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39. Calls on the Commission to clarify in its legislative proposals the role of the supervisory authorities in remuneration policy;
40. Stresses that variable remuneration should not be paid through vehicles or methods that facilitate the avoidance of payment of income taxes on this remuneration;
41. Calls for it to be ensured that, when remuneration is being regulated, this is not done to the detriment of the fundamental rights guaranteed by the Treaties, in particular the right of the social partners – in accordance with national laws and practices – to conclude and enforce collective agreements;
42. Calls on the Commission to set up an EU crisis management framework in order to avoid a new financial crisis, taking into account initiatives taken by international bodies such as the G20 and the IMF;
43. Calls on the Commission to encourage the Member States to remind listed companies and financial services companies of their social responsibility, their tarnished image and the need to set a good example in a prosperous international society;
44. Considers that continuing to do business or maintain branches in non-cooperative countries is contrary to the long-term interests of companies generally, and calls for the development of a European strategy to combat tax havens in order to implement the pronouncements made by the G20 in London and Pittsburgh;

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45. Instructs its President to forward this resolution to the Council, the Commission and the EU and national regulatory authorities.

Cross-Border Crisis Management in the Banking Sector

P7_TA(2010)0276

European Parliament resolution of 7 July 2010 with recommendations to the Commission on Cross-Border Crisis Management in the Banking Sector (2010/2006(INI))

(2011/C 351 E/09)

The European Parliament,

- having regard to Article 225 of the Treaty on the Functioning of the European Union,
- having regard to its resolution on the Commission communication on implementing the framework for financial markets: Action Plan ⁽¹⁾, of 13 April 2000,
- having regard to the Commission Communication of 20 October 2009 entitled ‘An EU Framework for Cross-Border Crisis Management in the Banking Sector’ (COM(2009)0561),
- having regard to the proposal of 23 September 2009 for a regulation of the European Parliament and of the Council on Community macro prudential oversight of the financial system and establishing a European Systemic Risk Board (COM(2009)0499),

⁽¹⁾ OJ C 40, 7.2.2001, p. 453.

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- having regard to the proposal of 23 September 2009 for a Council decision entrusting the European Central Bank with specific tasks concerning the functioning of the European Systemic Risk Board (COM(2009)0500),
 - having regard to the proposal of 23 September 2009 for a regulation of the European Parliament and of the Council establishing a European Banking Authority (COM(2009)0501),
 - having regard to Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions ⁽¹⁾,
 - having regard to Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions ⁽²⁾,
 - having regard to Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes ⁽³⁾,
 - having regard to Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions ⁽⁴⁾,
 - having regard to the Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent ⁽⁵⁾, the Third Council Directive 78/855/EEC of 9 October 1978 concerning mergers of public limited liability companies ⁽⁶⁾ and the Sixth Council Directive 82/891/EEC of 17 December 1982, concerning the division of public limited liability companies ⁽⁷⁾,
 - having regard to the Memorandum of Understanding of 1 June 2008 on cooperation between the financial supervisory authorities, central banks and finance ministries of the European Union on cross-border financial stability,
 - having regard to Recommendation 13 of the report by the High-Level Group on Financial Supervision chaired by Jacques de Larosière submitted to President Barroso on 25 February 2009, which states, '[t]he Group calls for a coherent and workable regulatory framework for crisis management in the EU',
 - having regard to Rules 42 and 48 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Legal Affairs (A7-0213/2010),
- A. whereas there is an internal market for banking services in the Union, and not an amalgam of services independent of one another, and whereas that internal market is critical for the Union's global competitiveness,
- B. whereas there is at present insufficient international regulation of crisis management in the banking sector,

⁽¹⁾ OJ L 177, 30.6.2006, p. 1.

⁽²⁾ OJ L 177, 30.6.2006, p. 201.

⁽³⁾ OJ L 135, 31.5.1994, p. 5.

⁽⁴⁾ OJ L 125, 5.5.2001, p. 15.

⁽⁵⁾ OJ L 26, 31.1.1977, p. 1.

⁽⁶⁾ OJ L 295, 20.10.1978, p. 36.

⁽⁷⁾ OJ L 378, 31.12.1982, p. 47.

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- C. whereas existing EU and international supervisory mechanisms for the financial sector have proven ineffective in preventing or sufficiently containing contagion,
- D. whereas the cost of management of the crisis fell too heavily on taxpayers, growth and jobs,
- E. whereas the participation of shareholders in burden-sharing and then of creditors is crucial for reducing to a minimum the cost for taxpayers arising from any crisis of financial markets and institutions,
- F. whereas the absence or weakness of Union regulations and supervision has resulted in uncoordinated actions by national authorities and has increased the risk of protectionist behaviour and distortion of competition including through State aid and has threatened the construction of an internal market for financial services,
- G. whereas a uniform approach to preventing the failure of banking groups would be more in keeping with the concept of an internal market,
- H. whereas a strong internal market for financial services is critical for the Union's global competitiveness,
- I. whereas players in the banking sector should be made accountable and whereas that accountability should contribute to the crucial objective of rebuilding the financial markets to serve the financing of the economy,
- J. whereas, as a result of the crisis, there is a need for, and citizens expect, the EU institutions, working in dialogue with the G-20 and other international fora, urgently to create an adequate framework which, in the event of a crisis, preserves financial stability, minimises the cost to taxpayers, preserves basic banking services and protects depositors,
- K. whereas financial stability and integrated financial markets require cross-border supervision of cross-border and systemic financial institutions,
- L. whereas the purpose of a EU framework for cross-border crisis management is to empower the authorities to adopt measures that include intervention in the management of banking groups, when this is necessary (and especially, but not exclusively, in deposit-taking banks, where there is a possibility of systemic risk),
- M. whereas the purpose of an EU framework for cross-border crisis management is also to regulate cross-border banking groups and individual banks conducting cross-border operations exclusively through branches; whereas there should also be uniform regulation in regard to cross-border banking groups,
- N. whereas a robust response to crisis requires a coherent and comprehensive approach entailing better supervision (implementation of the new EU supervisory architecture), better regulations (ongoing initiatives such as those relating to Directive 2006/48/EC, Directive 2006/49/EC, Directive 94/19/EC and executive remuneration) and an effective EU crisis-management framework for financial institutions,
- O. whereas the polluter-pays principle should be extended to the financial sector because of the devastating impact of failure across countries, sectors and the entire economy at large,
- P. whereas early intervention in banking crises, and their resolution, should be initiated on the basis of clearly defined criteria, including sub-capitalisation, reduced liquidity and the deterioration of asset quality and value; whereas intervention should be tied in with deposit-guarantee schemes,

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- Q. whereas a strict EU code of conduct for management, as well as mechanisms to deter inappropriate behaviour, are required and should be developed in alignment with similar international initiatives,
- R. whereas it is important that the Commission carries out full impact assessments in any consideration of the question whether new guidelines for the management of companies would be appropriate,
- S. whereas within three years of a European Banking Authority (EBA), an EU banking resolution regime, an EU financial stability fund and a resolution unit becoming operational, the Commission should study the appropriateness of expanding the scope of the crisis-management framework to other non-bank financial institutions including, but not limited to, insurance companies and asset and fund managers and should also study the feasibility and appropriateness of establishing a network of national stability funds for all the institutions that do not participate in the EU financial stability fund, as proposed in recommendation 3 in the Annex,
- T. whereas moral hazard should be avoided to prevent excessive risk taking, and a framework that protects the system, not delinquent participants in that system, is called for, in particular no resolution funds should be used to bail out shareholders of banks or to reward the management for its own failure; whereas, institutions which make use of an EU banking resolution regime in this context and should face consequences such as administrative and reparation measures; whereas the elimination of moral hazard should therefore become a guiding principle in future financial supervision,
- U. whereas the present economic, financial and social problems and multiple new regulatory demands on banks, require a gradual and sensible approach but should not deter from an ambitious and urgent agenda,
- V. whereas asset transfer within a banking group should not, in any event, endanger the financial and liquidity stability of the transferor and should be effected at a fair market valuation or price; whereas clear principles should be developed for the valuation of impaired assets and for the treatment of subsidiaries and branches domiciled in host countries,
- W. whereas the Union should build a common understanding of who should do what, when and how in the event of crisis in financial institutions,
- X. whereas the measures applicable in the banking sector should promote the real economy in its short and long-term financing and investment needs,
- Y. whereas wide gaps between national regulatory and insolvency regimes should be bridged through a harmonised framework and reinforced dialogue among national supervisors and authorities within the cross-border stability groups,
- Z. whereas the increasing size, complexity and interconnectedness on both regional and global levels have shown that the failure of institutions, irrespective of their size, may have spill-over effects across the financial system, therefore calling for an effective crisis resolution framework to be put in place for all banks, in a gradual and phased process, recommending that an initial focus be put on the institutions with the highest concentration of risk; whereas such a crisis-resolution framework should take into account similar efforts of international forums to the greatest extent possible,
- AA. whereas a limited number of banks (cross-border systemic banks) represent an extremely high level of systemic risk due to their size, complexity and interconnectedness across the Union, calling for an urgent and targeted special regime, more generally equitable resolution regimes are required for other cross-border financial institutions,
- AB. whereas an EU crisis-management framework, in order to be effective in supporting interventions, requires a common set of rules, appropriate expertise and financial resources, which should therefore also be the key pillars of the proposed priority regime for cross-border systemic banks,

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- AC. whereas supervision, early intervention powers and measures related to resolution should be considered as three interlinked steps of a common framework,
- AD. whereas the fast-track special regime for cross-border systemic banks should evolve in the medium or long term towards a universal regime covering all cross-border financial institutions in the Union and this should include a harmonised EU insolvency regime,
- AE. whereas any stability fund developed on a pan-Union basis should be ring-fenced for the purposes of future crisis resolution alone and not to be used for the repayment of past interventions or problems resulting from the financial crisis of 2007/2008,
1. Requests the Commission to submit to Parliament by 31 December 2010, on the basis of Articles 50 and 114 of the Treaty on the Functioning of the European Union, one or more legislative proposals relating to an EU crisis-management framework, an EU financial stability fund (Fund), and a resolution unit following the detailed recommendations made in the Annex hereto, taking into account initiatives taken by international bodies, such as the G-20 and the International Monetary Fund, in order to ensure a global level playing field and based on a profound analysis of all alternatives available, including an impact assessment;
 2. Confirms that the recommendations respect the principle of subsidiarity and the fundamental rights of citizens;
 3. Considers that the financial implications of the requested proposal should be covered by appropriate budgetary allocations (excluding the contributions to the Fund which are to be a responsibility of participating banks);
 4. Instructs its President to forward this resolution and the accompanying detailed recommendations to the Commission, the Council, and the parliaments and governments of the Member States.

ANNEX TO THE RESOLUTION:

DETAILED RECOMMENDATIONS AS TO THE CONTENT OF THE PROPOSAL REQUESTED

Recommendation 1 relating to a common EU crisis-management framework

The European Parliament considers that the legislative act to be adopted should aim to regulate as follows:

1. Create a European crisis-management framework with a common minimum set of rules and ultimately a common resolution and insolvency law, applicable to all banking institutions operating in the Union and with the following objectives:
 - to promote the stability of the financial system;
 - to limit or prevent financial contagion;
 - to limit the public cost of interventions;
 - to optimise the position of depositors and guarantee their equal treatment across the Union;
 - to preserve the provision of core banking services;
 - to avoid moral hazard, charge costs to industry and shareholders and internalise negative externalities created by financial markets and institutions;

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- to ensure equal treatment of each class of creditors in the Union including the fair treatment of all subsidiaries and branches of the same cross-border institution in all Member States;
 - to ensure respect for the rights of employees;
 - to strengthen the internal market for financial services and its competitiveness.
2. Progressively converge existing national resolution and insolvency laws and supervisory powers and, within a reasonable calendar, establishing an effective single EU regime.
 3. Once the process related to harmonisation of insolvency and supervision provisions is completed at the end of a transition period establishing a single EU resolution authority as a separated body or as a unit within the EBA.
 4. In order to improve cooperation and transparency, carry out peer reviews of supervisors on a regular basis under the leadership of the EBA building on prior self-assessment.
 5. Where the need for a resolution or the winding-up of a cross-border institution arises, carry out an in-depth investigation (via independent experts appointed by the EBA) in order to highlight the causes and responsibilities involved. Ensure that Parliament is informed of the results of those investigations.
 6. Attribute to the relevant supervisor the responsibility for crisis management (including powers of early intervention) and the approval of each bank's contingency plan, as follows:
 - for cross-border systemic banks: the EBA, in close cooperation with the college of national supervisors and the cross-border stability groups (as defined in the Memorandum of Understanding of 1 June 2008);
 - for all other cross-border non-systemic banks: the consolidated supervisor within the college (under its agreed governance), under the coordination of the EBA and in consultation with the cross-border stability groups;
 - for local banks: the local supervisor.
 7. Design a common set of rules for crisis management including common methodologies, definitions and terminology, and a set of relevant criteria for stress test for cross-border banks.
 8. Ensure that resolution plans become a mandatory regulatory requirement; the resolution plans should include an in-depth self-assessment of the institution and details of a fair distribution of assets and capital, with appropriate clawback of transfers from subsidiaries and branches to other units, and identification of cleavage planes that allow separation of stand-alone modules, especially those providing vital infrastructure such as payment services. The requirement for the content of those plans should be proportionate to the bank's size, activities and geographical spread. Ensure that those resolution plans are regularly updated.
 9. Design, before December 2011, a European supervisory rating for banks (Risk Dashboard) based on a common set of quantitative and qualitative indicators. The Risk Dashboard indicators should be evaluated according to the nature, scale and complexity of the institution in question while preserving confidentiality. The Risk Dashboard should comprise at least:
 - capital;
 - leverage;
 - liquidity;
 - mismatch of maturity, interest rate and currency;
 - liquidity of assets;
 - large exposures and risk concentrations;
 - expected losses;

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- sensitivity to market prices, interest and exchange rates;
 - access to funding;
 - outcomes of stress tests;
 - effectiveness of internal controls;
 - quality of management and corporate governance;
 - complexity and opacity;
 - risk outlook;
 - compliance with law or regulatory requirements.
10. Empower supervisors to intervene on the basis of thresholds of the supervisory rating, in full accordance with the principle of proportionality, and provide for reasonable remedy periods for the institutions to address the weaknesses by themselves.
11. Provide supervisors with appropriate legal tools for intervention by amending the relevant sectoral legislation or by introducing new sectoral legislation to:
- require adjustments of capital (above the minimum regulatory requirements) or liquidity and changes in the business mix and internal process;
 - recommend or impose changes of management;
 - impose dividend retention and restrictions in order to consolidate capital requirements; limit the terms of banking licences;
 - allow supervisors to trigger separation of stand-alone modules, whether failing or successful, from the institution to ensure core functions can continue to operate;
 - impose a total or partial sale;
 - transfer assets and liabilities to other institutions with the objective to ensure continuity of systemically important operations;
 - create a bridge bank or good bank/bad bank;
 - require swaps of debt into equity, or other convertible capital, depending on the nature of the institution, with appropriate haircuts;
 - take temporary public control;
 - impose a temporary suspension (moratorium) of certain types of claims against the bank;
 - control the process of intra-group asset transfers;
 - appoint a special administrator at group level;
 - regulate winding-up;
 - allow the EBA to authorise the intervention of the EU financial stability fund including for the provision of emergency medium-term funding, capital injections and guarantees;
 - impose administrative and reparation measures for those institutions using the Fund.

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12. All the tools referred to in point 11 shall be applied in full compliance with the EU competition rules and ensuring equal treatment of creditors and depositors across the Member States.

Recommendation 2 relating to cross-border systemic banks

The European Parliament considers that the legislative act to be adopted should aim to regulate the following:

1. Cross-border systemic banks, due to their special role in the internal market of financial services, need to be addressed urgently by way of a new special regime to be known as European Bank Company Law, to be designed by the end of 2011. A more general regime for all the other cross-border banks shall also be proposed.
2. Cross-border systemic banks shall adhere to the new reinforced special regime; that regime shall overcome legal impediments to effective action across borders while ensuring the clear, equal and predictable treatment of shareholders, depositors, creditors, employees and other stakeholders, in particular after intra-group asset transfers. This shall include a special '28th' regime for insolvency procedures for cross-border systemic banks, which may later be extended to all cross-border banks;
3. The Commission shall adopt a measure setting up, before April 2011, criteria for definition of cross-border systemic banks. On the basis of such criteria; such banks will be identified on a regular basis by the board of supervisors, after consultation of the European Systemic Risk Board, (Article 12b of the Economic and Monetary Affairs Committee's report of 17 May 2010 on the proposal for a regulation of the European Parliament and of the Council establishing a European Banking Authority (the 'EBA Report');
4. For each of the cross-border systemic banks, the EBA shall exert supervision and act through the competent national authorities (in accordance with the EBA Report);
5. The Commission shall adopt a measure proposing a mechanism of asset transfers within Cross-Border Systemic Banks taking due regard of the need to protect the rights of host countries.
6. An EU financial stability fund and a resolution unit shall support interventions led by the EBA relating to crisis management, resolution or insolvency, as regards cross-border systemic banks.

Recommendation 3 relating to an EU financial stability fund

The European Parliament considers that the legislative act to be adopted should aim to regulate the following:

1. An EU Financial Stability Fund (Fund) shall be created, under the responsibility of the EBA, to finance interventions (rehabilitation or orderly winding-up) aimed at preserving the system's stability and limiting contagion from failing banks. The Commission shall present to Parliament, by April 2011, a proposal with details of the Fund's charter, structure, governance, size, operating model as well as a precise calendar for implementation (in accordance with points 2 and 3 below).
2. The Fund shall be:
 - pan-European;
 - funded *ex-ante* by the cross-border systemic banks on risk-based, countercyclical criteria and taking into account the systemic risk posed by an individual bank. Banks contributing to the Fund shall not be obliged to contribute to similar stability funds or resolution units in their own countries;
 - separate and independent from deposit-guarantee schemes;
 - adequately sized to support temporary interventions (such as loans, asset purchases and capital injections) and cover costs of resolution or insolvency procedures;
 - gradually built, recognising the present economic environment;
 - designed in a way that does not create moral hazard: the Fund shall not be used to bail out bank shareholders or to reward the management for its own failure;

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3. The Commission shall also address:

- investment guidelines for the Fund's assets (risk, liquidity, alignment with EU targets);
- selection criteria for the Fund's asset manager (internal or via a private or public third party such as the European Investment Bank);
- the possibility of contributions qualifying for calculation of regulatory capital ratios;
- administrative measures (penalties or compensation schemes) for those cross-border systemic banks which make use of the Fund;
- conditions for eventual expansion of the scope of the Fund to include all cross-border banks beyond cross-border systemic banks;
- scope (and appropriateness) of the creation of a network of national funds to cater for all institutions that do not participate in the Fund. An EU framework should then be established to regulate the existing and future national funds which will comply with a uniform and binding set of common rules.

Recommendation 4 relating to a resolution unit

The European Parliament considers that the legislative act to be adopted should aim to regulate the following:

An independent resolution unit shall be established within the EBA to lead the resolution and insolvency procedures for cross-border systemic banks. That unit shall:

- operate within the strict boundaries defined by the legal framework and the EBA's competencies;
- comprise a pool of legal and financial expertise specially skilled in bank restructurings, turnarounds and liquidation;
- cooperate closely with national authorities on implementation, technical assistance and sharing of staff;
- propose disbursements from the Fund;
- where the need for a resolution or winding-up of a cross-border institution arises, an in-depth investigation should be carried out by independent experts appointed by the EBA in order to analyse and highlight the causes and responsibilities involved. Parliament should be informed of the results of the investigations.

European Financial Stability Facility and European Financial Stabilisation Mechanism and future actions

P7_TA(2010)0277

European Parliament resolution of 7 July 2010 on the European Financial Stability Facility and European Financial Stabilisation Mechanism and future actions

(2011/C 351 E/10)

The European Parliament,

- having regard to the Treaty on the Functioning of the European Union (TFEU), in particular Articles 122 and 143 thereof,
- having regard to the Euro Group's terms of reference of 7 June 2010 on a European Financial Stability Facility,