Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Central Bank — An EU Framework for Crisis Management in the Financial Sector'

COM(2010) 579 final

(2011/C 248/17)

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On 20 October 2010, the Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Central Bank - An EU framework for Crisis Management in the Financial Sector

COM(2010) 579 final.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 26 May 2011.

At its 472nd plenary session, held on 15 and 16 June 2011 (meeting of 16 June), the European Economic and Social Committee adopted the following opinion by 132 votes to 13 with 20 abstentions.

1. Conclusions and recommendations

1.1 The EESC shares the Commission's concerns that the support of failing financial institutions at the costs of public finances and the level playing field within the internal market is no longer acceptable in the future and supports in principle the proposed comprehensive EU framework. Its implementation will require from national authorities, as well as from banks, additional costs, professional skills and human resources, together with reforms of Member States' legislative frameworks and regimes. The EESC hopes that, taking into consideration the results of the public consultation, the Commission will conduct a thorough **impact assessment of the costs, human resources and legislative reforms needed**. A realistic proposal should be accompanied by **a timeframe of hiring human resources,** taking into account that the latter might not be immediately available in the market.

1.2 The Committee recommends a holistic approach and encourages the Commission to assess the cumulative effects of the crisis management framework together with the effects of all new regulatory requirements, new financial sector taxes and bank levies on banks' ability to provide lending to households and businesses at reasonable lending rates without jeopardising economic growth and job creation [1].

1.3 The EESC recommends the Commission to envisage appropriate measures for achieving coordination between the chosen resolution authority, the central bank and the ministry of finance (when none of the last two is chosen to be a resolution authority in the Member State) before conducting a resolution operation. In order to protect the sector from possible contagion and confidence crisis such coordination would be essential in cases of resolution of large and systemically significant institutions as well as in cases of simultaneous resolution of several institutions.

1.4 In addition to the proposed stress testing to be conducted by supervisors under preparatory and preventive measures, the EESC recommends the Commission to make compulsory for **all Member States (MS)** the IMF/World Bank Financial Sector Assessment Programmes (FSAP) as proposed by the De Larosière Report [2]. The analysis and stress testing conducted under FSAP link macroeconomic developments and imbalances in MS with their macro-financial stability and micro-prudential risks, which makes them useful and highly appropriate analytical tools for supervisors.

1.5 The EESC welcomes the Commission's proposal for asset transferability as a preventive measure but warns that the provision of any financial support to other group entities should not be imposed by supervisory authorities but should remain voluntary, and that equal treatment of both parent and host MS is key to maintaining financial stability. Group financial

(1) See also OJ C 107, 6.4.2011, p. 16 where we discussed in detail the costs related to the crisis management framework and BRF in particular, as well as their implications for the financial sector and the broader economy.

(2) The High-level Group on Financial Supervision in EU Chaired by Jacques de Larosière, Report, 25 February 2009, Brussels, p. 64.

support should be provided only under a group financial agreement and if a number of conditions are met:

— The main condition should require that the financial support may only be granted if the entity providing it complies and will continue complying at all times and under any circumstances with the prudential requirements of Directive 2006/48/EC or any higher national capital requirement in the transferor's country. The EESC recommends that this condition is respected by all supervisors and mediators, including EBA in cases of disagreements among members of the college.

— The EESC believes that as a safeguard for the macro-financial stability in the transferor's country the transferor's supervisor should have the power to prohibit or restrict a transfer of assets under a group financial support agreement if it threatens the liquidity, solvency and financial stability of the transferor and the financial sector in its country.

1.6 The appointment of a special manager is a signal that the bank is experiencing problems, which may undermine depositors' trust and trigger bank runs. When special managers are appointed for a number of institutions within the same period of time, serious disruptions might ensue; in such a case, additional precautionary measures should be introduced in order to protect the banks concerned and the sector as a whole from possible contagion and confidence crisis developments.

1.7 The EESC recommends the Commission to assess the impact of the bail-in instruments on the banking sector and financial markets as well as to conduct a feasibility and cost-benefit analyses of different bail-in instruments regarding their cross-border implications, marketability and transparency.

1.8 In response to regulatory tightening and introduction of additional crisis management measures and instruments, the shadow banking system could further develop significantly. The Commission should make sure that regulators and supervisors would be able to limit contagion risks to banks coming from outside the banking sector. Shadow banking entities should also be subject to stricter regulatory standards and should be enabled to bear losses.

2. **Introduction**

2.1 During the financial crisis, governments did not allow banks and other systemic financial institutions to fail. A wide variety of measure was adopted: in some cases, banks needed capital injections at a huge cost for public finances (hopefully to be recovered in the future), in others they needed liquidity support and/or guarantees on their liabilities. In all cases, this induced a stress on financial markets and a significant distortion in the level playing field within the internal market and worldwide.

2.2 In response to the already existing consensus that this must never happen again, the Commission has adopted several Communications related to crisis management and resolution. The first, in October 2009 (3), considered what changes were needed to make possible effective crisis management and resolution or orderly winding up of a failing cross-border bank. The second Communication published in May 2010 (4) explored the financing of resolution in a way which minimises moral hazard and protects public funds (5). Communication (2010) 579 final sets out a comprehensive EU framework for troubled and failing banks and the policy orientations the Commission intends to pursue. A public consultation on the technical details of the legislative framework under consideration was launched in December 2010.

2.3 The Commission intends to proceed gradually towards the EU crisis management regime. **As a first step**, it intended to adopt before the summer 2011 a legislative proposal for a harmonised EU regime for crisis prevention and bank recovery and resolution, which would include a common set of resolution tools and reinforcement of cooperation between national authorities when dealing with cross border failures of banks. **As a second step**, the Commission will examine the need for further harmonisation of bank insolvency regimes. Finally, a **third step should include** the creation of an integrated resolution regime, possibly based on a single European Resolution Authority, by 2014.

3. **Comments**

3.1 *Scope and Objectives*

3.1.1 The Commission's communication proposes a crisis management framework for '**all cross-border and domestic credit institutions and some investment firms**' '**of any type and size, and in particular systemically important institutions**'. In a footnote, the Commission explains that **its policy aim is to 'cover those investment firms the failure of which risks causing systemic instability, and is considering options as to how that category might be defined'.** In fact, many parts of the Communication refer not only to credit institutions but also to investment firms without having that category clearly defined. The EESC expects the Commission to clearly define the categories of **investment firms and investment funds** with potential systemic ramification taking into consideration the results of the public consultation initiated in December 2010. The Committee encourages the Commission also to assess whether the resolution tools and powers suggested by COM(2010) 579 final would be sufficient to address adequately all specific problems related to the failure of an investment firm and investment fund.

(3) COM(2009) 561.
(4) COM(2010) 254.
(5) See http://ec.europa.eu/internal_market/bank/crisis_management/index_en.htm.

3.1.2 The framework for prevention, crisis management and resolution is based on seven principles and objectives, expected to ensure that banks in difficulties exit the market without jeopardising financial stability. The EESC supports most of them but the fourth and the last ones deserve some comments and clarifications:

— We support the Commission's views on the importance of reducing moral hazard by ensuring that shareholders and creditors suffer a fair and appropriate amount of losses in bank resolution, but only if they receive the treatment that reflects the **normal order of ranking and is similar to what they would have received if the bank had been wound up**. In this process creditors usually receive a treatment different from that of shareholders. The proposal to allocate losses both to shareholders and creditors may raise some concerns of legal nature and needs further explanations as to the proportional allocation of losses and the criteria for including creditors among contributors: when, and to what extent? Allocation of losses to shareholders is certainly a correct principle but some concerns arise when creditors are expected to share the losses, without clarifying this concept. When, and to what extent, one specific creditor is to be called to bear the losses? Should we consider making a distinction between 'guilty' or 'imprudent' creditors and others? In addition, on what basis, and under what circumstances, would the losses be covered by the whole banking industry?

— On the last bullet point: we do agree on the need to avoid worse disasters but saying that one of the objectives of the suggested framework is 'limiting distortions of competition' is just paying lip service to the principle, as the fact that an ailing or, worse, nearly failed institution needs some help at the cost of third parties is per se a distortion of competition.

3.1.3 In response to regulatory tightening and introduction of additional crisis management measures and instruments, the shadow banking system might further develop. The EESC recommends that regulators and supervisors try to limit contagion risks to banks coming from outside the banking sector and enable shadow banking entities to bear losses and be subject to appropriate regulatory standards.

3.2 *Principal Elements of the Framework*

3.2.1 The framework outlined by the Commission is conceptually correct and the EESC approves the proposed three classes of measures:

i. preparatory and preventative,

ii. early supervisory intervention and,

iii. resolution.

Implementation of this framework will be far from simple, and the EESC welcomes the intention to ensure a gradual and smooth transition from the existing national arrangements to the proposed framework. The numerous initiatives proposed by some national authorities as well as the different national legislations on property rights, bankruptcy, administrative and penal responsibilities of the administrators create a lot of obstacles to a fast transition to the outlined framework. The Committee hopes that the 'wide range of options' would not be misused in political, economic and social emergencies but will be taken advantage of in order to ensure flexibility in adapting the national rules to the European legislation and promote effective coordination and cooperation of cross-border crisis management and resolution for all types of credit institutions irrespective of their size and interconnectedness.

3.2.2 *Authorities responsible for crisis management*

The Commission's communication explicitly states that powers of early intervention will continue to be exercised by prudential supervision under the Capital Requirement Directive (CRD), while as far as the resolution powers are concerned, each Member State will have to identify a resolution authority to exercise them. The EESC approves the Commission's recommendation that the resolution authority should be administrative rather than judicial but is aware of the obstacles and difficulties that will accompany its implementation. The Committee also expects that national ex-ante Bank Resolution Funds (BRFs) proposed by COM(2010) 254 final and COM(2010) 579 final would have their own share in exercising resolution powers if set up according to the recommendations in the quoted Communications. Even if the choice of resolution authorities is left to national discretion they should act in accordance with common rules and principles, specified by an EU framework.

3.2.2.1 The EESC also believes that a successful execution of a resolution operation will require good coordination between the chosen resolution authority, the central bank and the ministry of finance when none of the last two is among the chosen resolution authority in the MS. This is essential in cases of resolution of large and systemically significant institutions as well as in cases of simultaneous resolution of several financial institutions.

3.2.3 *Preparatory and preventive measures*

All measures and initiatives proposed in this section are conceptually correct, and no doubt they are necessary to ensure an effective implementation of the Commission's framework. However, there are some questions which cannot be swept under the carpet:

— How much would they cost and who would ultimately bear the costs?

— Would authorities and financial institutions be able to find the professional resources to meet the needs of the proposed measures?

— How long will it take before a fully-operational European system is in place?

3.2.3.1 More specifically, **supervisors are required** to introduce reinforced supervision, to assess and supervise recovery and resolution planning, to adopt preventive measures (Section 3.2, COM(2010) 579 final), to intervene in the resolution of a firm in cooperation with, resolution authorities, etc. In practice, supervisors become super-managers of the institutions.

In addition to standard reporting **financial institutions** are required to prepare, and submit to authorities, recovery and resolution plans, to be kept constantly updated. Furthermore, Member States are required to **create resolution authorities**, or to enlarge the mission of existing authorities to include the resolution of financial institutions.

3.2.3.1.1 All these actions are no doubt necessary in view of creating sound, secure financial markets; the problem is to determine **how much they will cost** (6) and to **make sure that both authorities and financial institutions will be able to find enough highly-skilled human resources** prepared to carry on the new tasks. The importance of the final goal may justify the high costs of the plan, but the scarcity of human resources might constitute a huge obstacle. The Commission is aware of that and in its Consultation document it invited MS to estimate the costs (including human costs) that are likely to be incurred in carrying out the proposed activities related to enhanced supervision, recovery planning, resolution plans. **A realistic proposal by the Commission should be accompanied by an impact assessment of costs and a timeframe of hiring human resources**, taking into account that the latter might not be immediately available on the market.

3.2.3.2 In addition to the proposed stress testing to be conducted by supervisors, the EESC recommends the Commission to make compulsory for **all MS** the IMF/World Bank Financial Sector Assessment Programmes (FSAP) (7) as proposed by the De Larosière Report (8). Currently FSAP is mandatory for 25 IMF member countries, out of which only 11 are EUMS. The analysis and stress testing conducted under FSAP link macroeconomic developments and imbalances in MS with their macro-financial stability and micro-prudential risks which makes them useful and highly appropriate analytical tools for supervisors.

3.2.3.3 **The EESC welcomes the Commission's proposal for asset transferability as a preventive measure in situations when group entities are experiencing liquidity stress**. The Committee is convinced that to preserve the subsidiary business model, the provision of any financial support to other group entities should continue to be voluntary and not imposed by supervisory authorities. In order to prevent spreading liquidity problems, the Committee recommends the Commission to specify carefully the circumstances and conditions under which assets could be transferred, and underlines that equal treatment across all MS - both parent and host, is key to avoiding contagion and maintaining financial stability.

3.2.3.3.1 Group financial support should be provided only under a **group financial agreement** and if a number of capital and liquidity conditions are met. The key condition should require that the financial support may only be granted if the entity providing it **complies and will continue complying at all times and under any circumstances with the prudential requirements of Directive 2006/48/EC or any higher capital requirement typical for the transferor's country.** The EESC recommends that this condition is respected by all **supervisors and mediators, including EBA** in cases of disagreement among members of the college or if an agreement is not achieved. We also believe that group financial support should be subject to approval by supervisors only after **risk assessment and stress testing** and the **market should be informed** about any provision of group financial support.

3.2.3.3.2 As a safeguard for the macro-financial stability in the transferor's country, **the supervisor of the transferor** should have the power **to prohibit or restrict a transfer of assets** under a group financial support agreement if it threatens the liquidity, solvency and financial stability of the transferor and its country.

3.2.4 *Triggers for early intervention and resolution*

3.2.4.1 The whole of this chapter seems to be correct and generally acceptable. Supervisors are entrusted with the difficult, delicate task of detecting, not only the circumstances where the requirements of the CRD are not met, but also the signals of a possible failure to meet such requirements. This implies the need of **sophisticated tools and professional abilities,** and an accrued attention to the market.

3.2.4.2 The tasks concerning the **decisions** of intervention, as well as the actions described in section 3.4, require a high degree of **subjective judgment** which, although well-grounded and professionally justified, might be challenged, in court or otherwise, by third parties or even by the institution itself. For supervisory authorities this implies liabilities and/or responsibilities which they should be prepared to face. Perhaps, a couple of clear cut quantitative triggers would help supervisors make decisions on early intervention with reduced reliance on subjective judgement and exposure to legal uncertainty. On triggers for resolution the Committee welcomes the Commission's ideas and recognises the need to combine and

(6) On financing the costs see section 3.4 of COM(2010) 579 final and Opinion OJ C 107, 6.4.2011, p. 16.
(7) See IMF, Financial Sector Assessment program, 2011, www.imf.org.
(8) The High-level Group on Financial Supervision in EU Chaired by Jacques de Larosiere, Report, 25 February 2009, Brussels, p. 64.

appropriately balance quantitative and qualitative triggers. We also recommend the Commission to pay special attention to those resolution triggers that are expected to signal the exact moment when the bail-in instruments are to be applied.

3.2.5 *Early intervention*

The measures which the Commission envisages seem to be correct and acceptable but the appointment of a **special manager** needs some attention. Earlier legal studies have recognised that the concept 'early intervention' has different meanings in different MS and the powers of the supervisory authorities to appoint a special manager may differ too. In some MS the national laws **may allow** the appointment of special managers and may need **only minor amendments.** In a number of MS the legal basis for appointing special managers exists thanks to provisions triggering early intervention measures when a bank is failing to meet the capital requirement. In other MS **the national company law may forbid** the appointment of a special manager by an entity other than the company's board or general assembly and **only a new law** can change or modify the existing legislation.

3.2.5.1 On the subject of **liabilities**, the Commission states that the appointment of a special manager should not imply a state guarantee, nor **expose supervisors to liabilities**. This is hardly acceptable from a purely legal point of view: a general principle is that whoever takes a decision, or an action, is responsible for its consequences. Any exception to such a principle not supported by law is likely to be challenged in court.

3.2.5.2 The EESC recommends that the appointment of a special manger should be possible on the basis of a clearly defined trigger when the supervisor, exercising the powers **under Article 136 CRD** is convinced that the management of the credit institution is **not willing or not able to** undertake the required measures. The Committee is convinced that if under a group treatment the decision to appoint a special manger is to be legally binding, it should be taken by the consolidating supervisor but in **consultation and close coordination with the host supervisors.**

3.2.5.3 The appointment of a special manager is a signal that the bank is experiencing problems, which may undermine depositors' trust and trigger bank runs. The EESC expresses concerns that when special managers are appointed for a number of institutions within the same period of time, this may cause serious disruptions and additional precautionary measures should be introduced in order to protect the banks concerned and the sector as a whole from possible contagion and confidence crisis developments.

3.2.6 *Resolution*

3.2.6.1 The actions provided for in this chapter are all well-conceived, but the Commission itself recognises that a **reform of bank insolvency laws** might be necessary and that an investigation would be considered (p. 8-9 of the Communication). In fact, the whole of the proposed actions can be considered as a **near-bankruptcy procedure, parallel but separate from the normal ones**. Rather than a reform, a new legislation is likely to be needed in most MS.

3.2.6.2 The main difference between resolution and bankruptcy is that after resolution the institution, or a part of it, will remain alive, a fact justifying the guidance and involvement of supervision and resolution authorities in the whole procedure. But **these authorities are not invested with judicial powers**, which complicate the attribution of powers and responsibilities, not to say liabilities. Commission seems to be well aware of such a problem: when dealing with safeguards for counterparties and market arrangements, a **judicial review** is evoked, 'to ensure that affected parties have appropriate rights to challenge the actions of authorities and seek financial redress'.

3.2.6.3 Here authorities could face a delicate and risky situation: an 'affected' party wishing to challenge the decision of the authorities could seek judicial redress and the court might **decide to block the whole procedure**. Under the existing legislations this risk exists and it is more than likely to arise; all efforts should be done in order to avoid the possibility that **resolution procedures be delayed or blocked**. Such procedures need to be timely and fast; as any delay or block could nullify the authorities' initiatives and trigger negative market reaction. A **change in legislations and judicial procedures** in most MS is no doubt necessary but since the insolvency frameworks and judicial procedures vary substantially in some of them the required changes will be significant.

3.2.7 *Debt write down*

The EESC welcomes the Commission's effort to analyse the challenges of resolving large, complex financial institutions (LCFIs) and the specific issues related to the debt write down tool. The Committee encourages the Commission to develop a framework where that tool effectively contributes to resolution of all institutions within the regime, including LCFIs, and underlines the importance of a common international framework. We hope that the Commission would therefore consider the agreement by the Basel Committee that systemically important financial institutions should have loss absorbing capacity beyond the minimum standards. The Committee stresses that bail-in tools could be recognised as a means to increase the loss absorbing capacity of financial institutions, including the systemically important ones, and welcomes their application as an alternative to bail-out with public money. However, the EESC expresses a number of concerns regarding the design and application of the bail-in instruments and encourages the Commission to study and address them with enhanced caution.

3.2.7.1 The EESC believes that when designing and exercising the debt-write-down power the usual ranking of claims established by insolvency law should be respected as much as possible. Any departure from it in exceptional circumstances should be established ex ante and preannounced.

3.2.7.2 The Commission should make sure that the regime is credible and spill-over effects will be avoided in cases when the main investors in a bank's bail-in instruments are other banks with interconnected businesses. The effectiveness of the bail-in instruments in periods of systemic crises and the effects of their simultaneous activation by many financial institutions should be considered carefully and additional measures should be proposed to avoid possible serious problems.

3.2.7.3 The Commission should analyse carefully the potential pro-cyclical behaviour and volatility of bail-in instruments in periods of crises and should consider when and to what extent they could be relied upon under such circumstances.

3.2.7.4 The EESC expects the Commission to conduct an impact assessment of the different bail-in-able instruments on the overall resilience of the banking sector and financial markets.

3.3 *Coordination of Cross-border Crisis Management*

3.3.1 *Coordinated resolution of EU banking groups*

3.3.1.1 The EESC welcomes the Commission's concern about achieving adequate cross-border coordination in crisis management and insists that the arrangements should ensure equal treatment of creditors and shareholders across home and host MS, protect against contagion in a crisis period and maintain financial stability in all MS.

3.3.1.2 Quite correctly, in Section 4 the Commission states that in the event of a failure a coordinated action is necessary, and that 'the measures outlined in Section 2 will ensure that the **resolution authorities have the same tools and powers**'. Such a statement, however, seems to fly in the face of another statement at the beginning of Section 3: '**the framework will not be prescriptive as to which measures are used in a particular case**'.

3.3.1.3 A coordinated action needs then a common willingness to adopt the same measures, a condition which, in the light of past experiences, is far from likely to happen. True, when drafting Section 3 the Commission probably referred to national cases only, whereas Section 4 refers to cross-border crisis, where the competence is transferred to a European Supervisory Authority (ESA). But the comment is not misplaced: **if each national authority is free to choose** its own procedures, those imposed by an **ESA might be different**, or in conflict, with the national ones. In such a case, the procedures concerning creditors of national branches of a foreign bank could be different from the procedures concerning creditors of a national bank. This might arise some concern as to **parity of rights** for creditors and, possibly, to cases of **conflict of rules** in the internal market. Some of these issues are addressed in detail by the consultation document and we hope that the consultation will help resolve most of them.

3.3.1.4 We are well conscious that MS would resist to the idea of prescriptive rules and that the opposite position may not be realistic; but leaving too much freedom of choice to national authorities would lead to difficulties when international crisis concerning groups arise. Probably, a **coordination of some major aspects** of the procedures (eventually under the umbrella of ESA) would be necessary before adopting national rules.

3.3.1.5 As to the **coordination framework**, the Commission considers two reforms: one based on **resolution colleges**, the other on **group resolution authorities**. The latter seems more rational, flexible and effective, since the **leading role would be for the resolution authorities** with the involvement of the European Banking Authority (EBA) as an observer. The other, consisting in an enlargement of the existing supervisory colleges with the addition of the resolution authorities, might have difficulties in reaching rapid decisions, due to supervision and resolution concerns.

3.3.1.6 **One major concern: a group resolution scheme *would not be binding***. National authorities which disagree with the scheme would have the freedom to take 'independent action', albeit 'being required' to give some consideration to the impact of their decision on other Member States, 'give reasons for their decisions' to the resolution colleges, and 'discuss' their reasons with the other members of the college. Again, past experiences give some ground to a **negative comment**: when national interests are at stake, there is a high probability that each national authority will protect them before any other concern. The proposed procedure is too clumsy, time consuming and inapplicable in cases when the national authorities will have to act immediately. Expecting national authorities to wait and refrain from adopting national measures until the group level resolution authorities make a decision is unrealistic especially in cases when the subsidiaries are too big for the local market.

3.3.1.7 The EESC recommends the Commission to simplify the procedure under which MS that disagree with the proposed plan can express their views.

3.4 *Financing resolution*

The EESC has already commented on this subject by Opinion on 'Banks Resolutions Funds' ([9]). The Committee would like to re-emphasise, that any draft legislative provision in this

([9]) OJ C 107, 6.4.2011, p. 16.

field should be accompanied by an in-depth analysis and impact assessment, taking fully into account the implementation of bank levies or taxes in some Member States.

3.4.1 *Resolution funds and Deposit Guarantee Schemes (DGS)*

The EESC has already expressed its views on BRF and DGS in a recent Opinion ([10]).

3.4.2 *Design of resolution funds*

3.4.2.1 There is some concern regarding an apparently innocent final sentence: '… and **costs exceeding the capacity of the fund are subsequently recovered by the banking sector**.' Calling the whole of a profession to cover the losses originated by one of their members is not an unusual policy, but for doing so the conditions should be strictly defined and preceded by an in-depth analysis of the consequences. An appropriate **legal basis** is needed. Imposing contributions to a fund by a **regulation** is an accepted procedure, but a law is required if losses are to be covered directly by third parties.

3.4.2.2 As for the **basis for contributions** an acceptable harmonised approach might be based on the total of liabilities after their qualitative evaluation or on liabilities excluding guaranteed deposits. But again, the flexibility devil is here: each Member State would be able to decide in a different way, 'provided that this would not result in distortions of the Internal Market'. Different criteria lead to different contribution systems and to different levels of costs for each national industry: a **distortion is the unavoidable result of flexibility**.

3.4.2.3 A lot of MS have already introduced taxes and **levies for which the parameters (base, rate and scope) differ considerably**. Regarding these differences, the Committee would like to underline the importance of **ensuring an appropriate coordination in the short term by introducing practical solutions, including bilateral agreements where appropriate. In addition, we would like to stress again the significance of built-in flexibilities in the national systems of levies in the short run in view of the ongoing changes in the regulatory area and developments towards an appropriate EU-wide solution in the medium term**.

3.4.3 *Size of funds*

The EESC has already commented on this in a recent Opinion ([11]). Again, the need for a **quantitative impact assessment** is required, as well as an evaluation of the impact of a further drain of funds from the credit-available resources of the financial sector, together with the effects of the CRD.

3.5 *Next steps and future work*

3.5.1 *Next steps: a coordination framework*

No doubt, national insolvency laws will have to be modified to accommodate the new rules concerning resolution, but **how and how long it will take is open to speculation**. Modifying a law needs the involvement of governments and parliaments: a usually lengthy procedure, more so when sensitive issues are concerned. Before adopting a new regulation, the Commission should try to avoid clashes with **established principles** in some MS.

3.5.2 *An insolvency framework (medium term)*

Administrative liquidation is not an unknown procedure, but in most MS it is usually done by a **liquidator appointed by a tribunal and under its supervision**. Liquidation of banks entrusted to, and under the authority of, administrative banking entities would mean the **transfer of powers from judicial to administrative authorities**: something which might conflict with national laws, or even constitutions.

3.5.3 The EU crisis management framework proposed by the Commission for the financial sector differs from the crisis management approach applied recently in some MS under the EU/IMF-supported programmes ([12]). They envisage bank recapitalisation with public funds, including from the EU-IMF financing which may continue in the next couple of years exactly at the time when the new European crisis management framework and bank resolution funds (BRF) are to be implemented in the rest of the EU. The EESC expects the Commission to propose appropriate transition measures within a realistic timeframe which will enable such MS to organise a fast, smooth and complete transition to the proposed EU crisis management framework and BRF, compatible with the need to avoid weakening their banking sectors.

Brussels, 16 June 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

([10]) See footnote 9.

([11]) See footnote 9.

([12]) See IMF Country Reports for Greece (No 1168) and Ireland (No 10366 and No 1147).