

Cross-border crisis management in the banking sector

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PURPOSE: to open consultations on the necessary measures for the creation of an EU Framework for Cross-Border Crisis Management in the Banking Sector.

BACKGROUND: the recent financial crisis has exposed the EU's lack of an effective crisis management for cross-border financial institutions. The events surrounding the failures of Fortis, Lehman and Icelandic banks in the recent financial crisis illustrate how damaging the absence of an adequate resolution framework can be for financial stability of the whole EU banking system. The European Commission is proposing a fundamental reform of the regulation and supervision of financial markets to address the failings exposed by the banking crisis (see [COM\(2009\)0114](#)). Measures have already been taken to upgrade deposit insurance, strengthen capital requirements and reform the EU supervisory infrastructure: measures that are essential for a more robust framework for prudential supervision and financial stability.

The Commission considers that the existing arrangements are clearly insufficient to stabilise and control the systemic impact of cross border financial institutions and that a new legal framework needs to be put in place. [Measures have already been taken to upgrade deposit insurance, strengthen capital requirements and reform the EU supervisory infrastructure. These reforms](#) must be complemented by a clear framework that will, in future, enable authorities to stabilise and control the systemic impact of failing cross-border financial institutions. Europe needs a strong regulatory framework that covers prevention, early intervention, bank resolution and winding up. The new framework should equip authorities with the right tools and provide the legal certainty to handle cross-border banking failures, in ways that minimise costs to taxpayers and allow even the largest banks to fail without damaging financial stability.

An EU resolution framework for cross-border banks is also a vital complement to the new supervisory architecture that the Commission proposed on 23 September 2009 ([COD/2009/0142](#); [COD/2009/0143](#) and [COD/2009/0144](#)).

CONTENT: the purpose of the Communication is to consult as widely as possible on a broad range of issues aimed at safeguarding financial stability and the continuity of banking services in a cross border banking crisis. The Commission feels that changes are needed to make possible effective crisis management and resolution or orderly winding up of a failing cross-border bank. The main focus is on deposit-taking banks, which play a unique role as providers of credit, deposit takers and payment intermediaries. This Communication considers measures to deliver two distinct, but connected objectives.

- to ensure that all national supervisors have adequate tools to identify problems in banks at a sufficiently early stage and to intervene to restore the health of the institution or group, or prevent further decline. This will require amendments to the supervisory regime on bank capital. Those core amendments might also be accompanied by a framework to enable asset transfers between group entities as a means of financial or liquidity support before the problems of particular group entities become critical;
- to make it possible for cross-border banks to fail without serious disruption to vital banking services or contagion to the financial system as a whole. This will mean the development of an EU resolution framework as well as measures to address the obstacles to effective cross-border

resolution that arise from the territorial and separate entity approach to insolvency, and arrangements for financing such resolutions, including the sharing of any direct fiscal costs by Member States.

The Communication covers three areas.

1. **Early intervention**, covering actions by supervisors aimed at restoring the stability and financial soundness of an institution when problems are developing, together with intra-group asset transfer between solvent entities for the purposes of financial support. These actions would be taken before the thresholds conditions for resolution are met, and before the institution is or likely to become insolvent. The new European Banking Authority could play a role in coordinating supervisory early intervention in a cross-border group. The Commission asks which additional tools should supervisors have in order to address developing problems, how their use should be triggered, and how important wind-down plans ("living wills") are as a tool for crisis management?
2. **Resolution**, covering measures taken by national resolution authorities to manage a crisis in a banking institution, to contain its impact on financial stability and, where appropriate, to facilitate an orderly winding up of the whole or parts of the institution. These measures take place outside the framework of banking supervision, and may be taken by authorities other than supervisors, although it is by no means precluded that supervisors might be involved. The Communication discusses what measures are needed and how national actions can be coordinated or integrated when applied to a cross-border group. One option considered is coordination by an EU resolution authority. The Communication also examines what the key objectives and priorities for an EU bank resolution framework should be; the key tools for an EU resolution regime; the appropriate thresholds for the use of resolution tools; the scope of the bank resolution framework; stakeholders' rights in bank resolution procedures; the application of resolution measures to a banking group. The Communication addresses the issue of **financing resolution measures**. The emphasis is on avoidance of public sector bail-outs and on facilitating private sector solutions. However, there is also recognition that use of public funds may be unavoidable at some stage of a resolution, and that progress is needed in clarifying how the potential costs of managing a crisis in a cross-border bank would be shared between affected Member States.
3. **Insolvency**, covering reorganisation and winding up that takes place under the applicable insolvency regime. The Communication asks what changes are necessary to insolvency law to support resolution measures, and whether greater coordination or integration of insolvency regimes is needed to deal with the reorganisation or winding up of cross-border groups.

Although these measures are – for the purposes of discussion - presented as conceptually distinct, they do not necessarily constitute separate and sequential 'phases' of a crisis. In practice, there may be considerable overlap between resolution and insolvency, in particular, and supervisory early intervention may move rapidly into resolution measures.

The Communication sets out questions on the tools that the Commission considers would be necessary for an EU crisis management framework. The Commission invites both general views and detailed comments on the matters discussed in this Communication by 20th January 2010. Further details on the issues raised in the Communication, together with specific questions are to be found in the accompanying staff working document.

The Commission plans to organise a public hearing in early 2010 in order to present the results of the consultation and to set out how it intends to proceed.