

# **MEMORANDUM OF UNDERSTANDING**

**BETWEEN THE FINNISH, NORWEGIAN AND SWEDISH MINISTRIES OF  
FINANCE AND THE DANISH MINISTRY OF BUSINESS**

**on cooperation regarding significant branches of cross-border banking groups.**

## I. OBJECTIVE AND SCOPE OF THE MEMORANDUM

1. In accordance with Article 51 of Directive 2013/36/EU, the competent authorities of a host Member State where a branch of an institution is located may make a request for that branch to be considered as significant.
2. Several large Nordic banking groups have branches in Denmark, Finland, Norway and Sweden, some of which may be regarded as significant, in accordance with Article 51 of Directive 2013/36/EU.
3. This Memorandum of Understanding ("the Memorandum") is intended to facilitate the cooperation regarding cross-border banking groups containing one or more significant branches.

## II. DEFINITIONS

4. For the purposes of this Memorandum the terms and expressions in the Memorandum shall have the same meaning as in Directive 2013/36/EU and 2014/59/EU, if not stated otherwise.
5. The following definitions shall apply:
  - a. '*signatory countries*' are Denmark, Finland, Norway and Sweden.
  - b. '*competent authority of the home Member State*' means the competent authority in a signatory country which has granted the authorization to an institution which has a significant branch in another signatory country.
  - c. '*competent authority of the host Member State*' means the competent authority in a signatory country within whose territory a significant branch is located, including the European Central Bank with regard to specific tasks conferred on it by Council Regulation (EU) No 1024/2013.
  - d. '*resolution authority of the home Member State*' means the resolution authority in a signatory country which has granted the authorization to an institution which has a significant branch in another signatory country.
  - e. '*resolution authority of the host Member State*' means the resolution authority in a signatory country within whose territory a significant branch is located.
6. The Finnish, Norwegian and Swedish Ministries of Finance and the Danish Ministry of Business are hereafter separately and jointly referred to as the ("Participant or Participants").
7. For the purposes of this Memorandum, references to EU regulations and directives shall for Norway be interpreted as references to the corresponding EEA Directives and Regulation<sup>1</sup>. The term 'Member States' shall include the EEA EFTA Countries (Norway, Iceland and Liechtenstein).

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<sup>1</sup> The parties recognize that directive 2013/36/EU and directive 2014/59/EU have not yet been incorporated in the EEA Agreement, and they are therefore not yet binding for Norway. There is an ongoing process with between EU and the EEA-EFTA Countries regarding the incorporation of these directives in the EEA Agreement. For the purposes of this Memorandum, the parties assume that the directives will be made part of the EEA Agreement within a relatively short time period.

### III. GENERAL PROVISIONS

8. The Participants have, in light of the significant cross-border banking activities within the Nordic Region and in particular the importance that significant branches have in the financial system of a host Member State, signed this Memorandum in recognition of the need for close and timely cooperation regarding cross-border banking groups containing one or more significant branches. It is a common objective to ensure effective and efficient supervision of significant branches located within the signatory countries, and close cooperation in resolution of cross-border groups containing such branches.
9. While recognizing that the main responsibility for the supervision of significant branches remains with the competent authority of the home Member State, the Participants also acknowledge that the competent authorities of the host Member State and the competent authorities of the home Member State shall collaborate. In the spirit of honoring the collaboration, the competent supervisory authorities in the signatory countries have drafted a Memorandum of Understanding on prudential supervision of significant branches of their own, Memorandum of Understanding between Finansinspektionen (SE), Finanstilsynet (NO), Finanstilsynet (DK), Finanssivalvonta (FI) and the European Central Bank on prudential supervision of significant branches in Sweden, Norway, Denmark and Finland, dated December 2, 2016 (the supervisory MoU) encompassing among others provisions on exchange of information, principles for prudential supervision, cooperation and responsibilities in cross-border group recovery planning and reciprocity.
10. While recognizing that the responsibility for recovery and resolution of significant branches, including any potential liabilities and costs in this regard (including the use of the national resolution financing and possible as a last resort government financial stabilization tools) in accordance with article 107 of Directive 2014/59/EU, lies fully with the home Member State the Parties acknowledge that given the systemic implications of such a resolution on the host Member States, predictable policies and close and timely information sharing between the home and host resolution authorities on recovery and resolution plans and their subsequent implementation is paramount.
11. Cooperation among the Participants will take place in accordance with, and without prejudice to, their responsibilities under national and Union or EEA law. This Memorandum does not override the respective institutional responsibilities of the different Participants or restrict their, or their authorities, capacity for independent and timely decision-making in their respective fields of competence, notably with regard to the conduct of day-to-day ministry, supervisory and resolution tasks.
12. As the provisions of this Memorandum are not legally binding on the Participants, they may not give rise to any legal claim on behalf of any Participant or third parties in the course of their practical implementation.

13. This Memorandum does not modify or supersede any Union law, EEA or any national laws nor does it affect any provisions under other multilateral or bilateral agreements in force and applicable to the Participants.
14. The provisions of the Memorandum do not prejudice or assume any particular decision or remedies to be taken in going concern as well as crisis situations.
15. This Memorandum complements other present and future arrangements on cooperation between the Participants and the ambitions expressed in this Memorandum will be reflected in the written arrangements which the competent supervisory and resolution authorities in the signatory countries draft within the realm of the supervisory and resolution colleges.

#### **IV. EXCHANGE OF INFORMATION**

16. The Participants acknowledge that the timely exchange of information between the competent authorities and resolution authorities of the home Member State and the competent authorities and resolution authorities of the host Member State is key to ensure effective and efficient supervision of significant branches and to enable members to assess and take measures to protect the financial stability within the Nordic Region.
17. The Participants shall, in addition to the information exchanged between competent and resolution authorities, which may include information on individual institutions, on a more general level timely inform each other of measures and issues of importance for significant branches and the financial stability within the Nordic Region, to the extent permitted by applicable Community and national confidentiality and professional secrecy regulations.

#### **V. COOPERATION IN CROSS-BORDER GROUP RESOLUTION**

18. The Participants recognise the value of regular crisis management exercises for Nordic banking groups with significant branches in one or more Nordic countries. The Participants envisage that such exercises are planned to be conducted in the fora of the Nordic Baltic Stability Group and that the first exercise is planned for 2018. The conclusions drawn from such exercises provide valuable information for future cooperation arrangements between the home and host authorities.
19. The Participants recognise that the failure of a systemic cross-border institution is likely to affect the stability of the financial sector and the economy in the different Member States in which it operates. In accordance with recital 3 and 5 of Directive 2014/59/EU a possible resolution action should take place sufficiently early and quickly in an unsound or failing institution so as to ensure the continuity of the institution's critical financial and economic functions, while minimizing the impact of an institution's failure on the economy and financial system. The resolution authorities should ensure that shareholders bear losses first and that creditors bear losses after shareholders, in accordance with the hierarchy of claims and subject to the no creditor worse off principle as specified in Directive 2014/59/EU. Resolution action should

seek to maintain uninterrupted access to deposits and payment transactions, and apportion losses to owners and creditors in a transparent manner, avoid destabilizing the financial sector and minimize costs for taxpayers.

20. The Participants acknowledge that sharing responsibility for financing of group resolution actions through mutualisation of national financing arrangements in case of group resolution is regulated by article 107 of Directive 2014/59/EU.<sup>2</sup> The Participants acknowledge that the Deposit Guarantee Scheme of the home member state shall cover the depositors at branches set up by their member credit institutions in host Member States as provided by Article 14 of the Directive 2014/49/EU, unless the deposit guarantee scheme of the host Member State has decided to top up a particular institution, in which case the deposit guarantee scheme of the Host Member State shall be liable for the difference between the coverage provided by the Home deposit guarantee scheme and the coverage provided under the topping-up decision.
21. The Participants recognise the obligation of the group resolution authority, when drafting the group resolution plan in accordance with Article 12 of Directive 2014/59/EU and when assessing resolvability of the group in accordance with Article 16 of that directive, to adequately assess the impacts of resolution measures in all Member States and to ensure that the resolution plan does not have a disproportionate impact on any Member State. The Participants also acknowledge the obligation of the group level resolution authority in accordance with Article 87 of that directive to seek the fulfilment of the resolution objectives stated in Article 31 of that directive in respect of all Member States where the group operates, including significant branches, and with due account of the financial stability of the Member States concerned.
22. The Participants acknowledge that ensuring effective resolution of failing institutions within the European Economic Area in line with Directive 2014/59/EU and EU/EEA state aid rules is an essential element in the completion of the internal market. The failure of such institutions has an effect not only on the financial stability of the markets and the economy where it directly operates but also on the whole Union/EEA financial market. The Participants therefore recognise that ensuring effective resolution of institutions across Member States is not only in the best interests of the Member States in which they operate but also of all the Member States in general as a means of ensuring a level competitive playing field and improving the functioning of the internal market in financial services.

## **VI. MACRO PRUDENTIAL TOOLS (RECIPROCITY)**

23. The Participants recognise that the management of a bank group with significant cross-border activities in different Member States is a matter of common interest for all Member States affected. The Participants acknowledge present reciprocity arrangements directed at ensuring financial stability in the host country while at the same time recognizing the need to develop the future framework for reciprocity encompassing all Nordic countries.

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<sup>2</sup> With respect to national financing arrangement in Finland, article 96 of the Regulation 806/2014/EU applies.

24. The Participants acknowledge that the financial stability of the home Member State is, to a large extent, dependent on the financial stability in the individual host Member States and in the Nordic Region as a whole.
25. The Participants acknowledge the importance of reciprocity when it comes to macro-prudential measures in general, and in particular as means to prevent banks from circumventing the measures by transferring operations to other countries. The Participants thereby recognise the importance of reciprocity in relation to macro-prudential measures as a mean of ensuring a level playing field and a well-functioning internal market.
26. The Participant note that the respective Member States have vested the macro-prudential mandate with different competent and designated authorities. This paragraph only applies to a Participant insofar as it is a matter for which the Participant is the competent or designated authority under EU and EEA law. A corresponding wording to this paragraph is found in the supervisory MoU.

The Participants acknowledge Recommendation ESRB/2015/2 of the European Systemic Risk Board<sup>3</sup> as minimum standard for reciprocity in macro-prudential matters.

The Participants acknowledge the importance of reciprocity in order to facilitate financial stability and the proper functioning of local markets and the EU and EEA common market, in particular as means of preventing banks from circumventing macroprudential measures by exploiting the differences in the regulatory framework. The competent and/or designated authorities of the home and host Member States will communicate with each other in respect of planned measures in order to facilitate reciprocity and the consistent implementation of regulatory frameworks.

The general principle shall be full reciprocity, with recognition that the Participants must respect applicable national, EU and EEA law. The Participants recognise the unique competence of the competent and/or designated authorities of the host Member States to assess which macro-prudential measures are necessary for the financial stability in the host Member States. If a particular measure is not legally available to the competent or designated authority of the home Member State, the Participant will apply the macroprudential policy measure available in its jurisdiction that has the most equivalent effect to the activated macroprudential policy measure. In the efforts to use the same macroprudential policy measure, the Participants will facilitate discussions and exchange relevant assessments.

Examples of macro-prudential measures set by the competent and/or designated authorities of the host Member States in relation to credit institutions located within their territory that should, in principle, be subject to reciprocation are combined buffer requirements as defined in Article 128 of Directive 2013/36/EU, asset-class specific risk weight floors, the requirements laid down in Article 458 of Regulation (EU) No 575/2013, and regulations and supervisory standards on mortgage lending (e.g. mandatory amortisation, loan-to-income and loan-to-value limits).

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<sup>3</sup> Recommendation of the European Systemic Risk Board of 15 December 2015 on the assessment of cross-border effects of and voluntary reciprocity for macroprudential policy measures (ESRB/2015/2) (2016/C 97/02).

## **VII. CONFIDENTIALITY**

27. The regulations regarding confidentiality and professional secrecy as provided in Directive 2013/36/EU, 2014/59/EU and national legislation are applicable on information exchanged between the competent, designated and resolution authorities of the home Member State and the competent, designated and resolution authorities of the host Member State.

## **VIII. REVIEW**

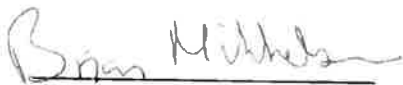
28. This Memorandum shall be subject to review in the event of any material changes of any relevant provisions in Directive 2013/36/EU and 2014/59/EU and other relevant European and national legislation.
29. After its entry into effect, other Member States may sign this Memorandum if agreed by the Participants. The Swedish Ministry of Finance shall coordinate this process.

## **IX. ENTRY INTO EFFECT**

30. This Memorandum shall enter into effect on December 9, 2016.

**SIGNATORIES**

**Erhvervsministeriet  
Denmark**



**Brian Mikkelsen**  
Minister for Business

Date: December 16, 2016.



**Valtiovarainministeriö – Finansministeriet  
Finland**

A handwritten signature in black ink, appearing to read 'P. Orpo', written over a horizontal line.

**Petteri Orpo**  
Minister of Finance

Date: December 9, 2016.

**Finansdepartementet  
Norway**



**Siv Jensen**  
Minister of Finance

Date: December 9, 2016.

# Finansdepartementet Sweden



Date: December 9, 2016.

**Per Bolund**  
Minister for Financial Markets  
and Consumer Affairs

