



**COUNCIL OF  
THE EUROPEAN UNION**



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**PRESS RELEASE**

2981st Council meeting

**Economic and Financial Affairs**

Brussels, 2 December 2009

President      **Mr Anders BORG**  
Minister for Finance of Sweden

**P R E S S**

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## Main results of the Council

*The Council reached agreement on proposals to create three European authorities for the supervision of banking, insurance and securities markets, as part of a reform of the EU's **supervisory framework** in the wake of the global financial crisis. It called on the presidency to start negotiations with the European Parliament with a view to adoption of the texts at first reading, so as to allow the new framework to be put into place during the course of 2010.*

*The Council opened **excessive deficit procedures** for **Belgium, the Czech Republic, Germany, Italy, the Netherlands, Austria, Portugal, Slovenia and Slovakia**, issuing recommendations on corrective measures to be taken. It adopted new recommendations on measures to be taken by **Ireland, Spain, France and the United Kingdom** to correct their excessive deficits, and a decision regarding non-compliance with its recommendation to **Greece**.*

*The Council also approved a draft directive that will allow member states to implement a temporary reversal of liability for the payment of VAT on **greenhouse gas emission allowances** in order to better tackle VAT fraud.*

*The Council adopted conclusions on:*

- ***exit strategy** with regard to measures taken to tackle the economic and financial crisis;*
- *financial stability arrangements and **crisis management** in the financial sector;*
- *the EU's post-2010 strategy on **jobs and growth**;*
- *implementation of a code of conduct aimed at eliminating **harmful tax competition**;*
- *future policy action with regard to **derivatives** markets and implementation of a code of conduct on the **clearing and settlement** of securities transactions;*
- *the **single euro payments area**.*

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<sup>1</sup> Where declarations, conclusions or resolutions have been formally adopted by the Council, this is indicated in the heading for the item concerned and the text is placed between quotation marks. Documents for which references are given in the text are available on the Council's Internet site (<http://www.consilium.europa.eu>). Acts adopted with statements for the Council minutes which may be released to the public are indicated by an asterisk; these statements are available on the Council's Internet site or may be obtained from the Press Office.

## **PARTICIPANTS**

The governments of the Member States and the European Commission were represented as follows:

### **Belgium:**

Mr Didier REYNERS

Deputy Prime Minister and Minister for Finance and Institutional Reforms

### **Bulgaria:**

Mr Boyko KOTZEV

Permanent Representative

### **Czech Republic:**

Ms Klára HÁJKOVÁ

Mr Tomáš ZÍDEK

Deputy Minister for Finance, Financial Market Section  
Deputy Minister for Finance, International Relations and Financial Policy Section

### **Denmark:**

Mr Claus Hjort FREDERIKSEN

Minister for Finance

### **Germany:**

Mr Wolfgang SCHÄUBLE

Federal Minister for Finance

### **Estonia:**

Mr Jürgen LIGI

Minister for Finance

### **Ireland:**

Mr Brian LENIHAN

Minister for Finance

### **Greece:**

Mr George PAPACONSTANTINOU

Minister for Finance

### **Spain:**

Ms Elena SALGADO

Second Deputy Prime Minister and Minister for Economic Affairs and Finance

### **France:**

Ms Christine LAGARDE

Minister for Economic Affairs, Finance and Employment

### **Italy:**

Mr Ferdinando NELLI FEROCI

Permanent Representative

### **Cyprus:**

Mr Charilaos STAVRAKIS

Minister for Finance

### **Latvia:**

Mr Normunds POPENS

Permanent Representative

### **Lithuania:**

Ms Ingrida ŠIMONYTĖ

Minister for Finance

### **Luxembourg:**

Mr Luc FRIEDEN

Mr Jeannot KRECKÉ

Minister for Finance

Minister for Economic Affairs and Foreign Trade

### **Hungary:**

Mr Péter OSZKÓ

Minister for Finance

### **Malta:**

Mr Richard CACHIA CARUANA

Permanent Representative

### **Netherlands:**

Mr Wouter BOS

Minister for Finance, Deputy Prime Minister

### **Austria:**

Mr Reinhold LOPATKA

State Secretary, Federal Ministry of Finance

### **Poland:**

Mr Jan VINCENT-ROSTOWSKI

Minister for Finance

### **Portugal:**

Mr Carlos COSTA PINA

State Secretary for the Treasury and Financial Affairs

**Romania:**

Mr Bogdan Alexandru DRĂGOI

State Secretary, Ministry of Public Finances

**Slovenia:**

Mr Franc KRIŽANIČ

Minister for Finance

**Slovakia:**

Mr Ján POČIATEK

Minister for Finance

**Finland:**

Mr Jyrki KATAINEN

Deputy Prime Minister, Minister for Finance

**Sweden:**

Mr Anders BORG

Minister for Finance

Mr Ingemar HANSSON

State Secretary to the Minister for Finance

Mr Per JANSSON

State Secretary to the Minister for Finance

Mr Urban KARLSTRÖM

State Secretary to the Minister for Local Government and  
Financial Markets, Ministry of Finance**United Kingdom:**

Mr Alistair DARLING

Chancellor of the Exchequer

**Commission:**

Mr Joaquín ALMUNIA

Member

Mr László KOVÁCS

Member

Mr Charlie McCREEVY

Member

**Other participants:**

Mr Jean-Claude TRICHET

President of the European Central Bank

Mr Philippe MAYSTADT

President of the European Investment Bank

Mr Thomas WIESER

Chairman of the Economic and Financial Committee

Mr Christian KASTROP

Chairman of the Economic Policy Committee

**ITEMS DEBATED****EUROPEAN SUPERVISORY AUTHORITIES FOR FINANCIAL SERVICES**

The Council agreed on a general approach on draft regulations aimed at establishing three new authorities for the supervision of financial services in the EU, namely:

- a European Banking Authority;
- a European Insurance and Occupational Pensions Authority; and
- a European Securities and Markets Authority.

It asked the presidency to start negotiations with the European Parliament with a view to adoption of the texts at first reading.

The draft regulations are part of a package of proposals to reform the EU framework for the supervision of banking, insurance and securities markets in the wake of the global financial crisis.

Negotiations with the Parliament on the macro-financial aspects of the package are already underway. At its meeting on 20 October, the Council reached agreement on a draft regulation aimed at establishing a European Systemic Risk Board (ESRB) to monitor potential threats to the stability of the financial system.

The three European supervisory authorities (ESAs) will be part of a European System of Financial Supervisors, working in tandem with a network of member state supervisors. Together, they constitute the micro-financial aspects of the reform package.

Entry into force will only be possible once all of the texts have been adopted; the aim is for the new framework to be put into place during the course of 2010.

In June, the European Council supported the creation of both the ESRB and the European System of Financial Supervisors, calling for:

- an upgrading of the quality and consistency of national supervision;

- a strengthening of the oversight of cross-border financial groups through the setting up of supervisory colleges; and
- the establishment of a single rule book applicable to all financial institutions in the EU.

The three ESAs are due to replace three existing EU committees of supervisors (CEBS, CEIOPS and CESR<sup>1</sup>) and will have legal personality under EU law. They will comprise high-level representatives of all national supervisory authorities, under a permanent chairmanship. The national authorities will remain responsible for day-to-day supervision of individual firms, and a steering committee will be set up to ensure cooperation and to coordinate the sharing of information between the ESAs and the ESRB.

According to the Council's general approach, the ESAs would be responsible for:

- ensuring that a single set of harmonised rules and consistent supervisory practices is applied by national supervisors;
- ensuring a common supervisory culture and consistent supervisory practices;
- collecting micro-prudential information;
- ensuring consistent application of EU rules, in cases such as the manifest breach of EU law or ESA standards and disagreement between national supervisors or within a college of supervisors;
- exercising full supervisory powers at European level with regard to credit rating agencies;
- ensuring a coordinated response in crisis situations.

On account of the liabilities that may be involved for the member states, the Council's general approach provides that decisions taken by the ESAs would not impinge in any way on the fiscal responsibilities of the member states. Any binding decision taken by the ESAs would be subject to review by the EU courts.

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<sup>1</sup> Committee of European Banking Supervisors, Committee of European Insurance and Occupational Pensions Supervisors, Committee of European Securities Regulators.

## **COMBATING FRAUD - VAT PAYMENTS ON EMISSION ALLOWANCES**

The Council agreed on a general approach, pending the opinion of the European Parliament, on a draft directive that would allow member states to implement, on an optional and temporary basis, a reversal of liability for the payment of VAT (value-added tax) on greenhouse gas emission allowances.

The aim is to close off certain forms of tax fraud, in particular so-called carousel schemes whereby supplies are traded several times by different suppliers without VAT being paid to the tax authorities. Applying a "reverse charge" principle, the draft directive would allow, until 30 June 2015, liability for the payment of VAT on emission allowances and services to be shifted from the supplier (as normally required by EU rules) to the customer.

The Council will continue to work on other elements of the proposal as regards the application of the reverse charge mechanism to mobile phones and electronic circuit devices with a view to reaching an agreement as soon as possible.

Pending agreement on the proposal, in the event of a justified request by a member state according to article 395 of the VAT directive (2006/112) for the application of the reverse charge mechanism to mobile phones and electronic circuit devices, the Commission declared that it would present a proposal for a derogation before June 2010.

Member states that are at present authorised to apply the reverse charge mechanism to mobile phones and electronic circuit devices will be allowed to continue to apply that arrangement until agreement is reached on a new decision or directive.



**VAT TREATMENT OF POSTAL SERVICES - Council conclusions**

The Council adopted the following conclusions:

"The Council notes that the third Postal Directive will enter into force 1 January 2011 (1 January 2013 in some Member States).

Bearing this in mind, the Council stresses the importance of taking all necessary measures to solve the political problems originating from the VAT treatment of postal services before the third Postal Directive will enter into force and the liberalisation of the postal market is a fact.

Taking the previous into account and taking account of existing tax arrangements in Member States, the Council invites the Spanish and Belgian Presidencies to explore and examine all options in order to make steps forward in this respect and to report the progress made at the Ecofin council in December 2010 at latest."

## **EXCESSIVE DEFICIT PROCEDURES**

The Council:

- opened excessive deficit procedures for Belgium, the Czech Republic, Germany, Italy, the Netherlands, Austria, Portugal, Slovenia and Slovakia, and issued recommendations on corrective action to be taken;
- issued revised recommendations on measures to be taken by Ireland, Spain, France and the United Kingdom in order to correct their excessive deficits;
- established that Greece's response to its recommendation on measures to correct its excessive deficit has been insufficient.

It adopted decisions, under article 126(6) of the Treaty on the Functioning of the EU, on the existence of excessive government deficits in Belgium, the Czech Republic, Germany, Italy, the Netherlands, Austria, Portugal, Slovenia and Slovakia. In the light of their most recent notifications and the Commission's autumn economic forecasts, all nine member states are expected in their 2009 budgets to exceed the 3% reference value set by the treaty for the ratio of deficit to gross domestic product (GDP).

It adopted recommendations, under article 126(7) of the treaty, on action to be taken by the nine member states to bring their deficits back below the 3% of GDP threshold. The Council however found that there were special circumstances, on account of the impact of the global economic crisis, warranting correction of the deficit in the medium term (rather than the short term). It set 2 June 2010 as a deadline for taking corrective action as planned, and outlined the strategy for reducing the excessive deficit by the specified deadline (see below).

Regarding Ireland, Spain, France and the United Kingdom, the Council adopted article 126(7) recommendations revising the timetable for correction of their deficits on account of the deterioration in the economic situation since the issuing of its recommendations in April 2009. It set 2 June 2010 as a deadline for taking corrective action as planned, and outlined the strategy for reducing the excessive deficit by the specified deadline (see below). Ireland, Spain and France have been subject to the excessive deficit procedure since April 2009, the UK since July 2008.

As concerns Greece, the Council adopted a decision, under article 126(8) of the treaty, establishing that its response to the recommendation issued in April 2009, when the excessive deficit procedure was initiated, has been insufficient.

In its April recommendation to Greece, the Council set out measures for correction of the deficit by 2010 and called for continued efforts to improve the collection and processing of government statistical data. Shortcomings in public finance statistics have however recurred, and Greek public finances have worsened beyond what could have been expected as a result of the economic downturn. New measures for the 2009 budget consist mainly of revenue-enhancing measures, partly temporary, and not permanent measures on the expenditure side as called for by the Council.

#### Timetable for correction of the deficits

On the basis of the Commission's autumn economic forecasts, the Council called on Belgium and Italy to reduce their deficits below the 3% of GDP threshold by 2012, the Czech Republic, Germany, Spain, France, the Netherlands, Austria, Portugal, Slovakia and Slovenia to do so by 2013, Ireland by 2014 and the UK by the 2014-15 financial year.

## **STABILITY PROGRAMME**

The Council adopted an opinion, as required by the EU's stability and growth pact, on a supplement to Belgium's stability programme (*doc.* [9235/09 ADD 1 + ADD 2](#)).

Stability and convergence programmes are aimed at ensuring sound government finances as a means of strengthening the conditions for price stability and for sustainable growth that is conducive to employment creation.

Belgium's annual update of its stability programme (*doc.* [9235/09](#)) was subject to a Council opinion in July.

## **PREPARATION OF THE DECEMBER EUROPEAN COUNCIL**

### **Financial supervision**

The Council took stock of progress on legislative proposals aimed at reforming the EU framework for the supervision of financial services in the wake of the global financial crisis.

The presidency will report on progress to the European Council at its meeting on 10 and 11 December, in particular in the light of work on the establishment of three European supervisory authorities (see page 6).

### **EU strategy for growth and jobs post-2010 - *Council conclusions***

The Council adopted the following conclusions and agreed to submit them to the European Council meeting on 10 and 11 December.

- "1. In view of the preparation of the EU post 2010 Lisbon Strategy, the Council **WELCOMES** the EPC report on "the Lisbon strategy post-2010".
  
2. The Council **UNDERLINES** that the EU economy is facing important structural challenges. High unemployment and weak productivity developments together with the impact of aging and the crisis-related impact on public finances pose long-term challenges. In the aftermath of the crisis it will therefore be important to focus policies away from crisis management towards a strategy of actions that aim to raise the EU growth potential, employment and ensure sustainable public finances.

3. Against this background, the EU post 2010 Lisbon Strategy should aim at raising the EU's growth potential and ensuring sustainable public finances in line with the Stability and Growth Pact. With a view to increase the growth potential, the Council **UNDERLINES** the need to increase employment in particular through higher labour participation rates and to enhance productivity through well-functioning product and service markets, fostering entrepreneurship; promoting human capital formation, innovation and open markets. In particular reforms that contribute to increasing long-term employment have the dual advantage of both boosting the growth potential and improving long-term public finances. To further improve sustainability, reforms of social security systems, such as pension systems and credible national fiscal frameworks that contribute to budget discipline will be necessary. The new strategy should also allow to better take account of the interaction between policies at EU and national levels. Consideration should also be given to strengthening the EU dimension and harnessing EU instruments to make the most of the potential at EU level in order to provide for a genuine, concrete and coordinated policy agenda, including the Internal Market, as well as promoting the external dimension. Greater consideration could also be given to aligning the priorities of the EU budget and the European Investment Bank lending priorities with the new strategy, without pre-empting the forthcoming discussions on the new financial perspective.
4. The Council **LOOKS FORWARD** to the Commission proposal on a new strategy for growth and employment covering these aspects.
5. The Council **EXPRESSES ITS CONVICTION** that better integrating the social dimension and climate change policies into a new strategy should be done in a manner that maintains and reinforces the clear focus on growth and jobs. New elements should be integrated in an economically sound manner, i.e. new policies should be designed cost-effectively and assessed according to their implications for growth and jobs.
6. The Council **UNDERLINES** that the objectives of the new strategy should be set and owned at the highest political level. The Council **AGREES** that a limited number of properly framed targets could play a vital role, both as a communication device on key political priorities and as a tool for directing policy makers towards concrete actions. In this regard, the Council **CONSIDERS** that appropriate steps should be taken to streamline the use of targets. In order to increase country ownership, consideration could also be given to setting targets while taking into account starting positions and structural differences and maintaining the partnership approach, e.g. by fully respecting responsibilities of the Member States in economic, employment and social policies. The Council **INVITES** the Commission, to further work together with the EPC and other relevant committees on this.

7. The Council RECOGNISES that, while policy learning appears to have been reasonably successful, there is scope for improvement of the governance framework of the strategy and in particular CONSIDERS that there is a need to further strengthen the effectiveness of policy coordination and multilateral surveillance of structural reforms, and to improve the evaluation and follow-up of the EU elements of the strategy. The Council therefore INVITES the Commission to consider the EPC report and to come forward with concrete proposals to improve existing surveillance mechanisms of structural reforms and monitoring of the EU level actions in time before the adoption of the new strategy. The renewed governance framework should provide for efficient arrangements for the surveillance of structural reforms at both Member States and EU level, making use of all available Treaty instruments. It should provide for a clear allocation of responsibilities and avoid blurring and overlaps between different strands of EU monitoring instruments in line with the Treaty.
  
8. The Council ACKNOWLEDGES that public awareness and support is crucial for the successful implementation of structural reforms and therefore INVITES the Commission, together with the EPC, to consider communication aspects further in the new strategy possibly by developing appropriate, simple and transparent reporting on country performance in relation to agreed targets and benchmarks, including vis-à-vis third countries. The Council also ENCOURAGES the Commission and Member States to consider ways to engage further in a dialogue with citizens and stakeholders to better communicate the benefits of reforms at the national and local levels."

**Exit strategies: support measures for the financial sector - Council conclusions**

The Council adopted the following conclusions and agreed to submit them to the European Council meeting on 10 and 11 December.

- "1. Member States have implemented a wide range of extraordinary support measures in order to restore financial stability and support the economic recovery. The Council NOTES that these tools have been effective in addressing the problems caused by the financial crisis. In this context, the Council UNDERLINES that the recovery is nonetheless still fragile and that, depending on the situation of each Member State, it would be premature to initiate an exit from the support schemes at this point of time.

2. The Council also STRESSES that banks must continue the work of cleaning up their balance sheets and strengthening of their risk-bearing capacity and Member States should ensure that there are strong incentives for doing so. The Council also STRESSES that public assistance and bank profits should be used in building up capital buffers and not to increase bank dividends or compensations. The Council CALLS on Member States to incorporate urgently within their national frameworks the FSB principles and CALLS on the financial sector to immediately implement these sound compensation practices. The Council INVITES the Commission to regularly report to the Council on the implementation of sound remuneration policies at its upcoming meetings.
3. The Council CALLS upon CEBS to provide, at least on a six-monthly basis, insights as to the strength of banking systems' balance sheets, particularly the quality of assets and the adequacy of capital. Information, through stress testing, on the dependence of EU banks on public support and on the amount of capital available for further lending in the context of exit strategies should be provided.
4. The Council RECOGNISES that it is appropriate to start designing the strategy for a transparent and coordinated phasing out of the different support schemes.
5. The Council ADOPTED in October general principles for coordinated fiscal exit strategies which should start in 2011 at the latest, provided that the Commission forecasts continue to indicate that the recovery is strengthening and becomes self-sustaining. However, there is a need for more broad-based exit strategies, also taking into account the need to unwind financial support schemes.
6. Against this background, the Council AGREES on the following principles for exit strategies from financial support schemes:
  - Phasing out of public support schemes should be duly coordinated among Member States to avoid negative spill-over effects, taking into account country-specific specificities. In this respect, a coordinated strategy should be based on:



- facilitating adequate incentives to return to a competitive market;
  - ex-ante exchange of information on the intentions to phase out; the Commission should centralize the information provided by Member States and make it available to all Member States on a regular basis;
  - transparency towards the public and the financial sector;
  - an assessment of the stability of the financial system.
- The timing of exit should take into account a broad range of elements, including macro-economic and financial sector stability, the functioning of credit channels, a systemic risk assessment and the pace of natural phasing out by banks. Since the crisis has affected Member States and their financial sector differently, Member States specific circumstances should be taken into account, thereby allowing Member States to exit from support schemes at different points of time, while maintaining an adequate level of competition.
- Depending on individual Member State's circumstances, the phasing out of support should start with government guarantees. Action to phase out guarantee schemes would incentivise the exit of sound banks and give other banks incentives to address their weaknesses.
- The exit of individual measures must take into account the legal framework, including the relevant state aid decisions, which provide a coherent framework for exit.
- The withdrawal of state support should also take into account the legitimate interest to minimize the potential loss of public money.
7. Finally, the Council INVITES the EFC, with the cooperation of the Commission, CEBS and the ECB, to closely monitor the developments and further discuss possible ways forward on the phasing out of public support schemes. The EFC should report about such progress to the Council by February 2010 and then on a regular basis."

**FINANCIAL STABILITY AND CRISIS MANAGEMENT - Council conclusions**

The Council adopted the following conclusions:

"The Council RECALLS, further to its conclusions of 9 October 2007 and of 14 May 2008 on financial stability arrangements, its broad conclusions of 20 October 2009 on strengthening EU financial stability arrangements, where it underscored the importance of, in particular, developing "common and interoperable tools to improve Member States' ability to adequately handle a financial crisis" and "a comprehensive EU-wide framework for closer policy coordination on financial stability", AND agreed on a timetable for further work in coming months.

**I) The EU regulatory framework**

On that basis, the Council WELCOMES the preparatory analysis carried out by the Commission in its Communication on an EU framework for cross-border crisis management in the banking sector, covering three main areas of early intervention, bank resolution measures and insolvency proceedings. The Council NOTES that owing to the consultative nature of that Communication, policy options are considered in very broad terms and REITERATES that subsequent policy proposals, as stated by the Commission, need to be accompanied by further and more thorough impact assessment.

Based on the articulation of issues in the aforementioned Commission Communication, the accompanying Commission staff working paper and its related impact assessment, the Council AGREES on the following orientations for further Commission work in the short-to-medium term:

1. As regards supervisory early intervention, faced with the need to provide supervisors with additional tools to address developing problems, priority should be given to supplementing the tools listed in Article 136 of the CRD with additional tools that are not currently available to authorities in all Member States - such as powers to require submission of a restoration plan and enhanced powers towards the banks management- as well as any other provision so as to reinforce and converge early intervention powers for supervisors.

2. To address differences in the ways in which early intervention actions are currently initiated, priority should be given to developing a shared set of early warning indicators and developing a framework for common assessment as a means of (i) determining the appropriateness of an intervention and (ii) facilitating cooperation, in such a way as to enable joint responses but maintaining a sufficient degree of flexibility and discretion as appropriate.
3. To address the challenge of dealing with cross-border groups whose subsidiaries may be subject to different supervisory and legal regimes, the work ahead should further explore the feasibility of developing mechanisms which would make it easier for the relevant authorities to take coordinated decisions on the basis of a common assessment taking into account a group resolution plan.
4. In terms of banking resolution, the Commission should take into account the following key objectives and priorities:
  - As an overarching goal, stability of the financial system should be preserved, while limiting public intervention so that it should always be possible – politically and economically – to allow banks to fail, whatever their size, incl. by:
    - Minimising contagion and providing the necessary legal conditions for an orderly winding up;
    - Ensuring the protection of depositors and the continuity of banking and payment services as necessary;
    - Reducing significantly moral hazard and creating certainty and predictability around bank resolutions for all stakeholders: owners, creditors and counterparties;
  - Operationally, the reorganisation and resolution of cross border banks in a timely and robust manner, assisted by the development of firm-specific recovery and resolution plans, as well as cooperation of national resolution authorities, should be improved to deliver optimal solutions at EU level.

5. In the medium-to-long term, the overarching objective of the Commission's work should be to aim at exploring ways for introducing an appropriate EU framework for early intervention and resolution, which includes the exploration of a corresponding EU framework for asset transfers along with the necessary safeguards. This work should in particular explore mechanisms to disincentivise ring fencing practices, including exchange of information, enhanced coordination practices and legal provisions.
6. The Council agrees with the Commission's suggested approach to focus on developing a crisis management framework to deal with cross-border banks, covering both cross-border banking groups as well as single entities which only operate cross-border through branches, and to give further consideration as to the case for extending and adapting this framework to other types of financial institutions.
7. The Commission is invited to address the need to revise, and develop, resolution tools. In addition, the Commission should also consider working over the medium-to-long term towards introducing and implementing a common set of tools for all national authorities. With a view to their consistent application, appropriate conditions could provide a basis for the use of such tools. In particular, subject to appropriate caveats, intervention should be possible before the relevant threshold for the purposes of ordinary insolvency proceedings is reached.
8. It is also necessary to further examine how and under which preconditions, during bank resolution, exceptions could be made to certain of the requirements imposed by the EU Company Law Directives and other relevant EC legislation, under specific safeguards for shareholders, creditors and counterparties.
9. The Commission is also invited to explore how cooperation and communication between authorities and administrators responsible for the resolution and handling of insolvency of a cross border banking group could be improved, and consider options which would provide for the integrated resolution of group entities located in different jurisdictions. This could possibly include the option of establishing a single resolution framework, particularly in the banking sector.

10. Taking note of the work underway at the G20 and the IMF, the Commission is invited to elaborate the ways for the private sector to contribute to financing resolution measures and to explore the possibility of setting up resolution funds<sup>1</sup>. Additionally, the Council LOOKS FORWARD to the Commission report to Council and Parliament on the review of the operation of the DGS Directive, expected by early 2010.
11. Finally, the Commission is invited to explore the preconditions to further harmonising the EU insolvency framework.

Follow-up:

The Council INVITES the Commission to report back to Council by spring 2010, presenting concrete policy proposals on the way forward along the lines outlined in these conclusions, taking also into account the outcome of the on-going consultation process. The Council INVITES the FSC/EFC to cooperate closely with the Commission on the development of the way forward and to report back to the Council on the Commission proposals by summer 2010.

## II. Policy coordination framework

12. The crisis has shown that an effectively functioning policy coordination framework for crisis management is needed at EU-level and that in further strengthening this framework, a holistic as well as a pragmatic approach needs to be pursued, clearly defining procedures, tasks and accountability of the different authorities, bodies, Committees and Institutions involved and, developed in parallel to the changes ongoing in the EU supervisory framework.
13. In this context, the Council WELCOMES the work done by the EFC, which sets out a number of directions on how the EU-wide policy coordination framework for financial stability could be further enhanced in the short to medium term, including in respect of the principles for burden sharing, and building on further progress in the regulatory framework to develop adequate early intervention tools, bank resolution and insolvency proceedings.

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<sup>1</sup> If national public funds are used to rescue banks, compliance with the EU State Aid regime will have to be ensured.

14. The Council AGREES that to be credible and effective in operational terms, the EU policy coordination framework should:
- preserve the existing model of financial integration;
  - provide the necessary degree of flexibility to deal with different types of crises, including cross border crisis affecting a number of Member States with important spill-over effects as well as with a EU-wide crisis;
  - develop clear procedures and commonly agreed coordination mechanisms for crisis management, providing it with the necessary political certainty and building on the EFC and Council role in terms of macro economic surveillance and policy coordination.
15. In respect of burden sharing, the Council TAKES STOCK of the pragmatic approach to burden sharing outlined by the EFC, which does not consist of ex-ante agreements on the precise allocation of costs among Member States but of an increased preparedness for ex-post burden sharing, as appropriate.

Follow-up:

The Council INVITES the EFC to continue its work on an EU policy coordination framework for crisis management, including in respect of burden sharing, and present concrete proposals to the Council in spring 2010."

## **MEETINGS IN THE MARGINS OF THE COUNCIL**

The following meetings were held in the margins of the Council:

- ***Meeting with the European Parliament***

On 1 December, the Council troika met representatives of the European Parliament's committee on economic and monetary affairs. The meeting focused on financial supervision and public finances.

- ***Euro Group***

On 1 December ministers of the euro area member states attended a meeting of the Euro Group.

- ***Ministerial breakfast meeting***

Ministers held a breakfast meeting to discuss the economic situation.

**OTHER ITEMS APPROVED****ECONOMIC AND FINANCIAL AFFAIRS****Single euro payments area - Council conclusions**

The Council adopted the following conclusions:

"The Council:

1. REITERATES the importance of and its support for the full realisation of the Single Euro Payments Area (SEPA), which aims at achieving an integrated and competitive internal market for euro payments for the benefit of citizens and businesses and in this regard WELCOMES the Communication from the Commission: "Completing SEPA: a Roadmap for 2009-2012" and the second annual Progress Report on the state of SEPA Migration in 2009;
2. WELCOMES the substantial progress achieved by industry with the successful launch of the SEPA Direct Debit (SDD) following the earlier launch of the SEPA Credit Transfer (SCT);
3. ENCOURAGES banks and payment institutions to develop and actively market attractive SEPA Direct Debit products and services meeting customer needs, while offering customers at least comparable levels of current prices, services, security and guarantees, thereby facilitating migration from existing national direct debit products to the new SDD products;
4. RECOGNISES that extensive communication efforts by service providers, when marketing SEPA products, are urgently needed in order to raise SEPA awareness and INVITES Member States to encourage communication efforts made by industry and by public authorities in order to ensure that appropriate information campaigns are launched;
5. CALLS upon industry to complete its work in relation to the outstanding technical standards required in the cards market by mid 2010, which should be developed in an open and transparent way, allowing full interoperability, security and free access thereby facilitating the deployment of pan-European card scheme(s);



6. ACKNOWLEDGES the importance of equal treatment between electronic and paper invoices for value added tax purposes as well as the importance of developing innovative payment solutions underpinning an efficient and competitive European economy and therefore CALLS upon industry to deliver solutions for online electronic payments (e-payments) and for mobile payments (m-payments) and on banks and payment service providers to develop and actively market attractive e-payment and m-payment services thereby fostering alternative channels for the initiation and reception of payments;
7. RECOGNISES that SEPA can significantly contribute to the modernisation of public administration and the e-Government Action Plan as well as to the efficiency and growth of the wider European economy by developing value-added-services such as e-invoicing and INVITES the industry and the Commission to accelerate the work to realise an interoperable e-invoicing framework as a matter of urgency;
8. REGRETS that almost two years after the successful technical launch of the SCT, the percentage of credit transfers in the euro area processed using the new SCT format remains very low and is mostly limited to cross-border payments, and CONSIDERS it crucial to accelerate the take up of SCT, especially for national euro payments traffic;
9. EMPHASISES again that the full benefits of SEPA can only be obtained through the full migration of existing national euro payments transactions and STRESSES the important role that should be played by users with high payment volumes such as significant public authorities, corporates and other large entities in such migration, and CALLS upon public authorities in all Member States to significantly step up, unless already done, their migration efforts and lead SEPA migration by example;
10. INVITES therefore public authorities to demonstrate, unless already done, their willingness to drive forward the migration process by drawing up integrated and synchronised national migration plans for all public authorities, in order to achieve full migration of national public administrations to SEPA standards, products and services; and NOTES the good progress already achieved by some Member States in this respect;

11. CONSIDERS that establishing definitive end-dates for SDD and SCT migration would provide the clarity and the incentive needed by the market, ensuring that the substantial benefits of SEPA are rapidly achieved and that the high costs of running both legacy and SEPA products in parallel can be eliminated. In this regard, each SEPA product shall be assessed separately and specific preconditions of Member States have also to be taken into account (e.g. in Eurozone versus non-Eurozone Member States). Moreover, specific needs and interest of end consumers have to be considered. Finally, different possibilities for setting an end-date shall be demonstrated, each with its advantages and disadvantages (e. g. EU-regulation, ECB-regulation, national measures);
12. INVITES therefore the Commission, in collaboration with the ECB and in close cooperation with all actors concerned, to carry out a thorough assessment of whether legislation is needed to set binding end-dates for SDD and SCT and to come up with a legislative proposal should this assessment confirm the need for binding end dates;
13. STRESSES the need for further improving the governance of the SEPA project and ENCOURAGES the Commission and the ECB, in close cooperation with all actors concerned by the SEPA project, especially users with high payment volumes such as public authorities, corporates and other large entities, to establish, as soon as possible and before mid-2010, a SEPA governance and monitoring structure at EU level bringing together the supply and demand sides on an equal footing under a neutral Chair."

#### **Derivatives markets - Clearing and settlement - Council conclusions**

The Council adopted the following conclusions:

- "1. The Council RECALLS the Conclusions of the European Council of 18/19 June 2009, where the European Council called for "further progress to be made in the regulation of financial markets, notably on transparency and stability of derivatives markets."
2. The Council RECOGNISES the global dimension of derivatives markets and the need for a level playing field, as agreed by G-20 leaders at their meeting on 25 September 2009, where they called i.a. for: "*Improving over-the-counter derivatives markets: All standardized OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at the latest. OTC derivative contracts should be reported to trade repositories. Non-centrally cleared contracts should be subject to higher capital requirements.*"

3. The Council also STRESSES the importance of the two related workstrands set out in the ECOFIN roadmap adopted by the Council (ECOFIN) on 20 October as an annex to its conclusions on strengthening EU financial stability arrangements, namely:
  - "Increasing the safety for "over the counter" derivatives markets, by : the clearing of standardized OTC derivative contracts through central counterparties and, if not, higher capital requirements; the reporting of non-standardized derivative contracts to trade repositories";
  - "Improve transparency in use of derivatives".
4. The Council broadly WELCOMES the future actions announced by the Commission in its Communication on "Ensuring efficient, safe and sound derivatives markets - Future policy action". On that basis, the Council, bearing in mind the aforementioned declaration of G-20 leaders in Pittsburgh:
5. Broadly WELCOMES the paradigm shift in the approach towards derivatives markets suggested by the Commission, namely moving from so-called "light-handed regulation" to a more ambitious and comprehensive regulatory policy, that is aimed at reducing counterparty and operational risks, increasing transparency of the derivatives market and strengthening market integrity and oversight and, operationally, is expected to shift derivatives trading and clearing from predominantly OTC bilateral transactions towards centralised trading and clearing infrastructures;
6. STRESSES in that respect, as noted by the Commission, the need to have a comprehensive policy on OTC derivatives in order to avoid regulatory arbitrage and, at the same time, to take into account differences across classes of instruments and contracts, as well as those of specific market participants, incl. non-financial firms, and commodity markets, e.g. for gas and electricity. Any future policy option should ensure that non-financial institutions can continue managing the risks inherent to their business, without incurring disproportionate costs; and where appropriate should allow them to tailor risks to individual needs, subject to proper risk mitigation techniques and internal controls, but without underpricing risks nor opening regulatory loopholes.

7. AGREES with the need to improve substantially the mitigation of counterparty credit risk, and focusing in particular on:
- a. Promoting clearing of clearing eligible derivatives by means of one or more central counterparties (CCPs) which should be subject to adequately harmonised regulation and supervision and oversight to ensure improved safety and soundness.

The Council WELCOMES the joint CESR-ESCB Recommendations for Central Counterparties in Europe and broadly WELCOMES the Commission's intention to work on appropriate legislative proposals addressing in particular 5 issues, namely: conduct of business and governance, risk standards, legal protection to collateral and positions, authorisation and recognition of third-country CCPs.

Taking into account i/ the pan-European reach and systemic importance of CCPs and ii/ the fact that CCPs may ultimately be supported by fiscal authorities, the Commission should propose appropriate institutional responsibilities;

- b. Recommending the use of CCPs located in Europe. The Council recognises that there are strong reasons for some CCPs being located in Europe, relating to regulatory, supervisory and monetary policy concerns.
- c. Accordingly, mandating CCP clearing for clearing-eligible derivatives. The Council however RECOGNISES that there are limits to the scope of potential standardisation, and that non-standardised OTC derivative contracts will therefore remain necessary and that proper arrangements need to be in place to fulfil the aforementioned objectives of transparency and safety for the OTC derivatives markets;
- d. Consequently, requiring proper collateralisation for bilateral clearing, and making it subject higher capital charges than centrally cleared trades, taking into account the risk-mitigating effect of collateral arrangements and other measures, as well as the impact on the corporate sector. The Council INVITES the Commission to conduct comprehensive impact assessments and reflect the principle of higher capital requirements for bilateral OTC contracts, as agreed at G-20 level in Pittsburgh, in future amendments to the Capital Requirements Directive (CRD). The Commission should take into account the technical solutions being developed under the aegis of the Basel Committee.

8. Also AGREES with the importance of improving transparency, efficiency and integrity for derivative transactions, focusing in particular on four issues:
- a. Mandating reporting of transactions to trade repositories, to be then provided to regulators. The Commission should work towards proposing a Common legal framework for the regulation, supervision and oversight of trade repositories, incl. the roles and functions that may be given i.a. to ESMA within the overall supervisory framework;
  - b. European regulators' and Central banks' access to information stored in trade repositories. The Council CONSIDERS that European regulators and Central banks must have unfettered access to complete global information. In the absence of such access to information in repositories located in third countries, the Council WOULD ENCOURAGE the creation and operation of European-based trade repositories;
  - c. Ensuring that all relevant trades eligible for exchange-trading take place on organised markets;
  - d. Enhancing pre-and post-trade transparency requirements as appropriate.

The Commission should include these issues in its review of the Directive on Markets in Financial Instruments (MiFID).

9. Broadly WELCOMES the Commission's intention to work also on mitigating operational risk and, within the context of the forthcoming review of the MiFID and of the Market Abuse Directive (MAD), to revise relevant legislative provisions underpinning market integrity and oversight.
10. Overall, broadly WELCOMES the Commission's intention to put forward, or revise as appropriate, several legislative proposals (i.e. a possible Proposal on CCPs, amendments to the CRD; the reviews of MiFID and MAD). The Council RECALLS in that respect the common / inter-institutional commitment to better regulation and INVITES the Commission to carry out a thorough impact assessment for the legislation to be proposed, working towards addressing the needs of all concerned stakeholders, and seeking consistency with existing or emerging international standards, whilst respecting the aforementioned overarching principles of market transparency and financial stability.

## Clearing and Settlement

11. In the field of clearing and settlement for cash equities, as clarified by the Commission report on the Code of Conduct, the Council NOTES the progress made in terms of increased efficiency and reduced costs for investors, in particular as regards cash-equity CCP-clearing. The Council AGREES with the conclusion that further steps need to be taken to address the issues related to risk and regulatory barriers that have been highlighted by the Code of Conduct. The Council TAKES NOTE of the ongoing work aiming at increasing legal certainty of securities holding and transaction and INVITES the Commission to present its draft legislation on securities law as soon as possible.
12. The Council INVITES the new Commission to continue work with the industry to resolve remaining challenges as regards price transparency and comparability, commercial and operational barriers to links and access and service unbundling in the post-trade sector.
13. The Council RECALLS in that respect its conclusions of December 2008 where it stressed the need for further progress on access and interoperability requests, bearing in mind financial stability concerns that these arrangements should be compatible with the safety and soundness of the post-trading infrastructure, and emphasised in particular that links between CCPs should comply with high prudential standards in respect of credit, liquidity and operational risks."

## **Tax evasion linked to cross-border transactions**

The Council took note of a presidency progress report on a draft directive concerning the common system of value added tax (VAT) as regards tax evasion linked to cross-border transactions.

The part of this proposal concerning VAT upon importation was adopted by the Council in June 2009. On the remaining part (joint and several liability), further work stills needs to be done.

**Harmful tax competition - Code of conduct**

The Council took note of a report outlining the progress achieved by a working group during the Swedish Presidency (July to December 2009) on implementation of a code of conduct aimed at eliminating harmful tax competition in the EU.

The working group is responsible for assessing:

- The "rollback" of tax measures deemed as harmful (where favourable tax treatment in one member state attracts businesses from other member states)
  - The monitoring of a "standstill" commitment by member states not to introduce new measures that are harmful.
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