committee is not designed to be a body in overall charge of macro-prudential oversight, but rather to be a platform for cooperation between the macro-prudential authority (the Bundesbank), the micro-prudential supervisor (BaFin) and the Ministry as a member with the power to

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<sup>86</sup> *Entwurf eines Gesetzes zur Stärkung der Deutschen Finanzaufsicht* dated 19 June 2012. The Committee should be set up under a new Law on the Supervision of Financial Stability (*Gesetz zur Überwachung der Finanzstabilität*) introduced by Article 1 of the draft law.

<sup>87</sup> Article 1, Section 2(1) of the draft law.

<sup>88</sup> *Ibid.*, Article 1, Section 2(3).

propose new legislation if need be<sup>89</sup>. While the composition of the Committee is intended to ensure that it represents different perspectives and is not dominated by the central bank, the Bundesbank has been given tasks associated with the responsibilities of the Committee, in particular concerning data collection.

The draft law provides broadly that the Committee will consider issues that are important for financial stability<sup>90</sup>. The Committee may warn the Federal Government, BaFin or any other public authority in Germany of risks which might adversely affect financial stability and it may recommend measures to address them. The addressees of such recommendations are required either to act and regularly report on the implementation status of the recommendations or to explain their inaction. The Committee may, at its discretion, publish its warnings and recommendations<sup>91</sup>.

The Bundesbank is to be given the explicit mandate of contributing to preserving the stability of the financial system in Germany by providing broad support to the Committee. The Bundesbank will carry out underlying analysis aimed at identifying risks to financial stability, and it will propose specific warnings and recommendations for adoption by the Committee and evaluate measures taken by the addressees of such recommendations to implement them<sup>92</sup>. Furthermore, the representatives of the Bundesbank will be entitled to cast a blocking vote in respect of any Committee decision on warnings, recommendations and annual reports to the Federal Parliament<sup>93</sup>.

The effective cooperation of the institutions represented on the Committee requires enhanced information sharing. The draft law provides for information exchanges between the Bundesbank and BaFin.<sup>94</sup> In their capacities as Committee members, the representatives of the four institutions will be exempt from the confidentiality obligations of their respective institutions<sup>95</sup>. However, they will have to keep confidential, vis-à-vis external parties, all information they become aware of in the performance of their functions<sup>96</sup> and any consultations of the Committee<sup>97</sup>. The Bundesbank will be given broad powers to obtain the information necessary for the performance of its new tasks set out in the draft law. If it fails to obtain information from public authorities, it will have the right to refer

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<sup>89</sup> See Special part (*Besonderer Teil*) of the Grounds (*Begründung*) re Article 2(1).

<sup>90</sup> See Article 1, Section 2(2)(1) of the draft law.

<sup>91</sup> Ibid., Article 1, Section 3.

<sup>92</sup> Ibid., Article 1, Section 1(1)(3) and Section 1(1)(4).

<sup>93</sup> Ibid., Article 1, Section 2(5).

<sup>94</sup> Ibid., Article 1, Section 4.

<sup>95</sup> Ibid., Article 1, Section 2(7).

<sup>96</sup> Ibid., Article 1, Section 6.

<sup>97</sup> Ibid., Article 1, Section 2(6).

directly to financial institutions to request detailed micro-level data<sup>98</sup>, within the limits set out in the statutory instrument of the Ministry<sup>99</sup>.

### 3.2 The United Kingdom

Financial regulatory reform in the United Kingdom (UK) is currently subject to the legislative procedure and is expected to become law by the end of 2012. The Financial Services Bill<sup>100</sup> (hereinafter the 'Bill') will replace the tripartite oversight role currently shared between the Bank of England (BoE), the Financial Services Authority (FSA) and the Treasury.

The Bill makes the BoE directly responsible for protecting and enhancing the stability of the financial system in the UK<sup>101</sup>. Macro-prudential oversight will be the responsibility of a new Financial Policy Committee (FPC) within the institutional structure of the BoE. The FPC is to be a sub-committee of the court of directors of the BoE<sup>102</sup> and will have primary responsibility for identifying, monitoring and taking action to remove or reduce systemic risks<sup>103</sup> with a view to protecting and enhancing the resilience of the UK financial system<sup>104</sup>.

Only half the FPC's 12 members will represent the BoE<sup>105</sup>. The other members will be the Chief Executive of the new Financial Conduct Authority (FCA), four members appointed by the Chancellor of the Exchequer and a representative of the Treasury. The quorum is to be seven, but the presence of certain members will be required<sup>106</sup>. The FPC will be chaired by the BoE Governor or, in his absence, by the BoE Deputy Governor for financial stability<sup>107</sup>, and should in principle reach decisions by

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<sup>98</sup> Ibid., Article 1, Section 5(1).

<sup>99</sup> Ibid., Article 1, Section 5(2).

<sup>100</sup> As brought from the Commons on 23 May 2012; available at [www.parliament.uk](http://www.parliament.uk).

<sup>101</sup> See Clause 2(2)(a) of the Bill, in which it is proposed that the BoE shall 'protect and enhance' the stability of the financial system, instead of contributing to the protection and enhancement thereof.

<sup>102</sup> The court of directors manages all the BoE's affairs with the exception of formulation of monetary policy, for which the separate Monetary Policy Committee is responsible. Among other things, the court of directors determines, reviews, and if necessary revises financial stability strategy.

<sup>103</sup> The Bill defines systemic risk, provides for a non-exhaustive list of its drivers and emphasises that it can also arise outside the UK, e.g. from the exposure of UK banks to risky overseas assets. See, to this end, proposed new Section 9C(3), (5) and (6) of the Bank of England Act 1998 (the 'BoE Act') as inserted by Clause 3 of the Bill. See also paragraph 6 of the Explanatory Notes to the Financial Services Bill. The Explanatory notes are available at [www.parliament.uk](http://www.parliament.uk).

<sup>104</sup> See the proposed new Section 9C(2) of the BoE Act.

<sup>105</sup> The Governor and three Deputy Governors of the BoE, and two other experts appointed by the Governor and having executive responsibility within the BoE. The Government will have a say about the selection of these two experts, as the Governor must consult the Chancellor of the Exchequer before appointing them.

<sup>106</sup> See section 11(2) of proposed new Schedule 2A to the BoE Act as inserted by Schedule 1 to the Bill.

<sup>107</sup> Ibid., Section 11(3).



consensus<sup>108</sup>. The Treasury representative may not vote and his or her attendance will not count for the purpose of the quorum<sup>109</sup>.

In carrying out its tasks the FPC must have regard for the BoE's financial stability strategy<sup>110</sup>, which is determined by the court of directors. However, the FPC may influence the strategy at early stage, since it must be consulted on a draft of the strategy or revisions thereto<sup>111</sup>. It may also make recommendations to the court of directors on its own initiative at any time<sup>112</sup>.

The FPC will be given responsibility for macro-prudential regulation<sup>113</sup>, though its powers in this field will be limited in various ways.

First, the FPC will be empowered to give directions to the FCA and the Prudential Regulation Authority (PRA)<sup>114</sup> (hereinafter 'the regulators'), i.e., it can require them to ensure the implementation of a specified macro-prudential measure by or in relation to a specified class of regulated persons<sup>115</sup>. However, according to the Bill, such measures will be prescribed by the Treasury by an order, and the FPC will only be consulted or give recommendations in this regard<sup>116</sup>. Draft orders will be subject to parliamentary control, and must be approved by a resolution of each House of Parliament<sup>117</sup>, though there is an exception for urgent cases. Directions may not relate to a specified regulated person and may only recommend, but not prescribe, the specified means and timing of implementation<sup>118</sup>. The FPC must also draw up a statement of the general policy it proposes to pursue with regard to each macro-prudential measure ordered by the Treasury<sup>119</sup>. The regulator(s) must comply with the directions and report thereon to the FPC<sup>120</sup>.

The FPC may make recommendations within the BoE, to the Treasury and to the regulators about the exercise of their respective powers<sup>121</sup> and to any other person<sup>122</sup>. The FPC may require that the regulators 'comply or explain'<sup>123</sup>.

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<sup>108</sup> Ibid., Section 11(4).

<sup>109</sup> Ibid., Section 11(2) and (7).

<sup>110</sup> See the proposed new Section 9E(1) of the BoE Act.

<sup>111</sup> See the proposed new Section 9A(2) of the BoE Act.

<sup>112</sup> See the proposed new Section 9A(3) of the BoE Act.

<sup>113</sup> See the first paragraph of point 7 of the Explanatory notes to the Bill.

<sup>114</sup> The PRA will be an operationally independent subsidiary of the BoE, charged with micro-prudential regulation of financial firms that manage complex risks on their balance sheets.

<sup>115</sup> See the proposed new Section 9G(1) of the BoE Act.

<sup>116</sup> See the proposed new Sections 9K(1) and (2) and 9O(2)(a) of the BoE Act.

<sup>117</sup> See the proposed new Section 9M of the BoE Act.

<sup>118</sup> See the proposed new Section 9G(4) and (6) of the BoE Act.

<sup>119</sup> See the proposed new Section 9L(1) and (3) of the BoE Act.

<sup>120</sup> See the proposed new Section 9H(1) and (3) of the BoE Act.

<sup>121</sup> See the proposed new Sections 9N to 9P of the BoE Act.

Second, the Bill attaches particular importance to the proportionality of the FPC's activities. It expressly requires the FPC to balance the efforts to prevent or remove systemic risk and the capacity of the financial sector to contribute to the growth of the UK economy in the medium or long term<sup>124</sup>. This is a reminder to the regulator to ensure that its prudential approach should be outweighed by benefits to the UK financial system.

Third, a direction made by the FPC in the performance of its functions may not relate to an individual regulated person<sup>125</sup>. Since it is generally considered that individuals, in particular systemically important financial institutions (SIFIs), may also generate systemic risk, excluding the possibility of naming an individual SIFI may limit the FPC's performance of its macro-prudential functions<sup>126</sup>.

The Bill ensures that the FPC may avail itself of sufficient information to fulfil its mandate, including information about individual regulated persons. By means of directions, the FPC may require regulators to provide the necessary information or documents, including information or documents in the possession of third parties, provided the regulators have authority to obtain them<sup>127</sup>. Part 2 of the Bill, which amends the Financial Services and Markets Act 2000 (FSMA 2000), requires the regulators to share with the FPC all such information in their possession as they are not prevented from disclosing<sup>128</sup>.

The Treasury will be entitled to set a remit for the FPC, but only in the form of a recommendation<sup>129</sup>. The UK Government is of the opinion that the FPC must be in a position to take potentially unpopular decisions independently of undue political influence<sup>130</sup>. On the other hand, the FPC must respond to such recommendations and, if relevant, give reasons for not acting on them<sup>131</sup>. The FPC's procedures will be kept under review by a non-executive sub-committee of the BoE court of directors<sup>132</sup>. The FPC

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<sup>122</sup> See the proposed new Section 9Q of the BoE Act.

<sup>123</sup> See the proposed new Section 9P(3) of the BoE Act. The FPC may require the same with regard to the recommended means and timing of the implementation of the directions. See, to this end, the proposed new Section 9G(7) of the BoE Act.

<sup>124</sup> See the proposed new Section 9C(4) of the BoE Act. See also the proposed new Section 9E(3)(a) thereof.

<sup>125</sup> See the proposed new Section 9G(4) of the BoE Act.

<sup>126</sup> Under proposed new Section 9R of the BoE Act, the BoE must, as a rule, publish a record of each meeting containing the texts of any directions or recommendations made by the FPC. However, the Bill also allows for the possibility of deferring or avoiding publication of information within the prescribed time, if publication would not be in the public interest. Thus, if the legislator had decided that a direction may relate to an individual regulated entity, it would have been possible to avoid such direction being made public.

<sup>127</sup> See the proposed new Section 9V of the BoE Act.

<sup>128</sup> See the proposed new Section 3P(2) of FSMA 2000, as inserted by Clause 5 of the Bill.

<sup>129</sup> See the proposed new Section 9D of the BoE Act.

<sup>130</sup> See Chapter 2.10 of the HM Treasury publication: 'A new approach to financial regulation: securing stability, protecting consumers' (hereinafter the 'New approach to financial regulation'), presented to the Parliament by the Chancellor of the Exchequer by Command of Her Majesty in January 2012.

<sup>131</sup> See the proposed new Section 9D(3)(c) of the BoE Act.

<sup>132</sup> See the proposed new Section 9B(4) and (5) of the BoE Act in conjunction with Section 3 of the BoE Act.

will have to publish a regular financial stability report, including an assessment of how successful it has been in achieving its objectives<sup>133</sup>.

### 3.3 Belgium

In Belgium, a Committee for systemic risks and system-relevant financial institutions (*Le Comité des risques et établissements financiers systémiques* (CREFS)) was established in 2010<sup>134</sup> as an autonomous macro-prudential authority with legal personality. It was created as an interim body in the context of a supervisory reform with the aim of contributing to the stability of the financial system. The powers and tasks of CREFS relating to prudential supervision have been gradually taken over by the Nationale Bank van België/Banque Nationale de Belgique (NBB)<sup>135</sup>.

The Belgian legislator has opted for a twin-peak model for its supervisory structure, under which the NBB has been given new micro-prudential supervisory tasks, including tasks relating to systemically important financial institutions (SIFIs). The new tasks complement the NBB's existing task of contributing to the stability of the financial system<sup>136</sup>. Among other things, the NBB's mission includes identifying threats to the stability of the financial system, in particular by monitoring and assessing strategic developments in and the risk profiles of SIFIs, submitting recommendations to the Federal Government and Federal Parliament on measures that are necessary or helpful for the stability, smooth running and effectiveness of the country's financial system, and the collaboration with the ESRB<sup>137</sup>. The NBB assesses the strategic decisions, risk profiles and policies of SIFIs in the light of their impact on the stability of the financial system and, if necessary, imposes specific measures on the supervised entities concerned<sup>138</sup>. The NBB may request the Financial Services and Market Authority to provide the information necessary for carrying out its macro-prudential tasks<sup>139</sup>. Thus, in Belgium, the conferral of new micro-prudential powers on the central bank has been accompanied by strengthening of its macro-prudential powers.

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<sup>133</sup> See the proposed new Section 9T(4)(b) of the BoE Act.

<sup>134</sup> By the Law of 2 July 2010 amending the Law of 2 August 2002 concerning the supervision of the financial sector and financial services, and the Law of 22 February 1998 governing the status as an official body of the National Bank of Belgium (NBB), and containing various stipulations.

<sup>135</sup> The transfer of competences from CREFS to the NBB took effect on 1 April 2011 on the basis of the Royal Decree of 3 March 2011 implementing the development of financial supervisory structures.

<sup>136</sup> Articles 12, 12bis and 36/2 of Law of 22 February 1998 establishing the organic statute of the Nationale Bank van België/Banque Nationale de Belgique, as amended.

<sup>137</sup> *Ibid.*, Article 36/3 §1. System-relevant financial institutions are determined by NBB.

<sup>138</sup> *Ibid.*, Article 36/3 §2 and §3.

<sup>139</sup> *Ibid.*, Article 36/3 §6.

### 3.4 Czech Republic

Česká národní banka (CNB) is the single supervisor of all financial institutions in the Czech Republic as well as having the task of contributing to the stability of the financial system as a whole<sup>140</sup>. Recent draft amendments to the Law on Česká národní banka and to other related laws<sup>141</sup> (hereinafter the ‘draft amendments’) strengthen CNB’s financial stability mandate. CNB has been given the new explicit objective of ensuring the financial stability and safe and sound operation of the financial system in the Czech Republic<sup>142</sup>. The draft amendments are a response to Recommendation ESRB/2011/3 and reflect a situation in which more importance is being attached to adequate institutional arrangements for the performance of tasks in the field of macro-prudential policy<sup>143</sup>.

In fulfilment of this new objective, CNB’s task will be to set macro-prudential policy by identifying, monitoring and assessing risks which jeopardise the stability of the financial system and to prevent or mitigate these risks by means of its powers for contributing to the resilience of the financial system and the maintenance of financial stability<sup>144</sup>. This task will be carried out by the CNB’s governing body<sup>145</sup>. CNB will submit an annual financial stability report to the Parliament, outlining the macro-prudential strategy<sup>146</sup>. In the performance of its tasks, CNB may address communications, recommendations and warnings to the public, the Chamber of Deputies, the Government, individual entities or to a class of entities<sup>147</sup>.

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<sup>140</sup> See Article 2(2)(d) of Law No 6/1993 on Česká národní banka, as amended (hereinafter the ‘Law on CNB’).

<sup>141</sup> The draft law was endorsed by the Government of the Czech Republic on 3 October 2012. The text is available at the website of the Ministry: [www.mfcr.cz](http://www.mfcr.cz).

<sup>142</sup> Article 1(5) of the draft amendments. It is proposed to insert the new objective in the Article laying down the primary objective of CNB to maintain price stability.

<sup>143</sup> See the specific part of the explanatory memorandum on Article 1(5) of the draft amendments.

<sup>144</sup> Article 1(10) of the draft amendments.

<sup>145</sup> Ibid., Article 1(17).

<sup>146</sup> Ibid., Article 1(15).

<sup>147</sup> Ibid., Article 1(16).

#### 4. CONCLUSIONS

The latest legislative developments at both EU and Member State levels reflect recognition of the need to strengthen macro-prudential oversight of the financial system and of the role of central banks in ensuring financial stability. Regardless of whether legislators opt for more or less direct involvement of their central banks, they all agree on benefiting from the expertise and experience of central banks in this field<sup>148</sup>. Conferring new macro-prudential tasks on central banks seems to be an even more natural choice in countries where the central banks have already been carrying out micro-prudential supervision<sup>149</sup>.

National legislators have taken care to ensure that the macro-prudential objectives do not conflict with the central bank objectives, especially as concerns the members of the euro area. For instance, in Finland there has been a debate about whether giving the central bank a macro-prudential mandate, including among its objectives contributing to sustainable growth, would be compatible with the Treaty. This was ultimately resolved by designating the Finnish market authority as the macro-prudential authority instead of the central bank. In Germany, the draft law refers to the macro-prudential objectives as being only intermediary objectives (safeguarding the stability of the financial system as a whole) and not the ultimate objective (thereby ensuring sustainable economic growth).

Even where macro-prudential decisions are not left wholly to the central bank, NCBs are expected to carry out necessary underlying analysis<sup>150</sup>. It is widely recognised that, in order to carry out these new functions, the central banks must have improved access to information, including information on individual financial institutions that are potentially systemically important. To rectify the lack of cooperation and information exchange between the competent authorities revealed by the financial crisis, the flow of information is intended to be mutual, requiring the central banks to pass information to specified EU or national authorities. While the flow of information between the authorities that need to know becomes smoother, stricter guarantees of confidentiality are being proposed to prevent the disclosure of sensitive information to third parties. Moreover, where central banks provide support to other bodies that are charged with new macro-prudential tasks, the staff concerned are prevented from using the information for other purposes. The more that supervisory tasks are gathered together under the roof of a central bank, the less need there is for information exchange.

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<sup>148</sup> See, for example, Recital 24 of the ESRB regulation; Section II point 1 of General part of the Grounds for the German draft law; and Section 2.2 of the New approach to financial regulation.

<sup>149</sup> Or, as in the case of Belgium, new macro-prudential powers are being granted along with new micro-prudential powers.

<sup>150</sup> For example, the ECB ensures the Secretariat, including carrying out day-to-day analytical work, for the ESRB whose decision-making body is composed not only of representatives of the central banks. Likewise, it is proposed that in Germany the Bundesbank will only have three out of the six members of the Financial Stability Committee with voting rights, but the decisions of the Committee will be based on the analyses and proposals of the Bundesbank.

Giving publicity to the work of macro-prudential authorities is perceived as being a potentially effective tool for fostering compliance by financial institutions<sup>151</sup>. As a rule, the public should be informed regularly (at least annually) of the overall financial stability situation. The authorities concerned usually have a degree of discretion about the disclosure of warnings and recommendations, as their immediate publication can have both positive and negative effects, depending on the circumstances. In the United Kingdom where directions and recommendations must, in principle, be disclosed, they may not refer to individual regulated persons.

National macro-prudential authorities are charged with the oversight of their national systems. Given the cross-border interconnectedness of financial institutions, they can only succeed in their missions if they coordinate their activities with other national, regional and international bodies with comparable mandates. The cross-border dimension remains a daunting challenge<sup>152</sup>. The ECB considers that the tasks of national financial stability bodies should complement the activities of the ESRB. Their tasks and powers should not potentially conflict with those of the ESRB. Rather, appropriate synergies should be developed<sup>153</sup>. The national legislation analysed in the previous section sees national macro-prudential authorities in a broader regional or international context<sup>154</sup>, sometimes explicitly referring to the task of interacting with the ESRB<sup>155</sup>.

Since the ESRB only has the power to issue non-binding warnings and recommendations, it relies on national authorities to translate these into binding measures. For this reason, Recommendation ESRB/2011/3 suggests that macro-prudential authorities should at least be entrusted with the task of implementing policies to achieve their objectives and have appropriate instruments for achieving their objectives<sup>156</sup>. Central banks which, fully or partially, carry out micro-prudential tasks will certainly have effective tools to enforce compliance. Other central banks will communicate with market players via their countries' separate micro-prudential supervisors.

Macro-prudential bodies already existed in some countries<sup>157</sup>, but they have now been replaced by new structures in which the central bank has been given greater responsibilities and powers.

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<sup>151</sup> See, for example, Recital 21 of the ESRB Regulation.

<sup>152</sup> R.M.Lastra, 'Systemic risk, SIFIs and financial stability', *Capital Markets Law Journal*, Vol. 6, No. 2, p. 209.

<sup>153</sup> See, for example, paragraph 2.2.2 of ECB Opinion CON/2010/7. All ECB Opinions are published on the ECB website [www.ecb.europa.eu](http://www.ecb.europa.eu).

<sup>154</sup> For example in the UK, directions of the FPC may refer to a publication issued by an international organisation.

<sup>155</sup> For example, the German Committee is expected to provide advice on dealing with warnings and recommendations of the ESRB. The Czech Law on CNB already provides that CNB shall, as a part of the European System of Financial Supervision, cooperate with the ESRB. The Belgian Law of 22 February 1998, establishing the organic statute of the National Bank of Belgium, requires the NBB to collaborate with the ESRB.

<sup>156</sup> Recommendation ESRB/2011/3, Section 1, Recommendation C, paragraphs 1 and 4.

<sup>157</sup> For example, in the UK, the Bill abolishes the Financial Stability Committee (FSC) which is currently a sub-committee of the court of directors. The FSC has much softer powers than the new FPC. In Germany, the Committee will replace existing Standing Committee for Financial Market Stability.

Last, but not least, the legislators tend to explicitly emphasise that the new macro-prudential tasks of the central banks should not prejudice their independence or their performance of other tasks, above all, the conduct of monetary policy.

The crisis has contributed to the changing role of central banks<sup>158</sup>. ‘Since the start of the crises ... the prevailing view on the central banks’ role has swung from the relatively narrow definition ... to almost the other extreme, a view that central banks can and should be an almost omnipresent force in the financial system.’<sup>159</sup> As the crisis has persisted, there has been an increasing tendency to strengthen central banks’ financial stability mandates<sup>160</sup>. The question arises as to whether the strengthened financial stability role of central banks should be just a temporary ‘crisis management’ matter or whether it should become permanent. The answer to this may be found in the de Larosière Report, which identified pre-crisis regulatory shortcomings and recommended changes to the European legal and institutional architecture for financial supervision with a view to preventing crises in the future.

The roles of the ECB and the NCBs in the ESRB are justified by their expertise and existing responsibilities in the area of financial stability. The approach adopted is also justified by the fact that central banks have a broad overview of the financial sector and by the close link between monetary and financial stability. In addition, the powers and responsibilities of NCBs in financial supervision have been substantially strengthened in recent years. Such a trend is particularly relevant, given the need for macro-prudential oversight of the financial system to cover all financial sectors and to build on the existing information and expertise of micro-prudential supervisors within the EU.

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<sup>158</sup> See C. Goodhart, ‘The changing role of central banks’, *BIS Working Papers No 326*, November 2010.

<sup>159</sup> H. Hannoun, ‘The expanding role of central banks since the crisis: what are the limits?’, speech delivered at the celebration marking the 150<sup>th</sup> anniversary of the Central Bank of the Russian Federation, Moscow, 18 June 2010, p. 5. The author concludes that ‘central banks will see their mandate broadened in the future’ and ‘systemic oversight is also likely become part of more permanent central banks activities in many countries’. See also A.S.Blinder, ‘How central should the central bank be?’, *Journal of Economic Literature* 2010, 48:1, pp. 123-133.

<sup>160</sup> On 29 June 2012, the Euro area summit called for a single mechanism for banking supervision, involving the ECB. According to the summit statement, as a matter of urgency new supervisory tasks should be conferred on the ECB by the end of 2012.

## ANNEX

### **The institutional structure and substructures of the European Systemic Risk Board**

The ESRB is an EU body composed of: (i) a General Board with a Chair and two Vice-Chairs, (ii) a Steering Committee, (iii) a Secretariat, (iv) an Advisory Scientific Committee, and (v) an Advisory Technical Committee<sup>161</sup>. For the first five years of its existence, the Chair of the ESRB will be the ECB President<sup>162</sup>. The first Vice-Chair of the ESRB is elected for a term of five years from among the members of the General Council of the ECB<sup>163</sup>. The second Vice-Chair also has the role of chair of the Joint Committee for the ESAs<sup>164</sup>. The legislation provides that the Chair will represent the ESRB externally and preside at the meetings of the General Board and the Steering Committee<sup>165</sup> and have a casting vote in the event of a tied vote in the General Board<sup>166</sup>.

#### General Board

The General Board takes the decisions necessary to ensure the performance of the ESRB's tasks<sup>167</sup>. The General Board has 37 voting members<sup>168</sup>: the 27 NCB Governors; the ECB President and Vice-President; a Commission member and the three Chairs of the new European Supervisory Authorities; as well as the Chair and the two Vice-Chairs of the Advisory Scientific Committee and the Chair of the Advisory Technical Committee. To ensure close cooperation with national supervisory authorities, a representative from one supervisory authority from each Member State attends the meetings of the ESRB, but has no voting rights. In addition, the President of the Economic and Financial Committee (EFC) participates without voting right.

#### Steering Committee

Given the size of the General Board, with a total of 65 members, a Steering Committee assists the decision-making process of the General Board<sup>169</sup>. The Steering Committee prepares the meetings of the General Board, reviews the documents prepared for discussion and monitors the progress of the ESRB's ongoing work. The Steering Committee is made up of the Chair and first Vice-Chair of the General Board, the Vice President of the ECB, four other members of the General Board who are also members of the General Council of the ECB, a member of the Commission, the Chairpersons of the three ESAs, the President of the EFC, and the two Chairs of the Advisory Scientific Committee and the Advisory Technical Committee.

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<sup>161</sup> Article 4 of the ESRB Regulation.

<sup>162</sup> *Ibid.*, Article 5(1).

<sup>163</sup> *Ibid.*, Article 5(2).

<sup>164</sup> *Ibid.*, Article 5(3).

<sup>165</sup> *Ibid.*, Article 5(5) and (8).

<sup>166</sup> *Ibid.*, Article 10.

<sup>167</sup> *Ibid.*, Article 4(2).

<sup>168</sup> *Ibid.*, Article 6.

<sup>169</sup> *Ibid.*, Articles 4(3) and 11.



## Secretariat

The ECB ensures the Secretariat of the ESRB<sup>170</sup>. The Secretariat provides analytical, statistical, administrative and logistical support to the ESRB. The tasks of the Secretariat include the preparation of meetings, the collection and processing of qualitative and quantitative information for the ESRB, making the analyses and assessments necessary for the performance of the ESRB's tasks and the general running of day-to-day business. The Secretariat receives instructions directly from the Chair of the General Board, and the head of the Secretariat is appointed by the ECB in consultation with the General Board of the ESRB.

## Advisory Scientific Committee

The Advisory Scientific Committee (ASC) provides advice and assistance on issues relevant to the work of the ESRB at the request of the Chair of the General Board<sup>171</sup>. The ASC contributes to the performance of the ESRB's tasks by carrying out analytical and consultative tasks<sup>172</sup>. This includes advising on how to improve analytical methods for identifying risks and assessing their potential impact, and advising on the design and calibration of effective macro-prudential analytical tools and models. In addition, it provides analytical reviews of macro-prudential strategies and operational frameworks. The ASC consists of the Chair of the Advisory Technical Committee and 15 experts representing a wide range of skills and experience.

## Advisory Technical Committee

The Advisory Technical Committee (ATC) provides advice and assistance to the General Board on the work of the ESRB at the request of the Chair of the General Board<sup>173</sup>. Among other things, the ATC contributes to the regular review of the conditions of financial stability in the EU, including: the identification of systemic risks; preparations for analytical and policy discussions in the Steering Committee and the General Board on warnings and recommendations; the review and possible development of macro-prudential policy instruments to be made available to the competent authorities of the Member States; and the regular monitoring of the macro-prudential policy decisions of the competent authorities of the Member States<sup>174</sup>. The ATC provides advice, in particular on the draft regular reports which the ECB produces for the ESRB, and it is involved at an early stage in the preparation of warnings and recommendations. The ATC's input on systemic risks will also be provided through the participation of the Chair of the ATC in the Steering Committee and the General Board. The ATC is made up of: a representative from each NCB and a representative of the ECB; one representative from the competent national supervisory authority of each Member State; one representative of the EBA; one representative of the EIOPA; one representative of the ESMA; two representatives of the European Commission; one representative of the EFC; and one representative of the ASC.

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<sup>170</sup> Article 4(4) of the ESRB Regulation and Articles 2 to 4 of the Regulation on ECB support.

<sup>171</sup> Article 12(3) of the ESRB Regulation.

<sup>172</sup> See the Mandate of the Advisory Scientific Committee of the European Systemic Risk Board.

<sup>173</sup> Article 13 of the ESRB Regulation.

<sup>174</sup> See the Mandate of the Advisory Technical Committee of the European Systemic Risk Board.

## General Board

**Chair:** Elected by and from the members of the ECB General Council<sup>1</sup>

**First Vice-Chair:** Rotating Chair of the Joint Committee of European Supervisory Authorities (ESAs)

**Second Vice-Chair:** Rotating Chair of the Joint Committee of ESAs

**Voting members:**

- ECB President and Vice-President
- 27 NCB Governors
- Member of the Commission
- 3 ESA Chairs
- Chair and 2 Vice-Chairs of the ASC

**Non-voting members:**

- 27 high-level representatives of national supervisory authorities
- President of the EFC

### Advisory Scientific Committee (ASC)

**Chair and 2 Vice-Chairs<sup>2</sup>:** appointed by the General Board on a proposal of the ESRB Chair

**Members:**

- 15 experts selected by the General Board
- Chair of the ATC

### Steering Committee

**Chair:** ESRB Chair

**Members:**

- ESRB Chair and First Vice-Chair
- ECB Vice-President
- 4 ECB General Council Members
- Member of the Commission
- 3 ESA Chairpersons
- President of the EFC
- Chair of the ASC
- Chair of the ATC

### Advisory Technical Committee (ATC)

**Chair:** Appointed by the General Board on a proposal of the ESRB Chair

**Members:**

- ECB representative
- 27 NCB representatives
- 27 representatives of national supervisory authorities
- a representative from each of the 3 ESAs
- 2 Commission representatives
- a representative of the EFC

## Secretariat<sup>5</sup>

**Head:** Appointed by the ECB in consultation with the General Board

**Staff:** Appointed by the ECB

- 1) The ECB President is the Chair of the ESRB for the first 5 years of its operation.
- 2) The chairmanship of the ASC rotates between the Chair and the two Vice-Chairs.
- 5) Under the direction of ESRB Chair and Steering Committee