Ref. Ares(2011)553491 - 23/05/2011

EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

Brussels,
D(2011)

Opinion

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

(draft version of 19 April 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 sanction 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

The report needs to be significantly improved in several important respects. The analysis of the problems should be strengthened and their relevance more clearly established once the expected impacts of other on-going initiatives targeting banks' behaviour is taken into due account. The report should also clarify the legal and institutional context, highlighting the complementarity of the proposed institutional changes and legal provisions, notably with regard to the Capital Requirements Directive and the role of resolution authorities within the new European supervisory framework. The report should also clarify the content, and better assess the proportionality, of various options. Finally, the analysis of impacts should be strengthened given their uncertain but potentially significant magnitude for banks and their clients.

Given the nature of these recommendations, the Board asks DG MARKT to submit a revised version of the report, on which it will issue a new opinion.

Commission européenne, B-1049 Bruxelles / Europese Commissie, B-1049 Brussel - Belgium. Telephone: (32-2) 299 11 11.
Office: BERL 6/29. Telephone: direct line (32-2) 2981898. Fax: (32-2) 2965960.

E-mail: impact-assessment-board@ec.europa.eu

(C) Main recommendations for improvements

(1) Strengthen the analysis of the problem drivers and the baseline scenario. The analysis of the problem drivers should be strengthened in several respects and a more comprehensive baseline scenario outlined on this basis. First, the report should more clearly explain why failing banks, and particularly large and/or interconnected ones, should be dealt with differently than other businesses. Secondly, the report should assess the relative importance of the various problem drivers to better illustrate the relevance of the legal and institutional weakness addressed by the proposal relative to the other factors, such as political economy considerations and misaligned incentives among relevant authorities, which may also inform bailing out decisions. Finally, the report should show that these issues remain relevant even under a strengthened baseline scenario that takes full account of the impact of all parallel relevant initiatives – at the international, EU and national level.

(2) Clarify the legal and institutional context. The report should more clearly describe the nature and scope of the new powers it proposes as well as the innovations it suggests to the existing and evolving institutional setting. In this context, the report should more extensively describe the task of resolution authorities, their interplay with existing supervisory authorities and the role that the European Banking Authority and the European Systemic Risk Board would play at different stages and for different measures (including national stress testing). The complementarity of the proposed measures relative to the relevant provisions in the Capital Requirements Directive, and the extent of any overlaps, should also be demonstrated more clearly. This is particularly relevant as regards supervisory powers, the sequencing of measures and the legal requirements imposed on supervised entities and their creditors / asset holders (notably minimum capital requirements, cyclical buffers, possible surcharges for systemic institutions and mandatory "bail-in able" debt shares). The relationship and timing of the proposal relative to on-going international initiatives on the same topic should also be clarified (G-20 mandate, work by the Financial Stability Board and parallel US efforts).

(3) Clarify the content, and better assess the proportionality, of the various options. Against the background of a strengthened baseline and a clearer presentation of the context, the report should discuss more extensively the proportionality of the various options, notably those envisaging potentially highly intrusive action by regulators. In order to do so, the report should clarify the content of the options concerning debt write downs and resolution financing, including their mandatory or voluntary nature. It should also discuss more extensively the reasons for (and risks of) relying on authorities' capacity to apply their new powers in the most appropriate way rather than fixing rougher but clearer requirements for either banks (Chinese walls etc.) or supervisory action (triggers). Given this policy preference, the report should highlight more clearly what safeguards are envisaged to ensure a proportionate and appropriate application of the new tools and provisions by national supervisors, especially in cross-border cases.

(4) Strengthen the analysis of impacts. The report should try to provide a more evidence-based assessment of impacts drawing upon the experience of those Member States which have already established special resolution regimes. More specifically, the report should analyze more extensively the pros and cons of the suggested institutional changes, clarifying the impact that the creation of new resolution authorities and colleges would have on the effectiveness of the current institutional set-up. The impact of the

proposed measures on existing national resolution regimes and mechanisms to finance banking crisis responses should also be described. In addition, the impacts on those banks that are currently regarded as too big or interconnected to fail (and their asset holders / creditors) should be more transparently discussed. This also applies to the uncertain but potentially significant impacts of the debt write down option. Finally, the tables summarising the qualitative analysis of impacts should be thoroughly reviewed to ensure coherence and clarity (especially with regard to the ranking of impacts on stakeholders).

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

The report should provide an annex summarizing the stakeholder responses to the 2011 public consultation. Reasons for dismissing the views of major oppositing stakeholders should also be presented more extensively.

(E) IAB scrutiny process	
Reference number	**2011/MARKT/007**
External expertise used	No
Date of Board Meeting	18 May 2011