

# Procedure file

Basic information		
INL - Legislative initiative procedure	2010/2006(INL)	Procedure completed
Cross-border crisis management in the banking sector		
Subject		
2.50.04 Banks and credit		
2.50.10 Financial supervision		
5.03 Global economy and globalisation		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>ECON</b> Economic and Monetary Affairs		20/10/2009
		S&D <a href="#">FERREIRA Elisa</a>	
		Shadow rapporteur PPE <a href="#">HÜBNER Danuta Maria</a>	
	Committee for opinion	Rapporteur for opinion	Appointed
	<b>BUDG</b> Budgets	The committee decided not to give an opinion.	
	<b>EMPL</b> Employment and Social Affairs	The committee decided not to give an opinion.	
	<b>JURI</b> Legal Affairs		23/03/2010
		PPE <a href="#">BODU Sebastian Valentin</a>	
European Commission	Commission DG <a href="#">Financial Stability, Financial Services and Capital Markets Union</a>	Commissioner BARNIER Michel	

Key events			
20/10/2009	Non-legislative basic document published	<a href="#">COM(2009)0561</a>	Summary
21/01/2010	Committee referral announced in Parliament		
22/06/2010	Vote in committee		Summary
28/06/2010	Committee report tabled for plenary	<a href="#">A7-0213/2010</a>	
06/07/2010	Debate in Parliament		
07/07/2010	Results of vote in Parliament		
07/07/2010	Decision by Parliament	<a href="#">T7-0276/2010</a>	Summary

Technical information	
Procedure reference	2010/2006(INL)
Procedure type	INL - Legislative initiative procedure
Procedure subtype	Request for legislative proposal
Legal basis	Rules of Procedure EP 47
Stage reached in procedure	Procedure completed
Committee dossier	ECON/7/01765

Documentation gateway					
Non-legislative basic document		<a href="#">COM(2009)0561</a>	20/10/2009	EC	Summary
Committee draft report		<a href="#">PE440.108</a>	07/04/2010	EP	
Amendments tabled in committee		<a href="#">PE441.146</a>	05/05/2010	EP	
Committee opinion	JURI	<a href="#">PE440.176</a>	01/06/2010	EP	
Committee report tabled for plenary, single reading		<a href="#">A7-0213/2010</a>	28/06/2010	EP	
Text adopted by Parliament, single reading		<a href="#">T7-0276/2010</a>	07/07/2010	EP	Summary
Commission response to text adopted in plenary		<a href="#">SP(2010)6850</a>	29/11/2010	EC	

## Cross-border crisis management in the banking sector

**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.

## 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.

## Cross-border crisis management in the banking sector

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The European Parliament adopted a resolution, based on Article 42 of the Rules of Procedure, with recommendations to the Commission on Cross-Border Crisis Management in the Banking Sector.

The resolution 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.

As a result of the crisis, there is a need for, and citizens expect, the EU institutions, working in dialogue with the G-20 and other international fora, urgently to create an adequate framework which, in the event of a crisis, preserves financial stability, minimises the cost to taxpayers, preserves basic banking services and protects depositors.

Parliament calls 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.

The European Parliament considers that the legislative act to be adopted should take account of the following detailed recommendations:

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- 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.

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