



EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

Brussels,
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Opinion

Title **DG MARKT - Impact Assessment on a Proposal for a Legislative Act on an EU Framework for Bank Recovery and Resolution**

(Resubmitted draft version of 9 June 2011)

(A) Context

During the financial crisis, authorities aiming to preserve insured deposits and protect financial stability often ended up bailing out ailing banks with public funds rather than restructuring or dissolving them. This failure to fully penalise banks' past behaviour raises the concern that their future behaviour may again endanger financial stability. The IA report refers to planned legislative measures to address some of the underlying issues, including those specifically applying in a cross-border context. The initiative follows up on the May 2010 "Communication on Bank Resolution Funds" – COM(2010)254 – and the October 2010 "Communication on an EU framework for Crisis Management in the Financial Sector" – COM(2010)579.

(B) Overall assessment

While the report has been improved along the lines of the recommendations issued by the Board in its first opinion, various aspects should be further strengthened. The responsibilities of the different institutional actors, their allocation and the resulting incentives should be further discussed. The proposal for "bail-in able" debt should also be further examined, in particular with regard to its relation with planned minimum capital requirements and its impacts. Funding mechanisms for resolution should also be clarified. Impacts on national systems and existing banks should be analysed in greater detail. In particular, the report should show more convincingly that the establishment of new resolution authorities and colleges would not lead to an excessively complex institutional set-up. Finally, the report should show more clearly how stakeholders' concerns have been taken into account.

(C) Main recommendations for improvements

(1) Further improve the presentation of the legal and institutional context. The report more clearly describes the nature and scope of the proposed new powers and how they would fit in the evolving institutional setting. It should, however, explicitly analyze different allocations of responsibilities between supervisors and resolution authorities regarding how to ensure the resolvability of banks or when to start resolution. Summary table 1 should illustrate in greater detail the exact responsibilities of national supervisors and resolution authorities (and colleges) throughout all stages of bank recovery and

resolution. It should also clarify the role of the European Banking Authority under the various stages (in particular with regard to its powers in resolving disagreements between national authorities). While the complementarities with the Capital Requirements Directive (CRD) have been clarified, the revised report should better explain the relationship between the proposal for "bail-in able" debt and the planned CRD requirements for capital with "gone concern" loss absorbency (p.43).

(2) Better explain the content of some options. The revised report discusses more extensively the proportionality of the various options and illustrates in greater detail the safeguards envisaged to avoid unnecessarily intrusive action by regulators. However, it should further clarify some aspects related to the introduction of "bail-in able" debt, namely the aggregate size of the instruments potentially covered (p.42), the process to decide on the most appropriate policy "phase in" (p.43) and the way to assess and ensure coherence with international provisions (p.44). Similarly, in the case of resolution financing, the report should make clear whether the initiative would set a mandatory requirement to raise funds through a bank levy on a given tax base. The report should also explain how this would relate to the planned proposal on financial sector taxation.

(3) Further strengthen the analysis of impacts. First, the report should consider more explicitly the interaction between all the different objectives of the various institutional players, taking into account the fact that the misalignment between the authorities' national responsibilities and the industry's cross-border nature is a relevant factor during all phases and not only when tax payers' funds are used (see p.58). The report should, in particular, show more convincingly that the establishment of new resolution authorities and colleges would not lead to an excessively complex institutional set-up and competing powers and objectives for the various bodies. Secondly, the impact of the proposed measures on existing national resolution regimes, and on banks that are currently regarded as too big or interconnected to fail (and their asset holders / creditors), should be better illustrated, including through explanatory hypothetical examples. Thirdly, the potentially significant impacts of the "debt write down" option should be analysed in greater depth. Finally, the presentation of the results of the Symbol model included in the revised main text (§ 5.8) should be simplified for the non-expert reader.

(D) Procedure and presentation

While the revised report presents the reasons to dismiss opposing stakeholders' views more explicitly, it should also show how stakeholders' concerns are nevertheless taken into account to the maximum extent possible. This is particularly relevant in the case of the powers to ensure banks' resolvability and allow early supervisors' intervention. A section summarizing the recommendations made by the Impact Assessment Board and explaining how they have been taken into account should be added. New text (and tables) showing the complementarities of the preferred options with other Commission initiatives, and the CRD revision in particular, should be moved to §5 to avoid pre-empting the analysis of the options.

(E) IAB scrutiny process

Reference number	2011/MARKT/007
External expertise used	No
Date of Board Meeting	Written procedure The present opinion concerns a resubmitted draft IA report. The first opinion was issued on 23 May 2011