Cross-border crisis management in the banking sector

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The Committee on Economic and Monetary Affairs adopted the own-initiative report drafted by Elisa FERREIRA (S&D, PT), based on Article 42 of the Rules of Procedure, with recommendations to the Commission on Cross-Border Crisis Management in the Banking Sector.

The report notes that there is at present insufficient international regulation of crisis management in the banking sector and that existing EU and international supervisory mechanisms for the financial sector have proven ineffective in preventing or sufficiently containing contagion.

Members call on the Commission to **submit to Parliament by 31 December 2010, on the basis of Articles 50 and 114 of the TFEU, one or more legislative proposals** relating to an EU crisis-management framework, an EU financial stability fund, and a resolution unit following the **detailed recommendations** made in the Annex hereto, taking into account initiatives taken by international bodies, such as the G-20 and the International Monetary Fund, in order to ensure a global level playing field and based on a profound analysis of all alternatives available, including an impact assessment.

Recommendation 1 relating to a common EU crisis-management framework:

- create a European crisis-management framework with a common minimum set of rules and ultimately a common resolution and insolvency law, applicable to all banking institutions operating in the Union;
- progressively converge existing national resolution and insolvency laws and supervisory powers and, within a reasonable calendar, establishing an effective single EU regime;
- establish a single EU resolution authority as a separated body or as a unit within the EBA;
- carry out peer reviews of supervisors on a regular basis under the leadership of the EBA building on prior self-assessment;
- where the need for a resolution or the winding-up of a cross-border institution arises, carry out an in-depth investigation (via independent experts appointed by the EBA) in order to highlight the causes and responsibilities involved;
- attribute to the relevant supervisor the responsibility for crisis management (including powers of early intervention) and the approval of each bank's contingency plan;
- design a common set of rules for crisis management including common methodologies, definitions and terminology, and a set of relevant criteria for stress test for cross-border banks;
- ensure that resolution plans become a mandatory regulatory requirement. They should include an in-depth self-assessment of the institution and details of a fair distribution of assets and capital;
- design, before December 2011, a European supervisory rating for banks (Risk Dashboard) based on a common set of quantitative and qualitative indicators;
- empower supervisors to intervene on the basis of thresholds of the supervisory rating, in full accordance with the principle of proportionality, and provide for reasonable remedy periods for the institutions to address the weaknesses by themselves;
- provide supervisors with appropriate legal tools for intervention by amending the relevant sectoral legislation or by introducing new sectoral legislation to require adjustments of capital (above the minimum regulatory requirements) or liquidity and changes in the business mix and internal process; recommend or impose changes of management; impose dividend retention and restrictions in order to consolidate capital requirements; limit the terms of banking licences, etc.

Recommendation 2 relating to cross-border systemic banks:

- cross-border systemic banks, due to their special role in the internal market of financial services, need to be addressed urgently by way of a new special regime to be known as European Bank Company Law, to be designed by the end of 2011;
- cross-border systemic banks shall adhere to the new reinforced special regime; that regime shall overcome legal impediments to effective action across borders while ensuring the clear, equal and predictable treatment of shareholders, depositors, creditors, employees and other stakeholders, in particular after intra-group asset transfers;
- the Commission shall adopt a measure setting up, before April 2011, criteria for definition of cross-border systemic banks;
- the Commission shall adopt a measure proposing a mechanism of asset transfers within Cross-Border Systemic Banks taking due regard of the need to protect the rights of host countries;
- an EU financial stability fund and a resolution unit shall support interventions led by the EBA relating to crisis management, resolution or insolvency, as regards cross-border systemic banks.

Recommendation 3 relating to an EU financial stability fund:

- an EU Financial Stability Fund shall be created, under the responsibility of the EBA, to finance interventions (rehabilitation or orderly winding-up) aimed at preserving the system's stability and limiting contagion from failing banks. The Commission shall present to Parliament, by April 2011, a proposal with details of the Fund's charter, structure, governance, size, operating model as well as a precise calendar for implementation.

Recommendation 4 relating to a resolution unit:

- an independent resolution unit shall be established within the EBA to lead the resolution and insolvency procedures for cross-border systemic banks.