

Technical Details of a Possible EU Framework For Bank Recovery and Resolution

Following the June 2010 commitment at the G20 meeting in Toronto to ensure that authorities across the EU have the powers and tools to restructure or resolve financial institutions in crisis without taxpayers ultimately bearing the burden, and the October 2010 Commission Communication setting forth the foundations for such a framework, the Commission published a consultation on the technical details of the EU framework on January 6th. The comment period closed on March 3rd and the Commission issued its overview of the consultation on May 5th. The Commission is expected to publish a legislative proposal no later than September.

In the press release accompanying the January 6th Consultation, the Commission stated that “the overriding objective will be to ensure that banks can be resolved in ways which minimise the risks of contagion and ensure continuity of essential financial services, including continuous access to deposits for insured depositors. The framework should provide a credible alternative to the expensive bank bail-outs which have characterised the recent crisis.” The Commission’s overview indicates that, while commenters broadly support the underlying objective, views diverge on the specific steps that have been proposed to achieve this objective.

The overview indicates that there is general agreement on some aspects of the proposal:

- The resolution regime should apply to all credit institutions and investment firms provided that such obligation is proportionate to the size and systemic nature of the entity.
- The choice of specific authorities responsible for resolution of an entity should be left to the discretion of the Member State.
- Content of the recovery plans (with some additional elements suggested by commenters).
- The proposed resolution tools and powers are deemed to be sufficiently comprehensive to allow resolution authorities to intervene effectively in the event of a failing institution.
- Certain of the proposed preventative powers are deemed to be an unjustified interference in the freedom of an institution to organize its business.
- Safeguards for counterparties.
- Certain debt categories (senior) should be excluded from the bail-in regime under the comprehensive approach.

And disagreement on other aspects:

- Industry commenters agree that recovery planning at the group level is optimal. However, when entity specific recovery plans are considered necessary, Member States wish to give host and consolidating supervisors the right to require changes to recovery plans, whereas industry argues that only the consolidating supervisor should have this power.
- Intra-group asset transfers.
- While Member States welcome the flexible trigger for early intervention, industry commenters consider the notion of a “likely breach” to be too vague and subjective.
- Special management tool.
- Conditions for resolution.
- Minimum level of bail-in debt under the targeted approach.

Lastly, it should be noted that the Commission’s ambitions include the creation of a resolution fund, as well as further harmonization of bank insolvency regimes with the view to potentially creating an integrated EU-wide resolution regime by 2014.