Banking union

Berlin insists on treaty change

By Manon Malhère | Thursday 18 April 2013

If the EU wants its institutions to be responsible for the resolution and restructuring of banks in crisis, changes to the treaties will be necessary, says Germany. However, this point of view is not new, a European source reminded *Europolitics.*It was recently confirmed by Germany's Finance Minister, Wolfgang Schäuble, faced with the European Commission's announcement that it will propose a "centralised" resolution authority for banks in crisis within the framework of the current treaties.

The EU executive is indeed set to publish a legislative text in June establishing such an authority, which would be in charge of the resolution of banks in crisis in states taking part in the single supervisory mechanism (SSM); the EU17 and some member states outside the eurozone (see *Europolitics*4625). A common resolution fund will also be proposed in this text. The goal is to regulate the coordination of national resolution funds where the resolution of banks is cross-border or systemic. The EU is leaning rather towards an independent authority, *Europolitics*understands.

During the European Council of December 2012, the member states' leaders called on the Commission to work on a single resolution mechanism for banks in states taking part in the SSM. "The authority was discussed," but not included in the conclusions, due to its controversial nature, *Europolitics*heard.

Berlin does not agree with the idea that an independent European authority would have the power to decide the fate of banks in crisis in certain member states under the current treaties, said a European source, adding that in Germany, the restructuring and resolution of banks generally involves the use of public funds.

"It's too risky," and "it would be preferable to change the treaties" in order to provide a solid legal base, said the same source, suggesting that a "decentralised structure could be an alternative" while waiting for this change, such as a decentralised network of national resolution authorities.

According to many observers, Germany's real motivation is to hold up the process of building a banking union - since a change in the treaty is not necessary, at least not before the country's legislative elections in September.

The question of the legal basis for the creation of this new resolution authority is nonetheless being asked, as well as the degree of independence the Comission intends to grant it, particularly due to the spectre of the Meroni judgement of 1958 (Case 9/56), which is still the relevant case law. Overall, according to this judgement, the Commission cannot delegate powers it does not possess. However, this interpretation is nonetheless considered conservative by certain observers, who believe there are margins for manoeuvre.

"It is legally possible," Internal Market Commissioner Michel Barnier has said several times, adding that "there is nothing to prevent a targeted modification of the treaties from strengthening and consolidating elements of the banking union at a later stage".