

Annex: Financial Services – Explanatory note

1. Unanimity on:-

- i) Transfer of powers from national level to EU agencies

Explanation: this issue was debated at length before the European Council of June 2009. The June 2009 Ecofin agreed that “national supervisors should remain responsible for the day-to-day supervision of individual firms”. The UK signed up to the Commission’s proposals on the basis that the ESAs should have direct supervision powers only in relation to credit rating agencies, which is what the Council Conclusions record. These restrictions are being tested routinely in new legislation seeking to extend the supervisory powers of the ESAs.

- ii) Maximum harmonisation provisions that prevent member states imposing additional requirements

Explanation: member states may need to impose additional requirements on institutions within their own jurisdiction to reflect the nature of their financial sector – eg the UK’s decision to impose higher capital requirements on certain institutions to reflect the potential call on UK taxpayers of the UK’s large and international financial sector. This does not affect other Member States or the ability of their financial sector institutions to compete in the single market.

- iii) Fiscal interests of member states and imposition of taxes, levies etc

Explanation: the June 2009 European Council agreed that “decisions taken by the ESAs should not impinge in any way on the fiscal responsibilities of member States”. Furthermore, measures which entail very sizeable levies on the financial sector, such as the Deposit Guarantee Scheme Directive, are being pursued under QMV legal bases.

- iv) The location of the European Supervisory Authorities

2. General provisions for:-

- i) Requirement for executive powers of ESAs to be clearly set out and not replace the exercise of discretion by member states’ competent authorities

Explanation: this would have the effect of giving Treaty status to the ECJ Meroni judgement which prohibits discretionary powers from being conferred on EU agencies. This is consistent with the conclusions of the June 2009 Ecofin which agreed that "the framework for the exercise of the [ESAs] competences should be specified exhaustively and in precise detail in the relevant sectoral legislation in parallel with the creation of the ESAs."

- ii) Ensuring that 3rd country financial institutions that operate only in one member state are authorised and supervised in that member state if they do not want a passport

Explanation: a number of third country institutions operate in UK as part of their international business. These institutions have no EU business and no requirement for a passport to provide services in other member States. This provision ensures that their authorisation and supervision would continue to be determined by the UK as no other member State is affected.

- iii) No discrimination within the single market for financial services on the grounds of the member states in which an institution is established

Explanation: This addresses the issues which lie behind our challenge to the ECB's location policy.