



The EU's current Innovations in Financial Market Policy

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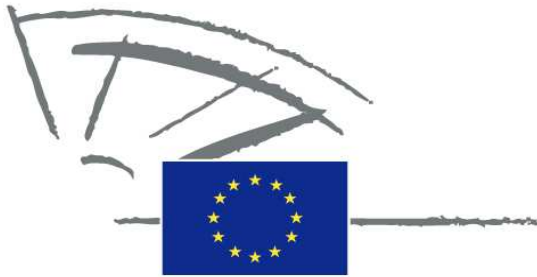
The most important regulatory lessons from the crisis

Macro-economic level: increasing transparency, cooperation and supervision

- I. Economic Governance in the EMU
- II. Financial Supervisory Architecture

Micro-economic level: filling regulatory loopholes

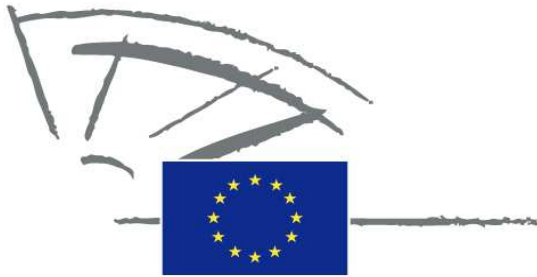
- I. Alternative Investment Fund Manager (AIFM)
- II. Derivates
- III. Short Selling
- IV. Credit Rating Agencies
- V. Capital Requirements
- VI. Deposit Guarantee Scheme (DGS)



I. Economic Governance in the EMU

Key issues in the Commission Proposals:

- Sanctions not only in the corrective, but also in the preventive arm of SGP:
 - interest-bearing deposit
 - not-interest-bearing deposit
 - fine
- Sanctions triggered, if no objection by Council voting in reversed qualified majority within ten days
- Principle of prudent fiscal policy added: annual expenditure growth shall not exceed medium-term rate of growth
- Debt criterion operationalised; numerical benchmark for convergence towards 60% GDP threshold
- Macroeconomic imbalances to be identified and monitored by a scoreboard
- EU budgetary coordination framework to be reflected in national budgetary frameworks



I. Economic Governance in the EMU

Key issues for the European Parliament:

- European Semester to be integrated in Stability and Growth Pact
- Strengthening the Community method:
 - more independent role for European Commission
 - reversed qualified majority: on sanctions and, if legally possible, already earlier in the process
 - reports of the Commission and decisions of the Council to be published
- Strengthening national ownership:
 - codified objectives for the fiscal framework to be transposed in national law
 - Safeguards for the quality and independence of national statistics agencies and forecasting institutions
 - Involvement of national parliaments
- Ideas: Debt Limit like in Germany? European Monetary Fund? Eurobonds?



II. Financial Supervisory Architecture

State of play:

- European Supervisory authorities working since 1 January 2011
 - European Banking Authority (EBA) in London
 - European Insurance and Occupational Pensions Authority (EIOPA) in Frankfurt
 - European Securities and Markets Authority (ESMA) in Paris
- European Systemic Risk Board (ESRB) for macro-prudential oversight
 - Chaired by the President of the European Central Bank
 - Administrative and logistic support by ECB
 - Advisory Scientific Committee and Advisory Technical Committee



II. Financial Supervisory Architecture

Key issues:

- European Supervisory Authorities (ESAs) with direct competences towards national supervisory authorities and individual financial institutions:
 - if breach of Community law
 - in emergency situations
 - in situations of disagreement between national authorities
- Omnibus Directives: Competences to be implemented in existing legislation
- Leading role within Supervisory Colleges
 - Mandate to create a Single Rule Book
 - Trigger to prohibit or restrict harmful financial activities
 - Joint Committee established in order to facilitate cooperation between ESAs and ESRB



I. Alternative Investment Fund Manager (AIFM)

State of play:

- AIFM-Directive: Rules for authorisation, ongoing operation and transparency of managers of alternative investment funds
- Commission proposal of 30 April 2009
- Difficult negotiations
- Compromise adopted by European Parliament in November 2010
- Transposition in national law until 2013; separate timeline for provisions dealing with third countries



I. Alternative Investment Fund Manager (AIFM)

Key issues:

- Scope of the Directive:
 - Principle of proportionality / Question of systemic risk
 - Only active marketing covered
- Capital Requirements and Own Funds
- Valuation: internal and/or external valuation
- Depositories
 - depository located in the country where the fund is established
 - special requirements for third country depositories



I. Alternative Investment Fund Manager (AIFM)

Key issues:

- Third Countries

- from 2013 on: EU-passport for EU manager with EU funds; national private placements for marketing of third country funds
- 2015: Assessment by European Securities and Markets Authority
 - Third Country Passport under certain conditions: effective cooperation agreements; minimum standards against money laundering and terrorism financing
 - National private placements to expire in 2018



II. Derivatives

Main topics of the proposal:

- all standardised OTCs will have to be cleared centrally
- corporates will have to clear only positions that are systemically relevant: an information threshold and a clearing threshold are introduced to identify these positions
- bilateral OTCs remain possible, but will need to be reported to trade repositories and will imply higher capital requirements
- ESMA will get a key role in regulating and supervising of CCPs as well as in dispute settlement and registering trade repositories
- CCPs will be considered as systemically relevant institutions and will have to build up robust governance arrangements



II. Derivatives

Main problems from an EP's point of view:

- subject matter and scope
- definitions of financial and non-financial counterparties
- criteria for the adoption of information and clearing thresholds for non-financial counterparties
- structure of authorisation and supervision of CCPs, establishment of colleges
- interoperability arrangements / systemic risk
- international level playing field / third country question



III. Short Selling

Main topics of the proposal:

- more transparency:
 - a low threshold for notification of a position will be introduced
 - transparency requirements apply to OTC as well
 - a requirement of marking of short orders will be introduced
 - exemptions for: shares of a company where the principal market is outside the EU, market making activities, primary market operations performed by dealers
- in emergency situations short selling activities that would otherwise be legitimate or pose minimal risks can be prohibited or restricted
- ESMA will be given a key co-ordination role
- competent authorities will get access to documents, the right to obtain information and to take enforcement action



III. Short Selling

Main problems from an EP's point of view:

- current approach is rather fragmented which limits the effectiveness, creates confusion and results in regulatory arbitrage
- adequacy of thresholds for disclosure of significant net-short-position
- marking and flagging of short orders
- restrictions of naked short selling
- exemption for intra-day-trade and market makers
- deadlines for buy-in-procedure



IV. Credit Rating Agencies

Main issues:

- oligopolistic structure of the market, thus a lack of competition
- business-model in which the issuer pays for the rating
- lack of accountability of the credit rating agencies
- lack of transparency about the methods



V. Capital Requirements

State of the play:

- own-initiative report of the European Parliament voted in September 2010
- proposals by the Basel Committee published in September 2010
- timeframe: Commission proposal expected in summer 2011



V. Capital Requirements

Main topics of the Basel proposal:

- Core Tier-1 becomes the essential factor for the calculation of the capital requirements. It should only consist of nominal capital plus return. Other forms of capital should become secondary over time.
- minimum common equity requirement should increase up to 4.5% in 2015, the Tier 1 capital requirement should increase up to 6% in 2015
- an additional capital conservation buffer of 2.5% should be introduced
- an additional countercyclical buffer of up to 2.5% should be introduced
- a non-risk-based leverage ratio should be introduced: Tier-1 leverage ratio of 3% for a test period, based on the results the ratio may be adjusted from 2017 on with the aim of migrating it to Pillar 1 on 1 January 2018



V. Capital Requirements

Main problems from an EP's point of view:

- quantitatively and qualitatively higher capital requirements are necessary but we should not overburden the financial institutions
- the future regulation should not discriminate against certain business models
- capital requirements are not the only regulation imposed on the financial sector at the moment but the cumulative effects of all current proposals and projects are yet unknown
- the introduction of higher requirements will only make sense if it happens on a global level, the international level playing field must be maintained



VI. Deposit Guarantee Scheme (DGS)

State of the play:

- proposal of the European Commission published in June 2010
- discussion in the European Parliament ongoing: draft report expected on 24 February 2011
- timeframe:

vote in Committee	9 May 2011
vote in Plenary	June 2011



VI. Deposit Security Scheme (DGS)

Main topics of the proposal:

- all financial institutions and security schemes will be covered
- simplification and harmonisation, in particular as to the scope of coverage and the arrangements for payout
- reduction of the time limit for paying out depositors (to 7 days)
- target level of 1.5% of eligible deposits which must be on hand after a transition period of 10 years
- additional 0.5% ex-post of eligible deposits contributions must be paid if necessary
- mutual borrowing between DGSs should be possible in certain circumstances
- contributions to the DGSs should be risk-based



VI. Deposit Guarantee Scheme

Main problems from an EP's point of view:

- target level of 1.5% of eligible deposits is too high
- focus on covered instead of eligible deposits
- ex-post contributions could have procyclical effects
- time for payment of depositors (7 days) is too short
- contributions to the scheme are not realistic
- mutual borrowing facility is not viable considering the differences between current schemes
- well-proven elements of existing schemes should be preserved
- more preventive measures should be allowed for



➔ The European answer to the crisis:

1. Decrease the likeliness of a new crisis: more transparency, more effective supervision, more cooperation
2. Increase the protection mechanisms in case of a crisis: prevent a spread of a crisis, higher buffers, more consumer protection