

Az Európai Unió Hivatalos Lapjában (2010.október) kihirdetett jogforrások listája, illetve a pénzügyi szolgáltatások szektorral kapcsolatban az Európai Bizottság honlapján közzétett hírek

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1.

SPEECH/10/612

Michel Barnier

Member of the European commission in charge of Internal Market and of Services
Remarks at "Securities Industry and Financial Markets Association" (SIFMA)

Securities Industry and Financial Markets Association

New York - October 28, 2010

Mr. President,

Mr. Bentsen,

Ladies and Gentlemen,

A very good morning to all of you.

I arrived from Europe late yesterday evening. I am very happy that my first meeting here in the United States takes place at SIFMA.

I am well aware of the important work your organisation and your members are doing.

And how instrumental you are in promoting a global dialogue on the issues of financial markets and regulation.

I was in the United States in May this year. I promised to come back on a regular basis. That is why I am here again.

To continue the fruitful dialogue and take stock of progress. And share with you what we have been doing in Europe during recent months.

Where do we stand today?

The crisis was **international and called for an international response**. And we responded together. In the G20-framework.

G20 Leaders will meet again in a couple of days. To take stock of progress. And underline the need to continue reforms.

Reforms are being delivered. In the United States, in Europe, in Asia.

But we cannot allow ourselves to be complacent.

This happens too often with reforms. There is consensus at the start. However, during the process. People turn their attention to other things. Results are not immediately visible, because reforms need time for implementation. Reform fatigue sets in.

That is the danger.

Yet, we are only **half way down the road** to build a safer and more stable international financial system.

Much progress has been made. But in some areas, much more remains to be done. In particular, dealing with **remaining macro-economic imbalances or instable exchange rates**. Or the current price fluctuations on certain **commodity markets**.

But let me turn back to progress made.

It has been significant.

And importantly, we have progressed together.

I would like to mention three major achievements:

1. First, we have **strengthened financial supervision** in Europe. The creation of the three new authorities – for banks, for insurances and for the securities markets – is a decisive step towards a safer and more integrated European financial market.

And in the longer term, this will mean a single point of contact for cross-border financial groups and regulators from outside Europe.

The new authorities will be in place from 1st of January 2011.

In addition, a **European Systemic Risk Board** is being set up. It will monitor threats to financial stability in Europe. Where needed, it will issue risk warnings and targeted recommendations. It should work closely with the Financial Stability Oversight Council that has been established in here in the United States.

2. This leads me to the **second major achievement**, which has taken place here. Our American friends have made a significant step with the adoption of the **Dodd-Frank Act**. I know that many details require some time.

But I want to salute the determination of the US Administration and of Congress to reform the financial system.

I hope that the reforms in the EU and the USA will be **concluded**. Un-doing them would give a very bad signal for financial stability throughout the world. The US and the EU must show leadership and finish the job of repairing the financial system. Citizens will not forgive us if we don't continue.

3. This brings me to the **third achievement**, namely the effective and fruitful **EU-US cooperation**. We – Europe and the US – must and do **work together reforming the financial system**. The agreement on capital requirements reached in the Basel Committee is essential.

We will propose next year the necessary legislative proposals to translate the agreement into European law.

And I trust that our US colleagues will do the same on this side of the Atlantic. I have noted Treasury Secretary Tim Geithner's commitment to this effect before the US Congress. And I intend to raise this point again with him and with Chairman Bernanke when we meet tomorrow.

We all have our local differences that need to be accounted for. But global financial institutions need to be subject to broadly the same requirements across the world.

These achievements should not hide the fact that we still have a lot to do.

I see in particular **three main areas** where more is needed:

1. First, **accounting standards**. I will attend the meeting of the IASB Monitoring Board and Board of Trustees later today.

I expect that the US authorities – in particular the SEC – take the necessary step in order to **transpose in the United-States international accounting standards**. This is an **essential element** of global reform.

Why? Because if accounting standards are different, then capital requirements become different too. And **what is the point of agreeing on capital requirements, if their application leads to different results because of different accounting rules?**

2. Second, **derivatives markets**.

In Europe, we have put on the table a proposal on OTC-derivatives. I have worked closely with Chairman Gensler to ensure that it is consistent with the approach taken here in the United States.

I do hope that progress on both sides of the Atlantic – **implementing the Dodd-Frank Act here, negotiating our regulations in Europe** – will maintain a **consistent regulatory approach**.

This is crucial, because 80% of derivatives trading takes place in the United States and Europe.

Our proposal deals with requirements on Central Clearing Parties and Trade Repositories. It is only **one part of our strategy**.

Other key aspects, for example additional capital requirements for contracts not centrally cleared, pre- and post- market transparency and trading of OTC-derivatives on exchanges or electronic platforms - **will be addressed in upcoming proposals on reviewing the capital requirements directive and the so-called MIFID Directive.**

I want to be clear on this point because I hear voices here in the United States saying that the OTC derivatives parts of the Dodd-Frank Act should be given a light implementation because the EU is being less ambitious.

That is simply not the case. Our processes are different but our level of ambition is the same. The EU and the US are working together and in parallel to reform OTC- derivatives markets.

3. Third, we have recently put forward in Europe **proposals for a crisis management framework**. This is an area where the United States have considerable experience through the system operated by the FDIC.

The FDIC exists since several decades and has a lot of experience. Its competencies have been expanded in the Dodd-Frank Act.

The challenge ahead is **to make resolution mechanisms operational in a cross-border context.**

Winding down a small or medium-sized local bank is tough. But the **real challenge** lies in having a credible system to **resolve large financial institutions.**

Institutions that operate in **several jurisdictions at the same time** and that are **systemic for some or all of these jurisdictions.**

In Europe, our environment is inevitably **more complex.** Especially when it comes to **sharing the costs** of winding down a failing cross-border bank. This is an area where Europe must make progress. And this would also allow further progress at international level.

Let me also mention briefly the European rules on **hedge funds.** It is a proposal which has been followed with great interest here in the United States. On Tuesday, we (finally) reached a political agreement.

And I am happy to say that we have obtained an open, non-discriminatory approach as regards fund managers and funds located outside Europe.

Finally, a word on the regulation of Credit Rating Agencies. European rules on supervision and conflicts of interest were adopted in 2009. I know that similar rules were introduced in the Dodd-Frank Act.

However, similar to the discussions going on here, we believe that reflections need to be pushed further on the **role of ratings.** We want to look in detail at the **impact of ratings** on some markets, such as sovereign bonds, where announcements have widespread consequences for markets and countries.

We want **more competition**, we want to lower barriers to entry in the market and reduce the market power of the existing agencies. And we need to look at the **issuer-pays model. Finding workable and credible alternatives.**

We will start **consulting stakeholders** on these issues in a few days. Because it is essential that we look at ways of how to do things differently.

Ladies and Gentlemen,

Let me conclude by stating the obvious.

We cannot revert to the financial system as it was before the crisis.

The result must be a **fundamentally different** system. Better supervised. With risks closely monitored. With financial institutions properly capitalised. But also with the correct incentives for market operators.

On **getting the incentives right**, let me finally stress one aspect of reform where, personally, I think that more could be done here in the United States.

I am referring to **compensation policies**.

Of course, competent people should be rewarded. I do not wish to express myself on what level of pay is too generous. But the way compensation is structured can give **wrong incentives and lead to excessive risk taking**.

Excessive risk is at the **expense of shareholders** who have to provide additional capital. **Excessive risk** is at the **expense of society as a whole**, as we saw in the crisis. It is in everybody's interest that these risks are kept under control.

In Europe we have taken **determined steps to reduce bankers' bonuses**. Based on the FSB-principles, we now have **binding rules** that will apply to bonuses paid in 2010.

I know that in the US, this is a very sensitive issue.

However, if we do nothing, it means that we have not drawn the right lessons from the crisis.

I for one, remember that it was **excessive risk taking** that caused the crisis. Speaking here a stone's throw away from Wall Street, I call on you to also remember.

Remember that an unfair and unstable financial system brings bubbles and crises.

But that a fair and stable financial system delivers prosperity and growth.

2.

IP/10/1353

Brussels, 20 October 2010

Commission sets out its plans for a new EU framework for crisis management in the financial sector

The crisis demonstrated clearly that when problems hit one bank, they can spread to the whole financial sector and well beyond the borders of any one country. It also showed that systems were not in place to manage financial institutions facing difficulties. Very few rules exist which determine which actions should be taken by authorities in the case of a banking crisis. That is why the G20 agreed that crisis prevention and crisis management frameworks had to be set up. Today, the European Commission responds by setting out its plans for an EU framework for crisis management in the financial sector. These pave the way for legislation due by spring 2011 which will create a comprehensive crisis management framework for banks and investment firms.

Internal Market and Services Commissioner Michel Barnier said: "First, we must try to avoid a financial crisis in the future. That is why our work to make the banking sector stronger and to create a real supervisory framework is so important. But banks will still face

difficulties in the future. They might even fail and should be allowed to do so. We need to make sure that they can do so without bringing down the whole financial system, or risking that taxpayers are called on to pay the costs. No bank should be "too big to fail" or too interconnected to fail. That is why we need a clear framework which ensures authorities throughout Europe are well prepared to deal with banks in difficulty and handle possible bank failures in an orderly manner. That is the aim of today's plans."

The Commission's Communication sets out the main elements that will be part of the Commission's legislative proposals next year, and is the result of extensive consultations over the past months (see [IP/09/1549](#)). Beyond the immediate priority of putting in place efficient crisis management arrangements in all Member States, the Communication also includes a "roadmap" providing a longer term view of some of the major challenges which will need to be overcome in order to ensure smooth handling of crises.

The new framework described in the Communication will be broad-ranging and aims to equip authorities with common and effective tools and powers to tackle bank crises at the earliest possible moment, and avoid costs for taxpayers. The toolbox of measures will include:

- *Preparatory and preventative measures* such as a requirement for institutions and authorities to prepare for recovery (i.e. dealing with serious difficulties faced by a bank) and resolution plans to ensure adequate planning for financial stress or failure, (such plans are called "living wills");
- *Powers to take early action to remedy problems before they become severe* such as powers for supervisors to require the replacement of management, or to require an institution to implement a recovery plan or to divest itself of activities or business lines that pose an excessive risk to its financial soundness;
- *Resolution tools*, such as powers to effect the takeover of a failing bank or firm by a sound institution, or to transfer all or part of its business to a temporary bridge bank, which would enable authorities to ensure the continuity of essential services and to manage the failure in an orderly way.

No entity should be "too big too fail". The overriding objective will be to ensure that banks can fail without jeopardising wider financial stability. That means banks can be resolved in ways which minimise the risks of contagion and ensure continuity of essential financial services, including continuous access for bank account holders to their accounts. The framework should provide a credible alternative to the expensive bank bail-outs we have seen in the last couple of years.

Europe is also faced with the issue that many banks operate throughout Europe but no system exists to deal with the cross-border implications of such a Europe-wide bank failing. So a key challenge is to put in place effective arrangements which ensure that authorities coordinate and cooperate as fully as possible in order to minimise any harmful effects of a cross-border bank failure. The Commission proposes to build on existing supervisory colleges (groups of national supervisors) to set up resolution colleges (where supervisors and national authorities in charge of resolution would meet), for the purposes of crisis preparation and management. The Commission will also propose that the new European Supervisory Authorities (see [MEMO/10/434](#)) and in particular the European Banking Authority, should have coordination and support roles in crisis situations, without impinging on the fiscal responsibilities of Member States.

As previously set out in its Communication on bank resolution funds from May 2010, the Commission is also proposing that national funds should be set up (see [IP/10/610](#)), on the

basis of contributions paid by banks, to fund the cost of future resolution measures and ensure that resolving a bank is a credible option. At present, moral hazard is pervasive across the system as no alternative to government bail-outs exist. The existence of common financing mechanisms which avoid use of taxpayer funds should enhance cross-border cooperation and facilitate advance planning of how the costs of resolving a cross-border institution should be shared.

Finally, the Communication sets out a roadmap of measures which will be considered in the longer term with a view to delivering a more integrated crisis management framework, in particular better suited to integrated European banking groups (i.e. banks operating at European level). The Commission plans to examine the need for further harmonisation of bank insolvency regimes with a report by the end of 2012 and, alongside the review of the European Banking Authority in 2014, will assess how a more integrated framework for the resolution of cross-border groups might best be achieved.

Background:

The financial crisis provided clear evidence of the need for more robust crisis management arrangements at national level, as well as the need to put in place arrangements better able to cater for cross-border banking failures. There has been a number of high profile banking failures during the crisis (Fortis, Lehman Brothers, Icelandic banks, Anglo Irish Bank) which have revealed serious shortcomings in the existing arrangements. In the absence of mechanisms to organise an orderly wind down, EU Member States have had no choice other than to bail out their banking sector. State aid to support banks has amounted to 13% of GDP. The Commission has already published two previous Communications on a way forward on the subject (see [IP/09/1549](#) and [IP/10/610](#)).

See also [MEMO/10/506](#).

More information is available at:

http://ec.europa.eu/internal_market/bank/crisis_management/index_en.htm

3.

MEMO/10/506

Brussels, 20 October 2010

An EU framework for Crisis Management in the Financial Sector – Frequently Asked Questions

1. Why is a new crisis management framework needed for the EU?

The financial crisis provided clear evidence of the need for more robust crisis management arrangements at national level, as well as the need to put in place arrangements better able to cater for cross-border banking failures.

There has been a number of high profile banking failures during the crisis (Fortis, Lehman Brothers, Icelandic banks, Anglo Irish Bank) which have revealed serious shortcomings in the existing arrangements.

In the absence of mechanisms to organise an orderly wind down, EU Member States have had no choice other than to bail out their banking sector. State aid to support banks has amounted to 13% of GDP. The impact on taxpayers is obvious.

A new crisis management framework is essential to complement other work streams aimed at making the financial system sounder, i.e. making banks stronger with higher levels of and better quality capital, greater protection of depositors, and better supervision.

2. What are the main issues that are under consideration?

The Communication describes the legal framework that the Commission intends to propose in Spring 2011, which will involve equipping authorities with common and effective tools and powers to tackle bank crises at the earliest possible moment, and minimize costs for taxpayers. These will include:

- *Preparatory and preventative measures*, such as a requirement for institutions and authorities to prepare recovery and resolution plans to ensure adequate planning for financial stress or failure (see also question 4);
- *Powers to take early action to remedy problems before they get out of hand* such as powers for supervisors to require the replacement of management, or to require an institution to implement a recovery plan or to divest itself of activities or business lines that pose an excessive risk to its financial soundness (see also question 5);
- *Resolution tools*, such as powers to effect the takeover of a failing bank or firm by sound institution, or to transfer all or part of its business to a temporary bridge bank, which enable authorities to ensure the continuity of essential services and to manage the failure in an orderly way (see also question 6).

The overriding aim is to put in place a framework that will allow a bank to fail – whatever its size - while ensuring the continuity of essential banking services, minimising the impact of that failure on the financial system and avoiding costs to taxpayers. This is essential to avoid the 'moral hazard' that arises from the perception that some banks are too big to fail.

3. Why didn't the EU have this framework in place before the crisis? And what has been done since the crisis?

Until the crisis, many felt that crisis management was best dealt with at national level especially if there was a risk that there would be budgetary implications and in view of the close connection of crisis measures with national insolvency regimes. Measures in place varied greatly between Member States.

However, the crisis has strengthened the case for action at EU level, since it clearly demonstrated that the absence of European arrangements could result in ad hoc national solutions, which might be less effective in resolving the situation and ultimately prove more costly for national taxpayers. Furthermore, the crisis highlighted there were no mechanisms in place to deal with banks in difficulty operating across borders.

4. What sort of preventative measures does the Commission consider necessary?

Preventative measures will include measures designed to ensure that developing problems will be identified and addressed at an early stage, and to enhance the preparedness of firms and authorities to deal effectively with serious difficulties. These will include reinforcing supervisory powers (e.g. tougher standards and more intrusive assessments, more systematic on-site examinations, etc.) and introducing a requirement for firm-specific recovery and resolution plans. The recovery part would be prepared by firms, and set out measures that the firm would take to deal with funding problems in a range of conceivable stressed scenarios.

The recovery part would be prepared by authorities with the cooperation of firms, and would put in place plans as to how the firm might be resolved, and its essential functions preserved, in the event of the firm's failure. Preventative measures might also include powers for authorities to take measures, or require a firm to make changes to its structure or business organisation, if the authorities assess that the firm is not resolvable with the available tools.

5. What about early intervention measures?

Early intervention measures will include measures by banking supervisors designed to address developing problems within individual banks and across banking groups at an early stage, to prevent them from aggravating and secure recovery. These will include expanding supervisors' powers of early intervention (e.g. powers to prohibit payment of dividends, requiring replacement of managers or directors, requiring the bank to divest itself of certain activities or business lines, etc.), the power to require implementation of a firm's recovery plan to address specific funding problems, and the appointment of special management for a limited period to take over control and run the bank with the objective of addressing its problems and restoring it to financial health).

6. What are resolution measures and how are they reflected in the Communication?

Resolution occurs at a point when the institution has reached a point of distress such that there are no realistic prospects of recovery over an appropriate timeframe and all other measures have been exhausted. Tools available to specially designated "resolution authorities" would include a sale of business tool (parts of the credit institution or parts of its business can be sold to one or more purchasers without the consent of shareholders); a bridge bank tool (authorities can transfer some or all of the business to a temporary bridge bank in order to preserve essential banking functions or facilitate continuous access to deposits); an assets separation tool (to remove toxic assets to a separate vehicle) and a debt write down tool (whereby all existing equity can be written off and the debt of the troubled institution can be converted into equity or written down, as a means of restoring the institution's capital position).

7. How is cross-border cooperation to work?

Beyond ensuring common tools in all Member States, the Commission considers that it will also be necessary to ensure smooth cooperation both in advance of and during a crisis. A cross-border coordination framework would entail building on the core of existing supervisory colleges (which are being established under the new Capital Requirements Directive (CRD III, see [IP/08/1433](#)) by including resolution authorities into "resolution colleges". These colleges would be tasked with crisis planning (preparation of resolution plans, agreeing principles for burden sharing, etc.) and would be a forum for information exchange and coordination during a crisis. There would also be a role for group resolution authorities to decide on the appropriateness of a group resolution scheme. The newly established European Supervisory Authorities (see [MEMO/10/434](#)) would also be expected to play a key role in the preparation, preventative, early intervention and coordination parts of the new framework.

8. How will resolution schemes be financed?

Financing is a key part of crisis resolution, and the Commission believes that a coordinated approach is needed in order to improve the prospects for effective cross-border cooperation. In May, the Commission set out its ideas for pre-funded bank resolution funds (see [IP/10/610](#) + [MEMO/10/214](#)) to ensure that the banking sector, and not the taxpayer, pays

the costs of future bank failures. This Communication further elaborates on the those ideas, in particular with respect to how the funds should be designed (ex ante funds backed by ex post financing arrangements), who should contribute, the appropriate basis for contributions), how resolution funds fit with the current legislative proposal on deposit guarantee schemes, and how the Commission intends to proceed in order to calibrate appropriate fund sizes.

9. Beyond this communication, what will be the next steps?

Future policy actions: beyond announcing a new legal framework on crisis management in the financial sector for adoption in Spring 2011, the Communication also outlines future work:

- In the *medium term*, this involves examining the desirability of administrative liquidation proceedings for banks in order to facilitate faster and more orderly liquidation and the need for further harmonisation of bank insolvency regimes (including core principles of bank insolvency such as priority rankings and rules on claw back actions).
- In the *longer term*, and alongside the review of the new EU supervisory authorities planned for 2014, the Commission also intends to assess how a more integrated framework for the resolution of cross-border groups might be best achieved.

10. Is this work intended to solve the current crisis?

The financial and economic crisis has called for extraordinary measures to be taken in order to avert a potential meltdown of the European banking industry. However the measures considered in the Communication are aimed at the management of future crises. Early supervisory intervention should assist in averting preventable bank failures, while an EU resolution framework would equip national authorities with adequate tools to manage the consequences of failures that could not otherwise be avoided. This is the missing link in an effective bank regulation framework.

11. Resolution measures may interfere with the rights of shareholders and creditors. How does the Communication propose to deal with this?

Bank resolution tools that involve transfer of assets may interfere with the rights of creditors and shareholders, and any EU resolution framework would need to incorporate adequate safeguards to protect those interests.

For example, EU company law contains a number of mandatory requirements that confer rights on shareholders. These include pre-emption rights, and the requirements that any increase or reduction of issued share capital is approved by the shareholders' general meeting. In addition to this, any transfer of ownership or assets of an ailing bank must comply with shareholders' right to property under the European Convention on Human Rights. A balance needs to be struck between protecting the legitimate interests of shareholders and enabling resolution authorities to intervene quickly and decisively to restructure a failing institution or group to minimise contagion and ensure the stability of the banking system in affected Member States. Where rights granted by EU law are affected, an EU resolution framework would also have to contain appropriate mechanisms for redress and compensation.

EU law does not currently specify the rights of creditors in the context of bank insolvency. Appropriate safeguards under a bank resolution framework might include compensation

mechanisms to ensure that creditors are not left worse off than they would have been had the bank under resolution been wound up under the applicable insolvency law.

12. What kinds of financial institution would be covered by an EU regime?

The Communication focuses principally on crisis management in the banking sector. This focus is justified by the special nature of banks - their unique role as providers of credit, deposit-takers and payment intermediaries – which give rise to particular problems and public policy objectives in the event of a bank failure. However, the Commission is also considering options as to how to include certain investment firms whose failure might also risk financial stability. Beyond that, the Commission also recognises that different kinds of crisis management measures may be necessary to address the specific risks to market stability represented by other types of financial institution. It intends to carry out further work by the end of 2011 to consider which crisis management arrangements might be necessary for other types of financial institution, including insurance companies, investment firms and Central Counterparties.

13. Would a requirement for cross-border groups to prepare "living wills" help authorities to manage a cross-border banking crisis?

There are currently no harmonised powers for supervisors to require banking groups to prepare recovery and resolution plans, often referred to as "living wills". The idea is that systemically important cross-border financial institutions could be required to produce detailed plans to facilitate, in a period of severe financial stress or instability, the preservation of the firm as a going concern, the continuity of its financial infrastructure services, and the rapid resolution or winding down where necessary of the institution (or part of the institution).

14. What is the proposal to write down creditors and how would it work?

The objective is to develop a mechanism for recapitalising failing institutions so that it can continue to provide essential services, without the need for bail out by public funds. Fast recapitalisation would allow the institution to continue as a going concern, avoiding the disruption to the financial system that would be caused by stopping or interrupting its critical services, and giving the authorities time to reorganise it or wind down parts of its business in an orderly manner. A number of ideas for achieving this objective are being considered by policy makers and international bodies. These ideas include requirements for firms to hold contingent capital or 'bail in' debt – that is, debt that converts into common equity when a firm is financial distress to recapitalise it quickly; and a power for resolution authorities to impose a write down or 'haircut' on the creditors of a failing firm, or to convert their debt claim to equity, at the point of resolution. In every case, there would need to be clarity about the conditions or triggers for write down or conversion. In the case of a statutory power for authorities, the classes of debt covered would need to be clear.

The Commission Services consider that contractual and statutory approaches could be complementary. They are exploring these ideas further, and will consult later in the year.

15. How does all this relate to discussions at international level?

Discussions have taken place on crisis management in a number of international fora (G20, Financial Stability Board, Basel Committee). There is broad recognition that the problems of cross-border banking groups extend beyond the EU, and many significant financial groups are global in their organisation. While certain of the problems which need to be addressed are the same - for example, the difficulties of cooperation and coordination, information sharing, the lack of effective tools, the need for better advance planning, the

territorial scope of national insolvency regimes when applied to a group - there are nevertheless significant distinctions between the progress that can be reasonably expected at international level and what can be achieved within the EU. The depth of integration of both banking business and the legal framework at European level both allows and requires greater cooperation and convergence in order to develop a more robust framework to underpin the Internal Market.

16. What are the main differences between what the EU is proposing and the US approach?

Both the EU and the US are working to develop mechanisms which should be capable of resolving or winding down failing financial institutions, and are actively engaged in discussions at international level. The US approach will entail putting an end to the problem of "too big to fail" banks by ensuring that failing institutions can be taken into receivership by the Federal Deposit Insurance Corporation (FDIC), under which their business will be transferred or wound down and the failed institution will be liquidated.

The Commission's proposed EU framework would also allow authorities to put banks into an orderly resolution in which their essential services could be preserved while the failed institution itself was ultimately wound down. However, the Commission is also considering equipping authorities with additional tools which would allow a troubled bank to continue as a going concern, through write down of its debt, in order to preserve its economically important functions and 'buy time' for authorities to sell or wind down its business in an orderly manner. In order to prevent moral hazard, there would need to be strict conditions accompanying any such approach. These would include dilution of shareholders, changes to management, haircutting of creditors and re-structuring so as to ensure that the surviving entity was viable. Such operations would also need to adhere to strict EU state aid rules.

In terms of funding the cost of resolution measures, the new US rules foresee a system of **ex-post** financing, meaning that other financial institutions will be required to pay only when failures occur. However, with the FDIC, the US does already have a well-funded system for bank resolution, which applies to smaller and medium-sized deposit taking institutions. The Commission on the other hand, supports a system of **ex-ante** financing, which would require all banks to contribute to national funds set up to cover the cost of future bank resolutions. The Commission has argued that there is a need to coordinate an EU approach to financing resolution measures, and has expressed a preference for ex ante funding as more credible and less pro-cyclical.

More information:

http://ec.europa.eu/internal_market/bank/crisis_management/index_en.htm

4.

MEMO/10/504

Brussels, 19 October 2010

Statement of Commissioner Michel Barnier following the negotiations on the AIFM Directive (hedge funds and private equity) at the Ecofin Council in Luxembourg

Today, Member States took a fundamental step towards an agreement on this important directive, an agreement which would not have been possible without the commitment and determination of the Belgian Presidency.

The text takes into account the numerous and legitimate requests of the European Parliament, with whom we must now finalise this agreement. I wish to thank Jean-Paul Gauzès for the key role he played in these negotiations.

Why is this directive such a breakthrough?

- May I remind you that we are talking of major actors on the financial markets (accounting for more than 50% of market transactions on certain days).
- May I also remind you that these actors were not until now subject to **oversight or specific regulation at European level**, and that all preceding attempts to put regulation in place had failed.
- Today, we are delivering on a commitment taken at the **G20**.

What will the Directive change?

It will put in place **new and robust rules** reinforcing:

- transparency
- safe-keeping of assets (the functions of depositaries are now closely regulated - we know the risks that weaknesses in this area can pose for investors)
- risk management
- control of leverage (that is to say the level of risk-taking in relation to available funds).

It will give substantial power to the regulators:

- regulators will have to authorise the fund managers
- they will have the necessary information to control risk-taking (level of leverage, risk management)
- this information will be shared with the European Systemic Risk Board.

On the very sensitive question of the passport, the agreement foresees a passport for third-country funds and managers. That was the initial proposal of the Commission. It will be a passport on merit, founded on a solid basis and providing strong controls in terms of risk management. It will also reinforce the internal market.

The negotiations were long and sometimes difficult, but we have reached a good compromise. The essential elements of the initial Commission proposal have been preserved: the broad scope, robust rules, increased transparency, and better protection for the investor. If this agreement is confirmed by the Parliament, it will **be the foundation for the efficient and intelligent regulation of alternative investment fund managers.**

Brussels, 13 October 2010

The European Commission consults on how the European audit market can be improved

The European Commission has launched today a broad consultation on the role of statutory audit as well the wider environment within which audits are conducted. In the wake of the financial crisis, we need to ask the question whether the role of auditors can be enhanced to mitigate any new financial risk in the future. The crisis also highlighted certain weaknesses in the audit sector which need to be explored further. This work on audit is part of our effort to learn the lessons from the crisis and reform the financial sector. In particular, the Commission is keen to discuss whether audits provide the right information to all financial actors, whether there are issues around the independence of audit firms, whether there are risks linked to a concentrated market, whether supervision at a European level might be useful and how best the specific needs of small and medium sized businesses may be met. The deadline for responses to the consultation is 8 December 2010.

Internal Market and Services Commissioner Michel Barnier said: "The veracity of financial statements is central to confidence in the marketplace. All financial actors need to be able to rely on information which reflects the true financial health of companies. Auditors have an important role to play and that is why we need robust and completely independent audits. The crisis highlighted failings in the audit sector. These need to be explored and we need to see what improvements can be made. I believe it is important to approach this discussion in a frank and open manner. No subject should be taboo."

Statutory audit denotes an audit of company accounts as required by EU law. Auditors are entrusted by law to conduct statutory audits. The aim of an audit is to offer an opinion on the truth and fairness of the financial statements of the companies they audit in complete independence of the audited company. To this extent, the independence of auditors should be the bedrock of the audit environment.

As a result of the banking crisis in particular, questions have arisen on whether the role of auditors can be enhanced to mitigate any new financial risk in the future. The aim of the Green paper is to launch a **wide consultation to determine** what changes might be needed to audit policy.

There are a number of areas which the Commission believes need to be explored further, in particular:

- the independence of auditors - it is unclear if auditors are truly detached and critical when examining the financial statements of a company when that same company is an existing or potential client for non audit services;
- the reliance stakeholders can place on audited financial statements. That is why we seek to understand what 'expectation gaps', if any, exist amongst stakeholders with regard to the scope and the methodology of audit;
- the potential for systemic risk because of the strong concentration in the audit sector (what consequences could there be for the wider financial system if one of the big audit firms closed down?);

- the role played by supervisors, and whether national supervision is fully effective;
- the potential for a real internal market for audit and the removal of barriers which currently make audit a mainly national market. In that context, the concept of a European passport for auditors should be explored further;
- the specific needs of small businesses – ensure proportional application of rules to SMEs;
- the global context: audit is a global market with firms operating as global networks; to this extent it is important to co-ordinate our efforts at an international level.

Responses to the Green Paper are welcome until 8 December. On the basis of those responses, the Commission will decide on the need for any measures in the course of 2011. The Commission will seek to cooperate and align its position with those of its main international partners within the Financial Stability Board and the G-20.

Responses to the Green Paper should be sent to the following address:

markt-greenpaper-audit@ec.europa.eu no later than 8 December 2010.

The Green Paper can be found at:

http://ec.europa.eu/internal_market/auditing/otherdocs/index_en.htm

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Brussels, 13 October 2010

European Commission Green Paper on Audit Policy - frequently asked questions

Why has the European Commission decided to launch a public consultation on audit policy?

Audit is an integral part of the financial environment. Statutory audit refers to the audit of companies under European law and is aimed at providing an accurate reflection of the veracity of a company's financial statements to stakeholders.

However, the financial crisis highlighted weaknesses in the system. Although audits of some large financial institutions just before or during the crisis resulted in 'clean' audit reports, there remained serious intrinsic weaknesses in the financial health of the institutions that had been audited.

In view of learning all the lessons from the crisis and in the context of the regulatory reform stemming from those lessons, it is important to have a comprehensive debate on the role of audit to ensure that any 'expectation gap' between auditors and stakeholders is addressed.

What are the existing rules on audit?

A number of instruments exist at EU level, both binding and non-binding rules and guidelines for the conduct of audits required by EU law, requirements to be met by auditors and the supervision of the latter.

The main EU instruments for audit are:

- **The Statutory Audit directive (2006/43/EC):** aims to ensure that investors and other interested parties can rely on the accuracy of audited accounts and to enhance the EU's protection against the type of scandals that occurred in companies such as Parmalat and Ahold (i.e. cases of fraud not discovered by the auditors). The Directive sets out the duties of statutory auditors and certain ethical principles to ensure their objectivity and independence, for example where audit firms are also providing their clients with other services. It introduced a requirement for external quality assurance, ensure robust public oversight over the audit profession and improve co-operation between regulatory authorities in the EU. The Directive provided also a basis for balanced and effective international regulatory co-operation with third country regulators such as the US Public Company Accounting Oversight Board (PCAOB).
- **There have been two further Recommendations in 2008** aimed at giving more responsibilities to the public oversight bodies and enhancing transparency of audit results. The second Recommendation encourages Member States to limit civil liability of auditors (see [IP/08/897](#)).

Although these instruments have improved the audit environment, the Commission's assessment is that they have not fully delivered on their promises and there are still potential failings in the audit environment which need to be discussed further.

Furthermore, the Commission is also aware of recent inspection reports by national regulators/supervisors where audits conducted by different firms, large and small, have been criticised, some for serious shortcomings. This would also suggest that further progress towards a greater quality of audits is still possible. The Commission's aim is for the highest standards possible to apply in the conduct of audits throughout the EU.

What are the objectives of the Green Paper?

The Green Paper submits the following considerations for public consultation:

- Determining whether there are possible ways to lower any gap between what investors expect from an auditor and what the auditor actually delivers, and **whether the role of the auditor should be revisited**;
- Exploring possible ways to **improve the auditors' communication to stakeholders and regulators** on what work they have carried out and what they have 'discovered' during their audit;
- Examining whether there are **conflicts of interest** in the current system e.g. when a firm both audits a company's results and offers it consultancy services; if so, what would be the appropriate manner to eliminate such intrinsic conflicts of interest so as to ensure complete auditor independence;
- Ensuring **effective and independent supervision** throughout the EU;
- Identifying if the current system entails any systemic, too big to fail risks because of the **concentration in the audit market**. What impact would the failure of one of the big audit firms have on the rest of the financial system? How could such accumulation of such risks be addressed?
- **Improving the internal market** of audit by ensuring further mobility for audit professionals and firms within the EU, possibly by creating a European Passport in this area;

- Addressing the proportionality of the application of regulatory requirements to **reduce administrative burden for SMEs** where possible.

Why is action needed when auditors were not responsible for the banking crisis?

The Green Paper is not about determining the causes for the crisis. But the crisis did highlight failings in the audit system across Europe. The Commission believes that there are important questions which need to be addressed in an open manner. Auditors have an important statutory role to play and this consultation provides an appropriate platform to have a comprehensive and constructive debate for real change.

How does the Green Paper fit with other Commission initiatives in response to the financial crisis?

This Green Paper is an integral part of the crisis related financial market reform and raises important questions on the lessons learnt from the crisis with regard to the role of audit, its independence and the accumulation of systemic risk. This last point is particularly important - the Commission is keen to address further potentially systemic risks proactively rather than reactively.

Does the Green Paper fit with the work being carried out in the field of corporate governance of financial institutions?

The ideas explored in the Green Paper are complementary to the ideas explored in the context of corporate governance. The corporate governance consultation covered certain elements of audit ([see IP/10/656](#)); the Green paper on Audit Policy covers all aspects of audit policy in a comprehensive manner.

Does the Commission favour any particular configuration of the audit market?

No, the Commission does not favour any configuration but wishes to examine evidence of any concentration in the market as well as a lack of choice with regard to providers of statutory audits.

Is action at a European level really necessary? After all, some European supervisors seem to be very active already in their inspections of audit firms.

The Commission welcomes the fact that European supervisors are starting to draw lessons from their oversight activities and looks forward to discussing those findings. While robust supervision within Member States is key, certain matters can be best dealt with at the European level, for example the potential future European passport allowing auditors, individual and firms, registered in one Member State to provide audit services in other Member States without further registration. Moreover, if the concentration of the audit market raises systemic risk issues, these would relate to the EU as a whole and not just to any one Member State, especially given the global reach of auditors. This also raises the issue as to whether supervision at a European level might add value to purely national supervision.

What are other regions in the world doing in this field?

The Commission is keen to take the lead in the area of audit because we believe it is a key lesson which needs to be learnt from the crisis. The issues will naturally be discussed in international fora; but for this to happen it is important to carry out a broad, all encompassing consultation to determine what the EU issues are and what options may be considered as a way forward. Then the EU will have a solid platform to enter into

constructive discussions with its international partners. We encourage all interested parties, including our international partners, to respond to the consultation.

Outside the EU, the Commission is not aware of any immediate initiative similar to the comprehensive debate we would like to facilitate. Notwithstanding, audit represents a very substantial activity in the EU and to this extent it would be appropriate to take the lead. Our aim is not to cause any distortions when compared to other non EU jurisdictions but, as explained above, to use this initiative to solicit debate and constructive discussion with our international partners. It has to be noted that at present, there are substantial differences internationally in terms of audit rules.

Why is the European Commission considering appointment and remuneration of an auditor by a third party?

Auditors are currently appointed and paid by the company they audit.

The Green Paper asks whether it would make sense that in some cases, the auditor should be appointed by a third party, perhaps the national regulator / supervisor, and not chosen by the company requiring audit services. From the point of view of complete independence between auditor and client, in particular in the cases of very big companies, this is an idea that can be explored.

Would ideas such as mandatory rotation of audit firms and joint audits not prove detrimental to the quality of audits performed?

In many instances, audit firms continue to audit the company for many years, in certain cases even decades. This may seriously impair the independence of the auditor vis-à-vis its 'client'. The Green paper thus explores the possibility of making a change in audit firms compulsory on a regular basis. Joint audit relates to the formation of an audit team / consortium including more than one audit firm: this could not only increase independence but could also provide for continuity if one of the audit firms were to fail.

Why does the Green Paper not raise the issue of the access of audit working papers by the US, for example?

The Commission addressed this issue by adopting two decisions this year allowing Member States to negotiate such access with the US, Japan, Switzerland, Canada and Australia (see [IP/10/1083](#) and [IP/10/136](#)).

What will be the follow-up to the public consultation? Will there be any legislative proposals?

The consultation is open for responses until 8 December 2010. This will be followed by a conference in Brussels on 10 February in 2011. The Commission will decide thereafter in 2011 on the need for any measures as a follow-up to the present consultation.

A sajtóbejelentések elérhetőek:

http://europa.eu.int/rapid/searchResultAction.do?search=OK&query=markt&use_rname=PROF&advanced=0&guiLanguage=en