



Register ID Number: 4129929362-47

NFU Response to the Consultation Paper on an EU Framework for Cross-Border Crisis Management in the Banking Sector

About NFU

The Confederation of the Nordic Bank, Finance and Insurance Unions (NFU) is an organisation for co-operation between trade unions that organise employees in the banking, finance and insurance sectors in the five Nordic countries. At present, eight trade unions are affiliated to the NFU; two in Denmark, two in Finland, two in Sweden, and one in each Iceland and Norway. Through these trade unions, NFU represents 160 000 employees in the Nordic financial market.

General remarks

Some of the questions asked by the Commission in the consultation paper deals with matters that primarily concerns regulators and national supervisory agencies, and hence not for NFU to comment specifically.

In our reply, we have focused on matters that will, from our perspective, have an impact on employees in the finance sector now and in the future.

As pointed out in the communication, experience has shown that the wide spread uncoordinated, national measures, such as ring fencing etc. by the national authorities in combating the crisis has demonstrated severe adverse effects for the European financial sector and all the stakeholders. Therefore it is of the utmost importance to ensure common approaches to mitigate future crisis.

Early intervention:

The issue of early intervention is of high importance to the employees in the finance sector. NFU does agree with the Commission that although there are already some measures in place on different national levels, the idea of reinforcing these as well as create new structures for early intervention is needed.



NFU would in this context like to stress the importance of looking beyond governmental supervision as the only viable way to go.

From the employee perspective, ensuring sound and efficient “whistle-blowing systems” would be one measure that would be appropriate. Whistleblowing is, indeed, about ensuring that early warnings from the bottom and up will reach the competent supervisory authority which should have the power, the mandate and resources to follow-up on the warnings and, where necessary, investigate the entire company. Whistleblowing would not only ensure a fast and efficient “point of entry” for national supervisors, but also providing employees with a measure where their concerns are taken seriously. This could be done in a way where the national supervisor consults with employee representatives in a suitable fashion, be it through anonymous “hot-lines” or scheduled, consultative meetings with trade unions. It is important to stress that for employees to be able to provide this information in an orderly fashion, the national supervisors must be able to create reliable systems for this, which are not filtered by a strong director or board of directors.

Another matter that needs to be discussed is board-level representation for employees. In many European countries, board-level representation for employees exists, and is also considered a valuable asset to the companies. The company gets an insight on how different issues are perceived from the employee perspective, and the employees get an overview on what the company is doing and how. A board-level representative can provide, from a supervision perspective, very valuable insights, since he/she is not only involved in the decision-making of the company, but also has access to direct information on the situation in the company from the employee perspective. Also, being elected for the board by a different group of people than the rest of the board members, employee representation ensures a bigger versatility of independence in the board.

NFU is of the opinion that board-level representation needs to be strengthened across Europe, in order to provide employees with an insight regarding the status of the company. For instance, we believe that board members elected by the employees should be trade union members in order to ensure that the person is supported by an effective network and has links to all employees in all parts of the company.

This would not only serve the supervision authorities well, but also provide the company as well as the employees with important input regarding the operations of the company.

Promoting good corporate governance within financial institutions is, indeed, an area that deserves further attention. An important area could be to describe the competences of the board of directors in relation to the strategic challenges faced by the financial institution. This should be done on a revolving basis, e.g. in the annual reports of the institution, thus enabling the AGM, relevant authorities and other stakeholders to evaluate whether the board of directors has the suitable competences for the business plan of the financial institution. This

must not, however, lead to any impingements regarding employees' right to board level representation.

Regarding intra-group asset transfers as a tool for early intervention NFU agrees with the Commission that if this is to be considered it must be accompanied with proper safeguard mechanisms, but not only for shareholders and creditors. It must be absolutely certain that any funds transferred from one entity to another do not lead to a situation where reduced profits for companies are balanced with reduced personnel costs.

It is also highly important that any such transfer is accompanied with proper information and consultation procedures in relation to the employees of the company in question.

Besides the prevention of the possible misuse of asset transfer for criminal purposes, it must also be ensured that asset transfers are not used for executive remuneration in any form. The "greed factor" undermines the general trust in companies and financial companies in particular, and further mistrust will only follow if such measures would be linked to bonus or incentive programs.

Even though taxation issues are beyond the scope of this communication, Member States might also be encouraged to remove or reduce tax incentives that could encourage "suspicious" intra-group asset transfers.

Finally, we believe that the supervisory authorities must, to a greater extent, step into the role of consultant to the company boards. In other words, the supervisory authorities should have the possibility to meet and discuss the general 'health status' of the company directly with the entire company board, and preferable without the presence of the management. In addition, the supervisory authorities should be granted the possibilities to report directly to the general assembly in order to enable shareholders to take a much more critical view with regard to the challenges facing the company and with regard to assessing whether both the management and board members do have the right competence profile in relation to the sectors, segments and geographical markets in which the company is commercially involved.

Bank resolution:

NFU agrees that it is necessary to agree upon a common set of objectives of a bank resolution framework, in order to create a level playing field for the finance industry.

When the Commission states that the overriding policy objective is to ensure that it should always be possible – politically and economically – to allow banks to fail, whatever their size, NFU would like to point to the fact that the discussion is leaving the finance sector employees out of the context. The Commission points out that this overriding objective is unlikely to be achieved unless the resolution framework is able to ensure the protection of (insured) depositors, but it should be as important to ensure the protection of the employees of the failing bank. The enforcement of this framework cannot be solely based on the economic

interests of the customer or the tax-payer; the economic interests of employees must also be taken into account.

NFU would also like to comment on some of the proposed tools for national authorities the resolution would entail. According to the Commission, resolution tools may include powers to transfer the whole or part of the assets and liabilities of a failing bank to another private sector entity (an assisted or unassisted merger effected by national authorities) or a 'bridge bank'.

In this context, the Commission is pointing out that it is essential that resolution authorities have a sufficiently wide range of common tools which can be applied flexibly and with discretion, and that they can act with adequate speed and control over the conduct of the resolution.

Of course it makes sense that national authorities can use the powers invested in them in an efficient way, but NFU is of the firm belief that speed must never prevail before employee's right to proper information and consultation in case of restructuring. This matter is also specifically pointed out in art. 28 of the Winding-up Directive, to which the Commission makes reference in the consultation paper.

In the consultation paper, the Commission is also discussing stakeholders' rights in bank resolution processes. Regarding creditors and other counterparties, NFU agrees with the Commission that any EU resolution framework would need to incorporate adequate safeguards to protect the interests of these groups, but also want to point out specifically that employees of any finance institution must be considered to be creditors as well in this case, and should therefore also be addressed as such. If any compensation mechanisms or similar is to be introduced to safeguard creditors, these must also guarantee that no employees are left worse off than they would have been had the bank under resolution been wound up under the applicable insolvency law. This means that, among other things, the question of employees prioritized right to salaries and other means of remuneration in case of insolvency must be addressed. If the framework will provide for the establishment of any sort of communication between the administrator (or what title the person or organ responsible for the resolution process will have) and the creditors, it must also be ensured that the employees are part of this procedure.

The bottom line is that it must be made absolutely clear what a resolution will entail for the employees of the bank concerned, and that the framework must provide for a continuously sound and sustainable employment situation in the bank. This means that, regardless of the design of the framework and the powers invested in the administrator, there must be no worsening of employee's rights in any aspect due to a bank being put under resolution, and that the administrator must assume all responsibilities vis-à-vis the employees as acting employer, including, but not exclusive to, concluding collective agreements.



Yours faithfully

NORDISKA FINANSANSTÄLLDAS UNION (NFU)

The Confederation of Nordic Bank, Finance and Insurance trade unions

Christina J. Colclough

General Secretary