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Opinion

Title Communication on a Bank Resolution Framework for the EU
(draft version of 11 September 2009)

Lead DG DG MARKT

1) Impact Assessment Board Opinion

(A) Context

The financial crisis highlighted serious shortcomings in the authorities' capacity to avoid and manage crisis situations in cross-border banks. The October 2007 ECOFIN Council called for a review of the tools for crisis prevention, management and resolution, including a revision of Directive 2001/24/EC on the reorganisation and winding up of credit institutions. Following on the Communication on Driving European Recovery - COM (2009)114 - and building upon the recommendations of the High-Level Group on Financial Supervision in the EU chaired by Jacques de Larosière, the Commission is planning to advance policy discussions on these complex issues through an open consultative Communication which would detail the problems affecting cross-border bank resolution in the EU and broadly sketch possible responses.

Given the consultative nature of this initiative, the impact assessment provides a proportionate analysis with any subsequent policy proposal expected to be the subject of a further specific impact assessment.

(B) Positive aspects

The report is well written and proportionate. It provides a clear, evidence-based and comprehensive analysis of the problems.

(C) Main recommendations for improvements

The recommendations below are listed in order of descending importance. 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.

General recommendation: The report should more clearly illustrate the interactions with other initiatives to address the weaknesses highlighted by the financial crisis, most notably the proposal for a reform of the EU supervisory regime and the creation of an European Banking Authority and an European Systemic Risk Council. The report should also analyze more extensively the options

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available for the financing of bank resolution, including the key issue of burden-sharing when public resources are mobilized. Finally, the report should specify more clearly the scope of the initiative both in terms of the banks concerned and the type of crisis addressed. Linkages between objectives, options and impacts could be more systematically emphasized.

During the IAB meeting DG MARKT stated its intention to take on board these recommendations.

(1) Present more clearly the interactions with other initiatives at the EU and international level. The report should highlight more clearly the complementarities (and possible overlaps) between the initiative and the other proposals being considered to address weaknesses in regulation and supervisory arrangements. In doing so, it should consider the initiatives being launched under the G-20 umbrella, the work being undertaken by the Council Economic and Financial Committee and, above all, the recent Commission proposal for reforming European financial supervision. With respect to the latter, the role that the European Commission, the European Banking Authority and the European Systemic Risk Council would play in crisis detection, prevention and resolution need to be more extensively illustrated and better incorporated into the baseline scenario with the aim of highlighting how the proposed measure would build upon and/or support the proposed new financial supervision architecture. A fuller explanation of the reasons why the existing Memorandum of Understanding on cooperation on cross-border financial stability has played - and is expected to continue playing - a limited role would also be welcome.

(2) Analyze more extensively alternative options for bank resolution financing, including those drawing upon public resources. The report correctly underlines the importance of ex ante assurances of fair burden sharing for an effective cross-border resolution framework. Accordingly, the report should provide a strengthened analysis of the options available in theory, including in terms of public funding arrangements. Going beyond the issue of burden-sharing, the report should also better highlight how some of the proposed measures may indirectly facilitate the mobilisation of financing for bank resolution (by easing inter-group transfers, by providing greater legal certainty for private sector involvement, by anchoring expectations, by strengthening incentives etc.).

(3) Delimit more clearly the scope of the initiative. The report should indicate precisely the target of the initiative (any cross-border bank operating in the EU or those above a certain threshold). In this context, the report should also differentiate more clearly how the options presented would operate (within the reformed EU supervisory framework) in the case of the crisis of an isolated cross-border bank or in the case of more systemic turmoil.

(4) Further strengthen the linkages between objectives, options and impacts. While the report provides a clear analysis of the problems, it could be improved further by methodically linking options to the full set of objectives and showing how the measures proposed would affect the misalignment of incentives identified in the problem section. Against this background, the analysis of impacts could also be more systematic, extended to the full set of relevant stakeholders and more clearly distinguishable from the presentation of options.

(D) Procedure and presentation

While the report has been prepared under time pressure and was submitted to the Board only seven days before examination, an Inter-Service Steering Group was created and stakeholders were consulted. A summary of responses to the stakeholder consultation should be annexed to the report. To be fully self-standing, the report should include an annex presenting the scope and interactions of the different processes, bodies and instruments being proposed in the context of the EU regulatory and supervisory response to the financial crisis.

The use of case studies to provide evidence of the problems identified is welcome. The usefulness of these case studies would be reinforced by more explicitly presenting the problems they highlight and by using them to illustrate the options.

While partly justified by the complexity of the issues under analysis, the length of the report is above the limit suggested by the Impact Assessment guidelines and could be shortened, for instance by avoiding unnecessary overlaps between sections (for instance § 3.2.1 and § 3.2.2). The language on the tasks and limitations of the proposed European Banking Authority should be consistent throughout the text.

2) IAB scrutiny process

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