



## Analysis

# The euro area: Comments on the EU Summit meeting 9 December 2011

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Text of Statement in *italics*, Comments in **bold**

*The European Union and the euro area have done much over the past 18 months to improve economic governance and adopt new measures in response to the sovereign debt crisis. However, market tensions in the euro area have increased, and we need to step up our efforts to address the current challenges. Today we agreed to move towards a stronger economic union. This implies action in two directions:*

- *a new fiscal compact and strengthened economic policy coordination;*
- *the development of our stabilisation tools to face short term challenges.*

### **A reinforced architecture for Economic and Monetary Union**

*1. The stability and integrity of the Economic and Monetary Union and of the European Union as a whole require the swift and vigorous implementation of the measures already agreed as well as further qualitative moves towards a genuine "fiscal stability union" in the euro area. Alongside the single currency, a strong economic pillar is indispensable. It will rest on an enhanced governance to foster fiscal discipline and deeper integration in the internal market as well as stronger growth, enhanced competitiveness and social cohesion. To achieve this objective, we will build on and enhance what has been achieved in the past 18 months: the enhanced Stability and Growth Pact, the implementation of the European Semester starting this month, the new macro-economic*

*imbalances procedure, and the Euro Plus Pact.*

*2. With this overriding objective in mind, and fully determined to overcome together the current difficulties, we agreed today on a new "fiscal compact" and on significantly stronger coordination of economic policies in areas of common interest.*

*3. This will require a new deal between euro area Member States to be enshrined in common, ambitious rules that translate their strong political commitment into a new legal framework.*

### **A new fiscal compact**

*4. We commit to establishing a new fiscal rule, containing the following elements:*

- *General government budgets shall be balanced or in surplus; this principle shall be deemed respected if, as a rule, the annual structural deficit does not exceed 0.5% of nominal GDP.*

- *Such a rule will also be introduced in Member States' national legal systems at constitutional or equivalent level. The rule will contain an automatic correction mechanism that shall be triggered in the event of deviation. It will be defined by each Member State on the basis of principles proposed by the Commission. We recognise the jurisdiction of the Court of Justice to verify the transposition of this rule at national level.*

- *Member States shall converge towards their specific reference level, according to a calendar*

*proposed by the Commission.*

*- Member States in Excessive Deficit Procedure shall submit to the Commission and the Council for endorsement, an economic partnership programme detailing the necessary structural reforms to ensure an effectively durable correction of excessive deficits. The implementation of the programme, and the yearly budgetary plans consistent with it, will be monitored by the Commission and the Council.*

*- A mechanism will be put in place for the ex ante reporting by Member States of their national debt issuance plans.*

**Comment:** these commitments will presumably appear in a treaty between some Member States (see end), although some of them are already proposed in EU legislation (see para. 6). The obvious question arises how a treaty between some Member States can use the EU institutions. Note that the statement refers to the Commission, the Council and the Court of Justice, but not the European Parliament (EP). The Court of Justice has ruled that Member States, acting collectively, can entrust tasks to the EU institutions, but it is not clear that the same is true if only some Member States take this route. Article 273 of the Treaty on the Functioning of the European Union (TFEU) allows some Member States to give the Court of Justice powers over dispute settlement between them in a special agreement relating to the subject-matter of the EU Treaties; but this does not extend to other forms of jurisdiction of the Court, such as infringement actions brought by the Commission. The question also arises whether a group of Member States, even if they can use the EU institutions, can require the EU institutions to take steps which conflict with rules in the Treaties - ie the Treaties specify that the Court of Justice has no jurisdiction as regards the excessive deficit procedure, and the Council and Commission have specified roles in that procedure. The adoption or application of such a treaty could potentially be challenged by means of legal actions against the EU institutions and/or the participating Member States for breaching EU law.

*5. The rules governing the Excessive Deficit Procedure (Article 126 of the TFEU) will be reinforced for euro area Member States. As soon as a Member State is recognised to be in breach of the 3% ceiling by the Commission, there will be automatic consequences unless a qualified majority of euro area Member States is opposed. Steps and sanctions proposed or recommended by the Commission will be adopted unless a qualified*

*majority of the euro area Member States is opposed. The specification of the debt criterion in terms of a numerical benchmark for debt reduction (1/20 rule) for Member States with a government debt in excess of 60% needs to be enshrined in the new provisions.*

**Comment:** It is not clear if this refers to a treaty between Member States, or EU legislation which has been or could be proposed for the eurozone (see para. 6). If it refers to a treaty between Member States, again the question arises whether a group of Member States can give powers to the EU institutions, and whether that could conflict with rules already in the Treaty. It should be noted that the 'six-pack' of EU legislation already adopted in November 2011 already provides for such 'reverse qualified majority voting' in the Council, which makes decisions nearly automatic unless a large majority of Member States can be taken to overturn them. Among the eurozone Member States, France and Germany have a 'blocking minority' - so decisions proposed by the Commission would always be adopted by the Council as long as those two Member States support them.

*6. We will examine swiftly the new rules proposed by the Commission on 23 November 2011 on (i) the monitoring and assessment of draft budgetary plans and the correction of excessive deficit in euro area Member States and (ii) the strengthening of economic and budgetary surveillance of Member States experiencing or threatened with serious difficulties with respect to their financial stability in the euro area. We call on the Council and the European Parliament to rapidly examine these regulations so that they will be in force for the next budget cycle. Under this new legal framework, the Commission will in particular examine the key parameters of the fiscal stance in the draft budgetary plans and will, if needed, adopt an opinion on these plans. If the Commission identifies particularly serious non-compliance with the Stability and Growth Pact, it will request a revised draft budgetary plan.*

**Comment:** This refers to EU legislation already proposed by the Commission, on the basis of Article 136 of the Treaty on the Functioning of the European Union (TFEU), which allows EU legislation to be adopted on economic governance which applies to all of the eurozone States and only the eurozone Member States. The 'ordinary legislative procedure' (a qualified majority vote in Council, co-decision with the European Parliament) applies. All MEPs can vote in the European Parliament, but only the ministers of eurozone Member States vote in the Council.

7. *For the longer term, we will continue to work on how to further deepen fiscal integration so as to better reflect our degree of interdependence. These issues will be part of the report of the President of the European Council in cooperation with the President of the Commission and the President of the Eurogroup in March 2012. They will also report on the relations between the EU and the euro area.*

**Comment:** this seems to envisage a further round of measures after the agreement on a new treaty between Member States in March 2012. It is not clear what this might involve, but the reference to 'fiscal integration' suggests that the future measures will be closely related to the euro. Probably this paragraph implicitly refers to the possible issue of 'eurobonds' (the joint issue of debt by eurozone Member States). However, the statement of euro-zone Member States does not include any reference to coordination on employment policy, although the report of Herman van Rompuy before the EU summit meeting had suggested that EU employment policy guidelines be made binding and enforced by fines. There is also no reference to the broader commitments on issues like education referred to in the 'Euro plus pact' agreed by 23 Member States earlier in 2011.

#### ***Stronger policy coordination and governance***

8. *We agree to make more active use of enhanced cooperation on matters which are essential for the smooth functioning of the euro area, without undermining the internal market.*

**Comment:** This refers to the possible use of the general rules on enhanced cooperation within the current EU Treaties, ie to adopt EU measures that apply to some Member States only. This is subject to a different process than the adoption of rules on economic governance which apply to eurozone Member States only (see para 6 above). Such measures must: a) be proposed by the Commission; b) be blocked in the Council, so the use of enhanced cooperation is a 'last resort'; c) be proposed again by the Commission, in the form of enhanced cooperation; d) be approved (as regards the authorisation of enhanced cooperation) by a qualified majority of all Member States in the Council (the non-eurozone Member States have a blocking minority, if they vote together), and the consent of the EP; e) meet a number of substantive criteria, including non-discrimination between Member States, not creating a barrier to trade or distorting competition; f) be open to all Member States who wish to join at any time, ie non-eurozone Member States cannot be kept out if they

wish to participate; and g) apply only to a coalition of willing Member States, ie the eurozone States cannot be required to join. Probably this is in particular an implicit reference to the possible use of enhanced cooperation as regards a financial transactions tax. The use of enhanced cooperation could be challenged if the various criteria are allegedly breached.

9. *We are committed to working towards a common economic policy. A procedure will be established to ensure that all major economic policy reforms planned by euro area Member States will be discussed and coordinated at the level of the euro area, with a view to benchmarking best practices.*

**Comment:** it is not clear whether such a measure will be a political agreement, or set out in EU legislation applicable to the eurozone, or set out in a Treaty between Member States.

10. *Euro area governance will be reinforced as agreed at the Euro Summit of 26 October. In particular, regular Euro Summits will be held at least twice a year.*

**Comments:** this re-iterates a prior political commitment.

#### ***Strengthening the stabilisation tools***

11. *Longer term reforms such as the ones set out above must be combined with immediate action to forcefully address current market tensions.*

12. *The European Financial Stability Facility (EFSF) leveraging will be rapidly deployed, through the two concrete options agreed upon by the Eurogroup on 29 November. We welcome the readiness of the ECB to act as an agent for the EFSF in its market operations.*

**Comment:** this refers to a treaty between eurozone Member States, agreed in 2010 and revised in 2011, to provide temporary support for eurozone Member States needing a bailout. It applies at present to Ireland and Portugal (the bailout support for Greece is provided on a less formal basis).

13. *We agree on an acceleration of the entry into force of the European Stability Mechanism (ESM) treaty. The Treaty will enter into force as soon as Member States representing 90 % of the capital commitments have ratified it. Our common objective is for the ESM to enter into force in July 2012.*

**Comment:** this refers to a treaty between eurozone Member States, agreed in July 2011 but not yet ratified by any Member State, providing for a permanent bailout fund. The threshold of entry into force once Member States with 90% of the capital commitments is a change from the current 95% requirement. This means that only France, Germany, Italy or Spain could veto the treaty's entry into force; so could a sufficiently large group of the 13 smaller States (which will hold 25% of the capital between them). This will speed up the treaty's entry into force; it will not apply to states which have not ratified it.

14. Concerning financial resources, we agree on the following:

- the EFSF will remain active in financing programmes that have started until mid-2013 as provided for in the Framework Agreement; it will continue to ensure the financing of the ongoing programmes as needed;

- we will reassess the adequacy of the overall ceiling of the EFSF/ESM of EUR 500 billion (USD 670 billion) in March 2012;

- during the phasing in of the paid-in capital, we stand ready to accelerate payments of capital in order to maintain a minimum 15% ratio between paid-in capital and the outstanding amount of ESM issuances and to ensure a combined effective lending capacity of EUR 500 billion;

- euro area and other Member States will consider, and confirm within 10 days, the provision of additional resources for the IMF of up to EUR 200 billion (USD 270 billion), in the form of bilateral loans, to ensure that the IMF has adequate resources to deal with the crisis. We are looking forward to parallel contributions from the international community.

15. We agree on the following adjustments to the ESM Treaty to make it more effective:

- Concerning the involvement of the private sector, we will strictly adhere to the well established IMF principles and practices. This will be unambiguously reflected in the preamble of the treaty. We clearly reaffirm that the decisions taken on 21 July and 26/27 October concerning Greek debt are unique and exceptional; standardised and identical Collective Action Clauses will be included, in such a way as to preserve market liquidity, in the terms and conditions of all new euro government bonds.

- In order to ensure that the ESM is in a position to take the necessary decisions in all circumstances,

voting rules in the ESM will be changed to include an emergency procedure. The mutual agreement rule will be replaced by a qualified majority of 85 % in case the Commission and the ECB conclude that an urgent decision related to financial assistance is needed when the financial and economic sustainability of the euro area is threatened.<sup>1</sup>

(1 subject to confirmation by Finnish parliament)

**Comment:** the eurozone Member States have committed themselves to substantive amendments to the ESM treaty, which anyway has to be amended as regards the entry into force rules (see above). Only France, Italy or Germany could veto an urgent decision, if the 85% rule were adopted.

16. We welcome the measures taken by Italy; we also welcome the commitment of the new Greek government, and of the parties supporting it, to fully implement its programme, as well as the significant progress achieved by Ireland and Portugal in implementing their programmes.

Some of the measures described above can be decided through secondary legislation. The euro area Heads of State or Government consider that the other measures should be contained in primary legislation. Considering the absence of unanimity among the EU Member States, they decided to adopt them through an international agreement to be signed in March or at an earlier date. The objective remains to incorporate these provisions into the treaties of the Union as soon as possible. The Heads of State or Government of Bulgaria, Czech Republic, Denmark, Hungary, Latvia, Lithuania, Poland, Romania and Sweden indicated the possibility to take part in this process after consulting their Parliaments where appropriate.

**Comment:** the procedure for EU treaty amendment will not be followed, so there will be no 'convention' consisting of, among others, MEPs and members of national parliaments. The international treaty will need to be ratified by national procedures, either through parliaments or possibly some referendums. On the possible content of the treaty, see the various comments above. Unlike the EU Treaty amendment process, the treaty will not necessarily require the ratification of all of the signatories to enter into force. The parties have complete flexibility to decide on the entry into force rules; It could enter into force when as few as two states have ratified it, or (for instance) once all of the eurozone States have ratified it, or on the same basis as the entry into force of the ESM treaty (see above). It cannot apply to States which have not ratified it.