



---

## **THE POINT OF VIEW OF THE INDUSTRY**

---

**CARMINE LAMANDA - SERGIO LUGARESÌ**  
**INSTITUTIONAL AND REGULATORY STRATEGIC ADVISORY**

---

Brussels 17 July 2009 CEPS

## CONTENTS

---

- INTRODUCTION
- MAKING BANKING FAILURE POSSIBLE (A WORLDWIDE ISSUE)
- CRISIS MANAGEMENT AND BURDEN SHARING IN THE EU

## MAKING FAILURE POSSIBLE INTRODUCTION

---

- IIF, “RESTORING CONFIDENCE, CREATING RESILIENCE”, JULY 2009.
- THE INTERNATIONAL INSTITUTE OF FINANCE (IIF): 380 FINANCIAL INSTITUTIONS FROM ALL OVER THE WORLD (THE INDUSTRY)
- TAKE RESPONSIBILITIES TOWARD THE FINANCIAL CRISIS
- COMMIT TO ACTIONS
- RECOMMENDATIONS TO REGULATORS AND SUPERVISORS
  
- WE PARTICIPATED IN THE PREPARATION, DON'T NECESSARILY AGREE ON EVERYTHING
- STILL A PRELIMINARY DRAFT
- TO BE PUBLISHED BY 23 JULY

## MAKING FAILURE POSSIBLE ADDRESSING THE CONFIDENCE DEFICIT 1

---

Ultimately, what drives the development of a jurisdiction-focused, self-sufficiency approach is a failure of confidence in other authorities and in the global market. Authorities consider that in the event of a failure, or near-failure, of a cross-border group, stakeholders in one jurisdiction – depositors, creditors, the financial system, taxpayers – will suffer disproportionately compared to stakeholders in other jurisdictions. It is possible to identify three clear reasons for this deficit in confidence :

- Firstly, concern that other authorities, faced with the imminent collapse of a cross-border group, will be compelled to maximise the interests of shareholders in their own jurisdictions;
- Secondly, concern that insolvency laws will operate in a such a way as to prejudice creditors and depositors in host jurisdictions;
- Thirdly, there is a lack of confidence that cross-border groups will run their affairs in such a manner that, in the event of failure, stakeholders in one jurisdiction will not be prejudiced.

**The crisis demonstrated that the distinction between crisis prevention, management and resolution rules is NOT helpful.**

## MAKING FAILURE POSSIBLE ADDRESSING THE CONFIDENCE DEFICIT 2

---

***Recommendation 33.** Large institutions play an important role in supporting the global economy. Artificial restrictions on size could produce materially distorting effects and unmanageable risk patterns within the system. Industry agrees however, that in addition to ensuring that such institutions meet the highest standards of risk management, it is essential that it be made possible for such institutions to fail, that is to exit the market in an orderly manner.*

**It is important to make it feasible for large institutions to be able to fail in a non-disruptive fashion, that is, to be able to exit the market in an orderly and reasonably predictable fashion.**

## MAKING FAILURE POSSIBLE INSOLVENCY PLANNING

---

***Commitment XVII.** The possibility should be explored of including insolvency planning in the contingency planning that large firms already carry out to cover difficult eventualities.*

**Such planning should be developed in close collaboration with supervisory colleges. This should include, for example, identifying events which would trigger the activation of pre-insolvency plans.**

**For such an approach to be successful it is essential that planning be carried out in confidence between the firm and its relevant authorities. Disclosure of contingency planning could undermine stability by giving market counterparties a road-map to the firm's intentions, facilitating the taking of positions against it.**



**We understand the insolvency plan to be a corporate governance simulation to test the ability of the parent company to manage a group in a crisis in an orderly way.**

## MAKING FAILURE POSSIBLE CRISIS MANAGEMENT

---

**Recommendation 47.** *The FSB should, as a priority, develop a convention on cross-border crisis management. The FSB should develop a coordination and mediation role with respect to the preparation of arrangements for cross-border crisis management concerning individual groups.*

**Recommendation 48.** *Cross-border crisis simulation exercises should be carried out on a regular basis and with strong participation by relevant authorities and market participants.*

**Recommendation 49.** *The FSB should explore the feasibility of establishing a pre-financed common fund designed to be used to deal with crises affecting internationally active firms.*

**Recommendation 50.** *Under the auspices of the G20, and subject to coordination by the FSB, criteria of burden-sharing between jurisdictions in the event of the need for financial intervention should be agreed between the major countries.*

## MAKING FAILURE POSSIBLE BANK RESOLUTION

*Recommendation 51. Under the auspices of the G20, and subject to coordination by the FSB, authorities should, as a matter of priority, ensure that they have special regimes in place for a bank resolution. These should incorporate the following:*

- Power of early intervention.*
- On determination that an institution is systemically significant, the winding up of such an institution should have as a primary objective the protection of the international financial system.*
- In order to preserve market certainty and confidence, financial markets law – for example concerning settlement finality, set-off, and collateral rights – must be respected.*
- In the context of the winding-up of a cross-border financial firm, the objective should be, subject to preserving the integrity of the financial system, to maximise outcomes for creditors of the group as a whole. There should be no discrimination between creditors on grounds of nationality or geographical location.*

**This means that there should be “regulatory grounds” in addition to “insolvency grounds”: greater role for public authorities to protect overriding public goods (such as the payment system and trust between operators).**

## BANK RESOLUTION AND CRISIS MANAGEMENT IN THE EU PRINCIPLES

---

- THE INSTITUTIONAL AND HISTORICAL BACKGROUND ALLOWS THE ACHIEVEMENT OF MORE COORDINATION AND INTEGRATION THAN AT THE INTERNATIONAL LEVEL.
- CROSS-BORDER GROUPS PLAY A CRUCIAL ROLE IN EUROPEAN ECONOMIC INTEGRATION (THE INTERNAL MARKET)
- NATIONAL EXPERIENCES (SUCH AS THE ITALIAN ONE) PROVIDE EXAMPLES OF HOW TO REGULATE THE GROUP.
- THE GROUP IS BASED ON THE RESPONSIBILITY OF THE PARENT COMPANY OVER THE ENTIRE GROUP.
- THE SUPERVISORY ARCHITECTURE SHOULD ADAPT TO THE REALITY OF CROSS-BORDER GROUPS (ON FINANCIAL STABILITY ISSUES THE ENTRY POINT FOR SUPERVISORY DECISIONS SHOULD BE THE PARENT COMPANY).

## BANK RESOLUTION AND CRISIS MANAGEMENT IN THE EU CRISIS MANAGEMENT

---

- 1. Completing the implementation of the 2008 Memorandum of Understanding (Cross-Border Stability Groups, CBSGs).**
- 2. The 2008 MoU should be reviewed in order to incorporate the lessons from the crisis.**
- 3. Prudential regulation should define the financial group and the powers and responsibilities of the parent company.**
- 4. In order for colleges of supervisors to share a common assessment of cross-border financial groups the parent company should provide contingency plans covering scenarios of increasing severity. This should include how the reorganisation and/or winding up of branches and subsidiaries in different countries would be handled and coordinated as well as how crisis management and resolution tools would operate.**
- 5. Intervention using national deposit guarantee schemes should be allowed in crisis management on economic considerations (a cost today to avoid a higher cost tomorrow) and their cross-border cooperation should be improved.**
- 6. European colleges of supervisors, led by the European Authority, should make non-binding proposals on cross-border bank crisis management to national authorities.**
- 7. Winding-up procedures should be harmonised up to best practice.**

## BANK RESOLUTION AND CRISIS MANAGEMENT IN THE EU FISCAL BURDEN SHARING

---

Ex-ante fiscal burden sharing is difficult: crises are different, business models are different.

- Burden sharing arrangements (by CBSGs) should remain voluntary, be suited to the financial institution concerned (firm specific) and the details left to the discretion of the authorities concerned.
- The development of ex-ante burden-sharing arrangements would, however, benefit from terms of reference at EU level, which set out the particular criteria and procedures that authorities may wish to follow. Such criteria may include: types of costs to be shared, the balance between retail and wholesale activities, assets and revenues, the share of payment system flows of the institution, as well as the relative importance and proportion of supervisory responsibilities.
- The terms of reference should also include: simple procedures for defining ex-ante burden sharing arrangements; the involvement of deposit guarantee schemes; the relation with contingency plans; non-binding mediation mechanism to tackle disagreement.