Outcome of the European Council meeting, 18-19 June 2009

2009/2595(RSP) - 09/06/2009

The Council adopted the following conclusions on the international financing of climate change measures and good governance in tax matters. It agreed to submit these conclusions to the European Council (18-19 June).

1) Reform of a European supervisory framework for financial markets: the conclusions lay down the Council's position on the Commission communication on "European Financial Supervision" (COM(2009) 0252) which is based on the recommendations made by the Larosière Group. The Council agrees with the objectives laid down in the Commission Communication and stresses that financial stability, regulation and supervision in Member States and in the EU must be enhanced in an ambitious way ensuring trust, efficiency, accountability and consistency with the allocation of responsibilities for financial stability, taking into account the responsibility of Finance Ministers in this area.

On the establishment of a European Systemic Risk Board: the Council agrees that an independent macro-prudential body covering all financial sectors, the European Systemic Risk Board (ESRB), should be established –without legal personality- and charged with the following tasks, without prejudice to the role and responsibilities of existing bodies:

- define, have access to and/or collect as appropriate, and analyse all the information relevant for identifying, monitoring and assessing potential threats and risks to financial stability in the EU that arise from macro-economic developments and developments within the financial system as a whole;
- identify and prioritise such risks;
- issue risk warnings, where risks appear to be significant, to policy makers and supervisors;
- where necessary give recommendations or advice on the measures, including where appropriate legislative ones, to be taken in reaction to the risks identified;
- carry out the mandatory monitoring of the required follow-up to warnings and recommendations; and
- liaise effectively with the IMF, the FSB and third country counterparts.

The Council agrees that the **ESRB should be composed as follows**:

- **a Steering Committee**, which shall set the work agenda, and prepare the decisions of the ESRB;
- the General Board shall comprise 27 Central Bank Governors, the ECB President (and vice-President as appropriate), 3 Chairs of the EU Committees of supervisors/European Supervisory Authorities and a Commission member as members with voting rights; and with the EFC president and representatives from national supervisory authorities (1 per Member State) as members without voting rights. The ESRB will act independently and members of the ESRB shall be guided, in the performance of their duties, by the general interests of the Community.

The Council notes that the **ESRB's recommendations** are expected to exert a major influence on the addressees through the high quality of its analysis and the participants in its work, and by means of mechanisms which would require the addressees to provide adequate justifications in case of inaction ("act or explain") to the Council and/or the ESAs as appropriate. If the ESRB judges that the reaction is inadequate, it shall also inform the Council as appropriate. On a case by case basis, the ESRB could decide to make the recommendations public after consultation of Council.

With a view to ensuring accountability, the Council stresses the need for the ESRB to report, at least bi-annually and more often as necessary, to the Council and to the European Parliament.

On the establishment of a European System of Financial Supervisors: the Council agrees that the recommendation by the de Larosière Group to establish a European System of Financial Supervisors (ESFS) should be carried out and completed without delay. To this end, the Council invites the Commission and all other relevant parties to take the appropriate initiatives, which i.a. should aim at:

- **upgrading the quality of supervision** and strengthening national supervisors by setting in motion a process leading to far stronger and consistent powers for supervisory and sanctioning regimes in the Member States, aligning supervisors' competences, mandates and powers to the fullest extent possible;

- **strengthening oversight of cross-border groups** by completing the setting-up of supervisory colleges for all major cross-border financial firms in the EU by the end of 2009;
- moving towards the **realisation of a single rulebook**, with a core set of EU-wide rules and standards directly applicable to all financial institutions active in the Single Market, so that key differences in national legislations are identified and removed.

The Council recommends that a European System of Financial Supervisors be established as an operational European network with shared and **mutually reinforcing responsibilities**. It also stresses that ensuring the ESAs independence vis-à-vis national authorities other than supervisors and vis-à-vis the European Institutions will be crucial.

The Council finds that the ESAs should be entrusted with the following tasks and powers:

i. Ensuring that a single set of harmonised rules and consistent supervisory practices is applied by national supervisors, by two means:

1. Developing binding harmonised technical standards in the areas to be specified in Community legislation. Such standards should apply from a fixed date, provided the Commission endorses them;
2. Drawing up non-binding standards, recommendations and interpretative guidelines, which the competent national authorities would apply in taking individual decisions.

ii. Ensuring a common supervisory culture and consistent supervisory practices: the ESAs should be responsible for building a common European supervisory culture and consistent supervisory practices, and ensuring uniform procedures and consistent approaches across groups.

iii. Collecting micro-prudential information: the ESAs should be responsible for the definition, collection and aggregation of all relevant micro-prudential information emanating from national supervisors. To this end, a central European database should be established and managed by the ESAs.

iv. Ensuring consistent application of EU rules, in cases to be further clearly specified in Community legislation such as:

1. Manifest breach of EU law or ESAs' standards: in the event that the non-compliance with Community law would persist, the Commission could require the national supervisory authority to either take specific action or to refrain from action in order to restore compliance with Community law.
2. Disagreement between national supervisors or within a college of supervisors: in the case of diverging opinions between national supervisory authorities over the proper enforcement of EU

legislation, or in the case of diverging opinions between national supervisory authorities within a college of supervisors, the ESAs should facilitate a dialogue and assist the supervisors in reaching a joint agreement.

v. Using full supervisory powers for some specific pan-European entities: an overwhelming majority supports the Commission to propose EU legislation giving the ESAs the responsibility for the authorisation and supervision of certain specific entities with pan-European reach, e.g. credit rating agencies and EU central counterparty clearing houses.

vi. Ensuring a coordinated response in crisis situations: the Commission is invited to explore how ESAs could play a strong coordinating role amongst supervisors in crisis situations, i.a. by facilitating cooperation and exchange of information between the competent authorities and acting as mediator when needed, while fully respecting the responsibilities of national authorities in preserving financial stability and in crisis management in relation to potential fiscal consequences and fully respecting central banks' responsibilities, in particular with regard to the provision of emergency liquidity assistance.

2) International financing of climate change measures: the Council stresses that realising an emission path to keep the global temperature increase below 2°C will require very substantial mitigation efforts in all countries. It reaffirms that developed countries should take the lead by setting and implementing ambitious and binding medium- and long-term targets for reducing their emissions. The Council reiterates that the private sector will be the main source of financing for mitigation Climate Change. The Council underlines that international private and public financing should be linked to each country's mitigation efforts and level of development, providing incentives for additional effort in the recipient countries.

All countries, except the least developed, should contribute their fair share of international financing for climate action in developing countries, with developed countries taking the lead. The main principles of contribution should be the ability to pay and the responsibility for emissions. Own action by developing countries, especially harvesting negative and low cost abatement opportunities, is indispensable for a substantial leveraging of international financing, in particular in advanced developing countries.

The Council underlines the following points:

- specification and implementation of concrete mitigation action should be entered into **a registry covering three levels**: own effort, supported effort and effort enabled by financial support and investment generated through the international carbon market;
- the allocation of support should move towards a **performance-based system**, strongly incentivising the promotion of actions which maximise climate value for climate money, such as mechanisms which rely on the principle of competition, based on effectiveness of emission reductions to access support;
- a **new mechanism including sectoral crediting and trading, should be developed** to operate at sectoral levels, ensure environmental integrity, provide the administrative simplicity required to handle efforts at much larger scale and help advanced developing economies to make a stronger contribution to mitigation;
- the project-based **Clean Development Mechanism** (CDM) should be reformed to ensure environmental integrity, and contribute to achieving real emission reductions. Advanced developing countries should gradually move to sectoral mechanisms and project-based CDM should be increasingly focused on least developed countries and areas where other crediting mechanisms are not feasible;
- effective adaptation policies should aim at building resilience and ensuring capacity handle emerging threats and respond to urgent and immediate hazards, as well as move towards a long term strategic approach;

- the implementation of international climate change financing both for mitigation and adaptation should as far as possible build on existing and reformed elements and institutions of the international financial architecture.

The Council reiterates that in the context of a global and comprehensive agreement, the **EU stands ready to contribute its fair share of international support** including through public support and offset credits linked to EU's ambitious mitigation targets. It will assist the European Council to determine well in advance of the Copenhagen Conference (1) the EU positions on main approaches for financing mitigation, adaptation, technology support and capacity building, (2) the specifics of the EU's contribution and (3) principles of burden sharing among Member States.

3) Good governance in tax matters: the Council welcomes the suggestion in the Commission Communication entitled "Promoting good governance in tax matters" – COM(2009)0201 to accelerate the ongoing work on legislative proposals concerning the savings taxation directive, the administrative cooperation directive and the recovery directive.

More specifically, as regards the ongoing review of the savings taxation directive, the Council notes the Presidency progress report. It welcomes the progress made and agrees that circumvention of savings taxation should be prevented and that the functioning of savings taxation should be improved in the framework of an overall agreement in particular by:

- an extension of the scope of the Directive to at least other substantially equivalent income than just interest from savings,
- the introduction of a look through approach for payments to certain non-EU entities and arrangements and a more systematic application of paying agent upon receipt responsibilities, and
- a broader use of personal identification numbers and the use of the information on actual tax residence, when available, in identification procedures.

It calls for a rapid continuation of work in order to find constructive solutions to outstanding issues. The Council also calls on the Commission to open consultations with Switzerland, Liechtenstein, Andorra, Monaco and San Marino on revising their respective agreements on savings taxation with the aim to ensure application of equivalent measures in line with international standards and the improvements agreed at EU level.

The Council is ready to examine the proposals for the **directives on administrative cooperation and recovery** and to continue its efforts in the autumn of 2009 to find solutions to outstanding issues.

The Council invites the future Presidency to report back on progress in the area of good governance in tax matters in the autumn of 2009.