State aid: Commission adapts crisis rules for banks

The European Commission has adapted its temporary state aid rules for assessing public support to financial institutions during the crisis. The main changes are aimed at improving the restructuring process and the level playing field between banks. In particular, banks will be required to work out a sound plan for their restructuring or orderly winding down before they can receive recapitalisations or asset protection measures. Moreover, in case of capital shortfalls, bank owners and junior creditors will be required to contribute as a first resort, before banks can ask for public funding.

"Today's changes of the crisis rules are based on the good practices of the last years in dealing with bank bail-outs and restructuring. In particular, bank owners and junior creditors will need to contribute before any more taxpayers' money is spent on bank bail-outs. This will level the playing field between similar banks located in different Member States and reduce financial market fragmentation. Moreover, banks that ask for a recapitalisation will need to present a sound restructuring plan. This will lead to swifter and more efficient restructuring" said Commission Vice-President in charge of competition policy Joaquín Almunia.

The Communication sets out the updated EU crisis rules for state aid to banks during the crisis from 1st August 2013. It replaces the 2008 Banking Communication and supplements the remaining crisis rules. Together, they define the common EU conditions under which Member States can support banks with funding guarantees, recapitalisations or asset relief and the requirements for a restructuring plan.

The main changes as compared to the existing regime are:

**A more effective restructuring process:** In principle, a bank needs to work out a restructuring plan, including a capital raising plan, convincingly demonstrating how it will become profitable in the long term before it can receive recapitalisation measures. If the viability of the bank cannot be restored, an orderly winding down plan needs to be submitted instead.

So far the Commission has temporarily authorised recapitalisations as rescue measures and taken a final decision on their compatibility with the crisis rules on the basis of a subsequent restructuring plan. This model was successful in ensuring a quick stabilisation of financial markets and preventing contagion at the beginning of the crisis. However, it did at times lead to long delays in the restructuring of aid beneficiaries, who – once their bail-out was achieved – did not always have sufficiently strong incentives to implement the necessary restructuring measures aimed at limiting the use of public money and avoiding similar problems in the future. Some cases have been pending since 2009. The Spanish programme – under which each of the eight restructuring plans was agreed in less than four months - illustrates that this process can be streamlined.
The new rules also entail the possibility for Member States and the Commission, in cooperation with the competent supervisor, to explore ways of filling capital shortfalls with contributions from the bank itself, from private investors or the bank’s owners. When a public recapitalisation is urgently necessary to avert risks to financial stability, it can still be temporarily approved before the full restructuring plan is ready, provided that the competent supervisor confirms that an immediate intervention is necessary.

**Strengthened burden-sharing requirements:** Banks with a capital shortfall will have to obtain shareholders and subordinated debt-holders’ contribution before resorting to public recapitalisations or asset protection measures. This will level the playing field between similar banks located in different Member States and reduce financial market fragmentation. Exceptions would be possible where financial stability is at risk or where a bank has already managed to significantly close the capital gap, and the residual amount needed from the State is small compared to the size of the bank’s balance sheet.

The Commission also clarified that **financial stability remains the overarching objective** in its assessment, how it reflects macro-economic considerations in its assessment and what the changes mean for aid schemes. It also codified its case practice, for example on liquidation aid.

The rules provide that failed banks should apply **strict executive remuneration policies**. The new Banking Communication sets out a cap on total remuneration as long as the entity is under restructuring or relying on state support. This will give management the proper incentives to implement the restructuring plan and repay the aid.

The rules will apply as long as required by market conditions. The rules will be revised as necessary. In particular, they may need to be adjusted in light of the evolution of the EU regulatory framework for banking.
**Background**

In 2008-2009, following the collapse of Lehman Brothers, the Commission adopted a comprehensive framework for coordinated action to support the financial sector during the crisis, so as to ensure financial stability while minimising distortions of competition between banks and across Member States in the single market.

It spells out common conditions at EU level for access to public support and the requirements for such aid to be compatible with the internal market in light of state aid principles. It comprises the Banking Communication, the Recapitalisation Communication, the Impaired Assets Communication and the Restructuring Communication. These special rules were introduced under Article 107(3)(b) of the Treaty on the functioning of the EU that allows the Commission to approve state support to remedy a serious disturbance in the economy of a Member State.

These rules have been regularly updated where necessary to adapt to the evolution of the crisis. The increasing divergence in economic recovery and burden-sharing requirements across the EU, the need to reduce and consolidate public and private debt and the existence of weak spots in the financial sector have recently led to tensions and a fragmentation of the markets, with increasing distortions in the single market. Today's adaption of the crisis regime is aimed at remedying these shortcomings.

The rules were updated thrice before. The full crisis regime for banks is available at: [http://ec.europa.eu/competition/state_aid/legislation/temporary.html](http://ec.europa.eu/competition/state_aid/legislation/temporary.html)

See also [MEMO/13/886](#).

---

Contacts :

Antoine Colombani  (+32 2 297 45 13, Twitter: @ECspokesAntoine)

Marisa Gonzalez Iglesias  (+32 2 295 19 25)