



**COUNCIL OF  
THE EUROPEAN UNION**



## **Council Conclusions on clearing and settlement**

***2872nd ECONOMIC and FINANCIAL AFFAIRS Council meeting  
Luxembourg, 3 June 2008***

The Council adopted the following conclusions:

"The Council RECALLS its Conclusions of 9 October 2007<sup>1</sup>, whereby it noted that "the reality of a single European securities market is not compatible with a fragmented European post-trading sector. Achieving competitive, efficient and safe pan-European post trading arrangements is becoming more and more critical"; and further stressed that "the various ongoing initiatives should proceed in a coherent manner, not in isolation".

On the basis of the third Progress report presented in March by the European Commission – “Improving the Efficiency, Integration and Safety and Soundness of Cross-border Post-trading Arrangements in Europe” – and following the exchange of views at the Informal meeting of Finance Ministers and Central Bank Governors in Brdo, the Council WELCOMES continued progress in certain key areas while stressing the need for continued efforts to ensure timely, proper and full implementation of the ongoing initiatives.

With regard to the implementation of the Code of conduct, the Council:

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<sup>1</sup> Doc 13313/07 EF 57 ECOFIN 365.

**P R E S S**

- WELCOMES the entry into force on 1 January 2008 of the last phase of the Code, related to the unbundling of services and accounting, and the positive results achieved so far, particularly on price transparency although price comparability should still be enhanced , and EMPHASISES that more progress is needed on effective unbundling of services and accounting separation, as well as on access and interoperability based on sound business cases;
- EXPECTS the private sector to fully implement the Code, and STRESSES the need to ensure that the benefits of the Code are also transmitted to the retail-side of the chain;
- RECOGNISES that public authorities may contribute to the swift and full implementation of the Code, including by pursuing an active competition policy in this area;

In respect of TARGET 2-Securities, the Council:

- WELCOMES the ECB's continued policy of wide stakeholders' consultation and transparency;
- NOTES that the ECB has so far broadly met the conditions set by ECOFIN in February 2007 for its continued political support;
- INVITES the ECB to take particularly into account the following aspects when the Eurosystem decides on whether to further proceed with the T2S project:
  - All opportunities to trim down the foreseen level of end-to-end costs, to the benefit of end-users, should continue to be explored by the ECB and the concerned CSDs, recalling in that respect the Conclusions adopted by the Council on 27 February 2007<sup>2</sup>;
  - The ECB should further explore the advantages and disadvantages of establishing a separate legal entity to further ensure responsiveness to market needs and limit potential conflicts of interest;
  - The ECB should continue to adequately involve all relevant stakeholders in the progress of the project;

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<sup>2</sup> Doc. 6497/07 EF 18 ECOFIN 73.

- NOTES that it is important for the possible continuation of the project on a sound and cost-efficient basis that:
  - i. The risks of cost and time slippage be robustly minimised for the sake of end-users;
  - ii. Interested CSDs take a clear and unambiguous position on T2S in consultation with their participants and with issuers; and
  - iii. The Eurosystem makes a clear offer in the shortest possible timeframe to interested participants.

Concerning the removal of the barriers identified in the "Giovannini Reports", the Council:

- WELCOMES the timeframe for the removal of the Giovannini barriers presented by the Commission in this Third Progress report;
- Concerning the outstanding private sector barriers, WELCOMES the progress made so far, and the forthcoming establishment of the CESAME II group chaired by the Commission and LOOKS FORWARD to its contribution to complete this agenda;
- Concerning the public technical, legal and fiscal barriers, NOTES the Commission's intention to adopt a Recommendation on withholding tax procedures by early 2009 and to take into account the need to both simplify and improve overall tax efficiency; LOOKS FORWARD to the advice of the Legal Certainty Group scheduled for July 2008 and INVITES the Commission to follow up expeditiously by coming forward with concrete proposals to address the relevant legal barriers; as a matter of priority, INVITES the Commission, in cooperation with CESR, to ensure that market participants and infrastructures are able to rely on, and to fully exercise, the rights granted to them by MiFID in relation to post-trading aspects and more generally to propose a way forward by early 2009 for those barriers where it finds current actions are insufficient.

In respect of the safety and soundness of the post-trading infrastructure, the Council:

- AGREES that the work started with the former ESCB/CESR draft "Standards for Securities Clearing and Settlement in the EU" should be completed, respecting the following principles:
  - The adopted text should take the form of non-binding Recommendations solely addressed to public authorities;

- Its scope should include ICSDs, and exclude custodians - whilst CEBS is invited to further review, in cooperation with CESR, the coverage of risks borne by custodians, taking into account that some CSDs/ICSDs/ CCPs are also subject to the CRD, so as to ensure a level playing field while avoiding inconsistencies in the treatment of custodians and double regulation by end 2008;
  - On credit and liquidity risk controls, the text to be adopted should replace former draft standard 9 by Recommendation 9 of the CPSS-IOSCO Recommendations for securities settlement systems of 2001.
- AGREES that, while the approach set out in the previous paragraph is a practical way forward, the FSC should assess the impact of its implementation on enhancing the level playing field, investor protection and prudential safety by mid 2010.
- INVITES the ESCB and CESR to adapt and finalise the draft by autumn 2008, and the FSC to monitor progress to ensure that there are no remaining gaps to be addressed and to reassess the situation by end 2008."
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