



**COUNCIL OF
THE EUROPEAN UNION**



Council Conclusions on enhancing the arrangements for financial stability in the EU

*2822nd ECONOMIC AND FINANCIAL AFFAIRS Council meeting
Luxembourg, 9 October 2007*

The Council adopted the following conclusions:

"Following the work priorities established by the ECOFIN Council of October 2006 and the discussion at the informal meeting of EU Finance Ministers and Central Bank Governors in Porto in September 2007, the Council AGREED to take further steps, at the EU and national level, to develop the arrangements for cross-border financial stability within the EU. These steps are based on recommendations from the Economic and Financial Committee and take into account the state of financial integration in the EU and existing stability arrangements. The Council AGREES that further actions should be taken to ensure that arrangements for financial stability are in line with evolving financial markets and that the EU obtains the full benefits of financial integration. In particular, the Council

RECOGNISES that:

- integration contributes positively to overall performance of the EU financial sector and promotes financial stability; in this context, the number of large cross-border banking groups has substantially increased, which improves the efficiency of financial services, including for businesses and consumers across the EU;
- the EU framework for prudential supervision and crisis management and resolution must allow a quick response to cross-border systemic financial crises and their implications;
- financial stability in the EU is a common concern for all Member States and must be safeguarded on the basis of close co-operation; and

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- preparation in advance is necessary for an effective safeguarding of financial stability across borders, while allowing for flexibility to deal with specific circumstances.

AGREES on common principles that will be the basis for co-operation among national authorities in preserving financial stability within the EU. These principles, set out in Annex I, should be respected in the management of any cross-border financial crisis with potential systemic implications. They constitute a consistent and sound basis for responding to any financial crisis situations in the EU, specifying the overarching considerations for cross-border cooperation, taking into account that quick actions may be needed to safeguard financial stability.

INVITES, in order to enhance procedures for co-operation and preparedness of authorities in the EU, the Economic and Financial Committee to prepare for spring 2008, an extended Memorandum of Understanding (MoU) that will build on the EU MoU signed in 2005 between Heads of Competent Banking Supervisory Authorities, Central Banks Governors and Finance Ministers in the EU. The new MoU will include:

- the common principles;
- a common analytical framework for the assessment of systemic implications of a potential crisis to ensure the use of common terminology in assessing the systemic implications of a cross-border financial crisis by all relevant authorities; and to enhance the availability of timely assessments among authorities that will facilitate the decision-making in a crisis situation. The EU Central Banks, Supervisory Authorities and Finance Ministries are INVITED to use this framework by the end of 2008; and
- common practical guidelines for crisis management to reflect a common understanding of the steps and procedures that need to be taken in a cross-border crisis situation.

ENCOURAGES authorities in different Member States that share financial stability concerns to start developing, as soon as possible, voluntary cooperation agreements consistent with the extended EU wide MoU and building on cross-border supervisory arrangements for crisis prevention. These agreements would focus on the principles and procedures in detail - taking into account particular needs of crisis management in a specific cross-border context. To facilitate the conclusion of these agreements, the Council INVITES the Economic and Financial Committee to develop concrete examples by spring 2008.

WELCOMES the progress made by the EU Member States with their national arrangements for financial stability, in particular that *Domestic Standing Groups* have been put in place in most EU Member States. These groups bring together competent Supervisory Authorities, the National Central Banks and the representatives from relevant Ministries within a Member State for stability and crisis management purposes to enhance preparedness of authorities through the exchange of information, development of tools and also by conducting crisis simulation exercises. The Council INVITES all Member States to develop such Domestic Standing Groups.

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RECOGNISES the need to facilitate cooperation and information exchange among authorities; and the need to enhance the availability of the tools that are necessary to preserve financial stability in Member States and to ensure their functioning across-border between relevant parties. To this end, the Commission is INVITED, in close co-operation with Member States, to examine possible enhancements, and where necessary propose regulatory changes as follows to:

- clarify the nature and extent of the legal obligations for Supervisory Authorities Central Banks and Finance Ministries to exchange information and to cooperate and in this context: increase information rights and *involvement of host countries*; clarify the role of *consolidating supervisors* and facilitate the timely involvement of relevant parties in a crisis situation; and consider including in the *mandates of national supervisors*, a task to cooperate within the EU and to take into account the financial stability concerns in all Member States;
- analyse the feasibility of reducing barriers to cross-border transfer of assets while defining appropriate safeguards for entities transferring the assets; and analyse the feasibility of revising rules for the winding-up of banking groups to include joint *insolvency proceedings* for cross-border groups while providing sufficient safeguards to all stakeholders of the group or its part being reorganised or wound-up; and
- improve interoperability of *Deposit Guarantee Schemes (DGS)*, by removing the inconveniences in the current arrangements, and clarify the practical implications of DGS to absorb and share any financial burdens.

INVITES the Commission, without prejudice to its assessment on a case by case basis and respecting Commission competences, working together with Member States, to endeavour to clarify when a major banking crisis could be considered by the Commission such as to provoke a 'serious disturbance of the economy' within the meaning of Article 87(3)(b) of the EC Treaty and state aid rules; and INVITES the Commission to consider streamlining procedures focusing on how state aid enquiries under such critical circumstances can be treated rapidly.

INVITES the Economic and Financial Committee and the Financial Services Committee to monitor and report regularly to EU Finance Ministers on the progress in all the above areas, as reflected in a strategic roadmap presented in annex 2. The EFC will test all the elements to be introduced in an EU wide crisis simulation exercise in spring 2009 and report to ECOFIN Ministers on its conclusions in autumn 2009.

LOOKS FORWARD to the enhancement of the Lamfalussy framework in the context of its forthcoming review in December 2007, on the basis of the reports by the Inter-Institutional Monitoring Committee, the Commission and the Financial Services Committee, including on financial supervision in the EU. In this context, the above conclusions will be taken into account so as to ensure coherence between the arrangements for crisis prevention and crisis management.

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Annex I: Common Principles for cross-border financial crisis management

Member States agree on a set of common principles to be followed in the management of any cross-border financial crisis, which involves at least one banking group which (i) has substantial cross-border activities and (ii) is facing severe problems which are expected to trigger systemic effects in at least one Member State; and (iii) is assessed to be at risk of becoming insolvent. The common principles are the following:

1. The objective of crisis management is to protect the stability of the financial system in all countries involved and in the EU as a whole and to minimise potential harmful economic impacts at the lowest overall collective cost. The objective is not to prevent bank failures.
2. In a crisis situation, primacy will always be given to private sector solutions which as far as possible will build on the financial situation of a banking group as a whole. The management of an ailing institution will be held accountable, shareholders will not be bailed out and creditors and uninsured depositors should expect to face losses.
3. The use of public money to resolve a crisis can never be taken for granted and will only be considered to remedy a serious disturbance in the economy and when overall social benefits are assessed to exceed the cost of recapitalisation at public expense. The circumstances and the timing of a possible public intervention can not be set in advance. Strict and uniform conditions shall be applied to any use of public money.
4. Managing a cross-border crisis is a matter of common interest for all Member States affected. Where a bank group has significant cross-border activities in different Member States, authorities in these countries will carefully cooperate and prepare in normal times as much as possible for sharing a potential fiscal burden. If public resources are involved, direct budgetary net costs are shared among affected Member States on the basis of equitable and balanced criteria, which take into account the economic impact of the crisis in the countries affected and the framework of home and host countries' supervisory powers.
5. Arrangements and tools for cross-border crisis management will be designed flexibly to allow for adapting to the specific features of a crisis, individual institutions, balance sheet items and markets. Cross-border arrangements will build on effective national arrangements and cooperation between authorities of different countries. Competent authorities in the Member States affected by a crisis should be in a position to promptly assess the systemic nature of the crisis and its cross-border implications based on common terminology and a common analytical framework.
6. Arrangements for crisis management and crisis resolution will be consistent with the arrangements for supervision and crisis prevention. This consistency particularly refers to the division of responsibilities between authorities and the coordinating role of home country supervisory authorities.

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7. Full participation in management and resolution of a crisis will be ensured at an early stage for those Member States that may be affected through individual institutions or infrastructures, taking into account that quick actions may be needed to solve the crisis.
8. Policy actions in the context of crisis management will preserve a level playing field. Especially, any public intervention must comply with EU competition and state-aid rules.
9. The global dimension will be taken into account in financial stability arrangements whenever necessary. Authorities from third countries will be involved where appropriate.

Annex II: Strategic Roadmap for strengthening EU arrangements for financial stability

1. Procedures and principles to enhance co-operation and preparedness

- October 2007: adoption by EU Finance Ministers and Central Banks Governors of common principles for cross-border crisis management with the objective to have the common basis for financial crisis management between relevant authorities in the EU.
- End 2007: Member States to decide whether to include an EU-dimension in the national mandates of supervisory authorities, i.e. a requirement to cooperate and to take into account financial stability concerns in all Member States (to be recalled in the context of the 'Lamfalussy' review).
- Member States are encouraged to develop and sign specific 'voluntary co-operation agreements' between authorities in different Member States as soon as possible; and the Economic and Financial Committee will provide examples of such agreements by the spring 2008.
- Spring 2008: EU Supervisory Authorities, Finance Ministries and Central Banks to sign an extended EU wide MoU, which will be built on the 2005 MoU and will include common principles on crisis management including on the sharing of fiscal burden; and a common analytical framework. An annex will include practical guidelines for crisis management.
- End of 2008: authorities in Member States will use the common analytical framework for assessing a cross-border financial crisis.
- 2007-2009: the Commission to propose ways to clarify cooperation obligations including possible amendments to EU-banking legislation, especially to: clarify the existing obligations for Supervisory Authorities, Central Banks and Finance Ministers to exchange information and to cooperate in a crisis situation; increase the information rights and involvement of host countries; clarify the role of the consolidating supervisors and facilitate the timely involvement of relevant parties in a crisis situation; and examine whether, to this end, legislative changes are necessary, including to reinforce the legal requirements for

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supervisory collaboration and information sharing. Progress report by the Commission to the EFC by the end of 2007. Commission proposal end 2008; and adoption by EP/Council by the end of 2009.

- 2009: the Economic and Financial Committee to conduct an EU wide crisis simulation exercise in spring 2009 to test the proposed arrangements and to report to ECOFIN Ministers on its conclusions in autumn 2009.

2. Review the tools for crisis prevention, management and resolution

- 2008: the Financial Services Committee and the Commission to identify specific obstacles to use of the tools in cross-border situations and propose changes, to ensure the availability of relevant tools at the national level and the functionality of tools for crisis management and resolution taking into account the cross-border dimension.
- 2008: the Commission and Member States shall work towards clarifying when a banking crisis could be considered by the Commission as “*a serious disturbance for the economy*” (under the Treaty and State aid rules) and the Commission to consider streamlining procedures focusing on how State aid enquiries under critical circumstances can be treated rapidly.
- 2007-2009: the Commission to assess the possible extension of the scope of the present EU-Directive on winding up of credit institutions to include insolvent subsidiaries with the objective to increase the efficiency, the optimal reorganisation and winding up of cross border banking groups taking due consideration of the interests of all stakeholders concerned. The Commission to launch a public consultation October 2007; legal study of obstacles mid 2008; and release a Commission Green Paper by end 2008.
- 2007-2009: work started in spring 2007 to be continued by the Commission with the objective to clarify EU Deposit Guarantee Schemes Directive, especially: practical agreement and clarification of the scope of the Directive and tasks of DGS, 'topping-up', information exchange between schemes, reducing pay-out delays and improving depositor information. Deposit Guarantee Schemes and relevant authorities in Member States will be involved. Final results are expected by March 2009.
- 2007-2009: alongside the review of the winding up Directive followed by Commission proposal mid-2009, the Commission to perform a feasibility study on reducing barriers for cross-border asset transferability while introducing appropriate safeguards within banking, insolvency and company law, taking into account that the reallocation of assets in a crisis affects the ability of stakeholders in different legal entities to pursue claims. The overall objective is to reinforce the primacy of private solutions, avoid counter-productive ring-fencing of assets, and facilitate a smooth management of a crisis."

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