



**COUNCIL OF  
THE EUROPEAN UNION**



## **Council conclusions on Strengthening EU financial supervision**

*2948th ECONOMIC and FINANCIAL AFFAIRS  
Luxembourg, 9 Juin 2009*

The Council adopted the following conclusions:

"On 19-20 March 2009, the European Council examined the report prepared by the High-Level Group on Supervision, chaired by Mr. Jacques de Larosière, in light of the ensuing Commission Communication on "Driving European Recovery" and concluded by agreeing "on the need to improve the regulation and supervision of financial institutions in the EU and that the report from the High Level Group on financial supervision chaired by Jacques de Larosière is the basis for action. The Council is instructed to examine the report, as well as the proposals from the Commission, on strengthening EU financial sector regulation and supervision with a view to first decisions at the June 2009 European Council. More detailed legislative proposals will follow in the autumn."

Against this background, the Council has examined i.a. the Commission Communication on "European financial supervision" of 27 May 2009 and concludes as follows. 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.

# **P R E S S**

The Council **UNDERLINES** the need for a balanced assessment of all relevant systemic risks that could have an impact on financial stability and **CONSIDERS** that the EFC should be informed regularly and at an early stage of the ESRB's and ESAs' analysis in order to prepare Council discussions and provide timely policy advice to the Council. The Council could invite the ESRB and ESAs to look at some specific issues as deemed appropriate.

### **On the establishment of a European Systemic Risk Board:**

1. 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:
  - i. 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;
  - ii. Identify and prioritise such risks;
  - iii. Issue risk warnings, where risks appear to be significant, to policy makers and supervisors;
  - iv. Where necessary give recommendations or advice on the measures, including where appropriate legislative ones, to be taken in reaction to the risks identified;
  - v. Carry out the mandatory monitoring of the required follow-up to warnings and recommendations; and
  - vi. Liaise effectively with the IMF, the FSB and third country counterparts.
  
2. The Council **FINDS** that the financial stability risk warnings and recommendations could be of a general nature or concern individual Member States or groups of Member States, and that they should be addressed to the Council and, as appropriate, to the new European Supervisory Authorities (ESAs), to be set up within the European System of Financial Supervisors (ESFS), for remedial action at the appropriate level. The deliberations of the Council will be prepared by the EFC in accordance with its role as defined in the Treaty.
  
3. 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. In implementing all these processes, the role of the EFC should be fully taken into account.
  
4. The Council **AGREES** that the ESRB should be composed as follows (see more details in Annex):

A Steering Committee, the composition of which is also set out in Annex to Annex, 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 - see Annex to Annex), 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.

5. The Council CONSIDERS that the ECB should provide analytical, statistical, administrative and logistical support to the ESRB, also drawing on technical advice from national Central banks and supervisors. The ESRB could also seek the views of private sector stakeholders, including consumers, as appropriate.
6. 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:**

7. Following up from the roadmaps agreed on 14 May 2008<sup>1</sup>, 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.
8. The Council RECOMMENDS that a European System of Financial Supervisors be established as an operational European network with shared and mutually reinforcing responsibilities. At EU level, the current EU Committees of supervisors (CEBS, CEIOPS and CESR) should be transformed into European Supervisory Authorities (ESAs) with a legal personality under Community law: a European Banking Authority (EBA), a European Insurance and Occupational Pensions Authority (EIOPA), and a European Securities and Markets Authority (ESMA). National supervisors should remain responsible for day-to-day supervision of individual firms. A steering committee of the ESAs should be set up to reinforce mutual understanding, cooperation and consistent supervisory approaches, in particular in relation to financial conglomerates, and to coordinate the necessary information sharing between the ESAs and the ESRB.

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<sup>1</sup> See doc. 9056/08 EF 27 ECOFIN 158 + COR 1.

9. The Council STRESSES that, without prejudice to the application of Community law and recognising the potential or contingent liabilities that may be involved for Member States, decisions under the mechanisms set out below should not impinge on the fiscal responsibilities of the Member States. The framework for the exercise of the above competences should be specified exhaustively and in precise detail in the relevant sectoral legislation in parallel with the creation of the ESAs. Moreover, any binding decision by the European Supervisory Authorities or the Commission must be subject to review by the Community Courts. Subject to these considerations, 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:
  - a) 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;
  - b) 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 by i.a.:

- issuing guidelines on practical supervisory issues with a view to a common framework for supervision;
- coordinating ex ante the supervisory analyses of the risks and behaviours of financial institutions and groups;
- conducting peer analysis across financial institutions and groups, to ensure consistency in supervisory outcomes;
- participating as appropriate as observers in supervisory colleges, so as to identify and address possible inconsistencies;
- collecting practical issues emerging in the implementation of Community legislation and ESAs' standards and ensuring that there is consistent interpretation across the Single Market;
- developing on a much broader scale common training for supervisors and staff exchanges.
- without prejudice to the role of European institutions, the ESAs should be given a certain role as regards international issues, including technical arrangements and preparation of equivalence assessments.

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. The information would be available for the relevant authorities in colleges of supervisors and should be shared with the ESRB subject to specific confidentiality agreements. The Commission is invited to examine the extent to which existing sectoral legislation would need to be amended.

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

a) Manifest breach of EU law or ESAs' standards:

Without prejudice to the procedures laid down by the EC Treaty to ensure compliance with Community law, a mechanism should also be put in place to address non compliance by a national supervisory authority which is considered to be manifestly diverging from the existing Community legislation and ESAs' binding harmonised technical standards.

This mechanism should allow the ESAs to address recommendations to the relevant national supervisor. 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.

b) 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. An overwhelming majority supports that, if, after a phase of conciliation, national supervisors or colleges of supervisors have not been able to reach an agreement, the ESAs should, through a binding decision, settle the matter. The other Member States do not agree with this approach, since they believe that it could impinge on Member States' fiscal responsibilities. The Commission's forthcoming legal text should define precisely the scope and modalities of this mechanism and ensure that such powers should not impinge in any way on Member States' fiscal responsibilities.

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. The other Member States do not agree with this approach, since they believe that it could impinge on Member States' fiscal responsibilities. All Member States agree that these full supervisory powers should not be extended to financial conglomerates, banks, insurance companies or investment firms and other financial institutions whose failure could result in fiscal burden for Member States. The Commission's forthcoming legal text should define precisely the scope and modalities of this mechanism and ensure that such powers would not impinge in any way on Member States' fiscal responsibilities.

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. An overwhelming majority supports the Commission to examine whether the ESAs should have, in crisis situations, the power to adopt specific emergency decisions, as e.g. short selling restrictions, which should be defined in Community legislation. The other Member States do not agree with this approach, since they believe that it could impinge on Member States' fiscal responsibilities. The Commission's forthcoming examination should address precisely the scope and modalities of this mechanism and ensure that such power should not impinge in any way on Member States' fiscal responsibilities.

10. The Council 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 ESAs should have their own autonomous budget, commensurate with their responsibilities, and be governed by rules which ensure their efficiency, independence, and accountability towards the Council, the Parliament and the Commission. Building on the existing EU Committees of supervisors, they should comprise high-level representatives of all the relevant national supervisory authorities. Their precise management, organisation and funding should be specified in appropriate Community legislation. Furthermore, they should have full-time Chairs.

11. The Council SUPPORTS the acceleration of work to build a comprehensive cross-border framework to strengthen the EU financial crisis management systems and calls on the Commission to bring forward appropriate proposals in this regard, including on guarantee schemes and winding up of financial institutions and the EFC to pursue its activities in this area based on experiences from the MoU on Cross-border financial stability.

**NEXT STEPS:**

The Council CONSIDERS that the Commission should present all necessary proposals by early autumn 2009 at the latest. The draft legislation for the setting up of the ESRB and the ESAs should specify i.a. the above-mentioned organisational and structural aspects, and the mechanism through which the ERSB and the ESAs should work in close cooperation. The aim should be to have the new European Financial Supervision system, comprising both macro-prudential and micro-prudential components, fully in place in the course of 2010. The present conclusions do not prejudge the choice of legal basis for the establishment of the financial supervisory structures, which can only be determined in the light of the content and objectives of the legislative proposals. The Council AGREES that the functioning of the ESRB and ESFS should be reviewed no later than three years after their establishment.

**Suggested composition of the ESRB and its steering committee:**

The Steering Committee shall be composed as follows:

- the ESRB chair and vice-chair;
- two additional Central bank members of the ESRB (one from a euro area Member State and one from a non-euro area Member State);
- the Chairs of the three new European Supervisory Authorities;
- the Commission member;
- the EFC President.

The General Board shall be composed as follows:

- Chair: President of the ECB (or alternatively a Governor (elected by ESRB members));
- Vice-Chair: elected by ESRB members;
- Governors of the 27 national Central banks;
- President of the ECB (if the latter is the chairperson of the ESRB, the ECB would be represented by its Vice-President);
- Chairs of the three European Supervisory Authorities;
- Member of the European Commission;
- EFC President\*;
- A representative of the national supervisory authorities\*, accompanying the Central bank Governor in a 1 +1 formula.

The Steering committee shall also be chaired by the ESRB Chair, or the vice-Chair in the absence of the ESRB Chair.

\* Members without voting right

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