

EUROPEAN SHADOW FINANCIAL REGULATORY COMMITTEE

Statement No. 6

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BANKING MERGERS AND ACQUISITIONS IN EUROPE

This statement addresses the role of the supervisory authorities in bank restructuring in Europe.

The pace of mergers and acquisitions (M&As) in the European financial industry is heating up. In the past, M&As were mostly domestic and friendly. The launch of the Euro and continuing market integration in the EU will increase the number of cross-border transactions. Since further restructuring in the EU needs to be facilitated, a clearer framework defining the role of national authorities in that process is needed.

Over the past few months national authorities have reacted in different ways to announced M&As, e.g. the Portuguese authorities blocked a planned merger between a Spanish and a domestic bank. Even in domestic mergers national attitudes vary widely: shareholders and markets are left to decide the course of events in e.g. the United Kingdom and Spain; in France and Italy a regulatory body determines whether a hostile bid for a bank is allowed to go forward.

The importance of this issue cannot be sufficiently emphasized for two reasons. The first is that under the provisions of the EU Treaty, acquisitions by other EU-based entities cannot be subject to discrimination. The second is that the completion of the single market in financial services in Europe requires freedom to invest in any other member country. Current practice in the regulation of cross-border mergers in banking does not match these principles. In several countries, for this reason, it is the view of the ESFRC that the discretionary powers of national authorities to block cross-border deals should be limited to some very specific circumstances.

PROPOSAL

1. Cross-border transactions for the control of banks should not be prevented or burdened for reasons other than anti-trust or safety and soundness concerns.
2. The principle of subsidiary and national differences in legal and tax matters should be respected, but the rules and procedures regulating banking M&As should be clear, and the grounds for all decisions should be made explicit. Every intervention by national authorities should be completely transparent.
3. All competent national authorities should be notified about any potential deal by the banks involved.

4. National supervisory authorities should give an explicit and formal opinion on the proposed transaction on the basis of an assessment of the financial strength of the parties and of the governance structure of the new institution.

5. The completion of the single market in financial services could be achieved more quickly and efficiently if the European Commission, with the support of the Council of Ministers, were to promote convergence with regard to supervisory practices. But the ESFRC does not advocate the creation of a new European agency to regulate and control cross-border banking M&As.