

Nordic Financial Unions

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NFU Response to Consultation on technical details of a possible European crisis management framework

Summary of main points

- Finance employees can make a crucial contribution to supervisory arrangements and provide unfiltered information on daily practices to supervisors
- The Commission must respect the social partners' right to govern pay and remuneration through collective agreements as stated in art. 153.5 of the Treaty on the Functioning of the European Union
- Finance employees must be seen as stakeholders in relation to recovery and resolution arrangements, which must take the employee dimension into account

General remarks

It is surprising and disappointing to see that so little attention is given the employee dimension in the consultation document. It is a well-known fact that employees can contribute to enhanced supervision if the right arrangements are in place. NFU and other stakeholders have repeatedly maintained the value of including employees as a factor in supervisory arrangements, as employees have knowledge about a financial company's daily practices that cannot be acquired anywhere else.

Furthermore, Commissioner Barnier has repeatedly emphasised his clear and firm intention of taking stakeholder perspectives, such as consumers' and employees', into account. Despite this, not a word is mentioned in the consultation regarding the role of employees in supervision on the level of undertakings. Nor are employees mentioned in relation to recovery, resolution and the other elements of the proposal. This is unacceptable, and NFU looks forward to seeing the employee dimension taken into account in future proposals in this matter – not least since this can provide a crucial contribution to enhance crisis management in the EU.

Specific remarks

Question 3

3d. Even if resolution authorities are a matter of national choice, should an EU framework specify that they should act in accordance with principles and rules such as those set in this document to take account of the fact any bank crisis management action in one Member State is likely to have an impact in other Member States?

Yes. As pointed out below, NFU supports the idea of a pan-European framework on these issues. There is a need to ensure that all financial markets, products and market participants are regulated in a fair and thorough fashion, thus ensuring a level playing field and sound competition.

Questions 4a-4c

4a. Should the stress tests be conducted by supervisors, or is it sufficient for institutions to carry out their own stress tests in accordance with assumptions and methodologies provided by or agreed with supervisors, provided that the results are validated by supervisors?

4b. The current crisis has shown that stress test disclosure is necessary to reassure markets and to bring to light potential problems before they become too large to be managed. It cannot, however, be excluded that in some circumstances disclosure without consideration of the possible impact in the market could do more harm than good. Do you agree that under exceptional circumstances the results of the stress tests should be made public only after appropriate safeguards have been agreed and introduced?

4c. Do you agree that in an integrated European market, stress testing should be conducted on the basis of a common methodology agreed at the EU level and subject to cross verification?

It is not sufficient to allow financial institutions to conduct their own stress tests. To prevent misuse of regulatory arbitrage and minimize the space for circumvention of agreed rules, stress tests should primarily be the task of independent authorities, not the financial industry itself. The global financial crisis has shown that there is a need to ensure that all financial markets, products and market participants are regulated in a fair and thorough fashion, thus ensuring a level playing field and sound competition.

Disclosure of the results of stress testing must take possible harmful market effects into account, as these in turn can have an effect on employment. While the prevailing principle should be transparency and openness, some cases could warrant a need for safeguards in relation to the possible effects on employment in a financial company or companies. Any agreed safeguards should take the employee dimension into account, for

example by making impact assessments on employment in a financial undertaking a mandatory element.

Question 5

5. Please estimate:

- the one-off costs in EUR (e.g., investments in IT systems);
- the additional ongoing annual costs (e.g. human, subcontracts etc.), that your institution would be likely incur in carrying out the activities related to enhanced supervision.

It is disappointing to see that the employee dimension is not even mentioned among the proposed measures for micro-level supervision of credit institutions. NFU has repeatedly maintained that finance employees are crucial as a source of information regarding the day-to-day practices in financial undertakings.¹ Finance employees are in some respects in a unique position in relation to ensuring that the competent authorities are made aware of adverse developments that can constitute a serious threat to financial stability or to market confidence. Employees can give supervisors direct information on day-to-day practices that is not filtered through management or a board of directors.

NFU is also surprised that the consultation document does not further discuss the scope and nature of early warning systems besides stress testing, with a view to detect unsound practices in financial institutions as soon as possible. A supervision mechanism without an early warning system will most likely turn out to be toothless, since the damage might already be done. From the employee perspective, ensuring sound and efficient “whistle blowing systems” would be appropriate in the context of enhanced supervision. Whistle blowing is all about ensuring that early warnings from the bottom up will reach the competent supervisory authority that should have the power, the mandate and resources to follow-up on the warnings. Whistle blowing would not only ensure a fast and efficient “point of entry” for supervisors, but also provide employees with a measure where their concerns are taken seriously. On-site supervision is an excellent opportunity to establish such a system.

This could be done in a way where the supervisors consult with employee representatives in a suitable way, be it through anonymous “hot-lines” or scheduled, consultative meetings with trade unions or other employee representatives. The Commission proposes an increase in the number or frequency of on-site inspections – why not use this opportunity to consult with employee representatives? It is important to stress that for employees to be able to provide this information in an orderly fashion, the supervisors must be able to create reliable systems.

¹ See for example *NFU Reply to the Green Paper on Corporate Governance in Financial Institutions and Remuneration Policies*, September 1 2010; *NFU Response to the Public consultation on a review of the Market Abuse Directive*, July 14 2010; *NFU Response to the Consultation Paper on an EU Framework for Cross-Border Crisis Management in the Banking Sector*, January 20, 2010.

Employees must not be punished in any way for contributing to identifying and eradicating systemically unsound practices.

Question 6 and 21

6. Are the required contents of recovery plans suggested above sufficient to ensure that credit institution undertake adequate planning for timely recovery in stressed situations? Should we include additional elements?

21b. Would the requirements for resolution plans suggested above will adequately prepare resolution authorities to handle a crisis situation effectively? Are additional elements needed to ensure that resolution plans will provide adequate preparation for action by the resolution authorities in circumstances of both individual and wider systemic failure?

Finance employees should not have to bear neither the burden nor the blame for bad management. When setting up the criteria for credit institutions' recovery or resolution plans, the social consequences must be taken into account. It should not be possible to put the blame of a material deterioration in an institution's financial situation on the employees, or push the cost burden of recovery onto the employees. The question of employees' prioritized right to salaries and other means of remuneration in cases of failing financial institutions must be addressed.

The bottom line is that it must be made absolutely clear what a recovery or resolution will entail for the employees of the entity or group concerned, and that the framework must provide for a continuously sound and sustainable employment situation. 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.

The Commission also considers "other management actions or strategies to restore financial soundness and the anticipated financial effect of those actions or strategies" (B1, f). Both in relation to this point and to the general context of recovery and resolution measures as well, NFU would like to stress the social partners' absolute right to assume the responsibility of sound and sustainable remuneration principles. NFU strongly supports the idea of remuneration policies and practices that are consistent with, and promote, sound and effective risk management. However, remuneration policies should be left to the social partners to decide upon, since pay is, according to art. 153.5 in the Treaty on the Functioning of the European Union (TFEU), not for the EU to deal with.

This has also been acknowledged in Recital 14 in the European Parliament legislative resolution of 7 July 2010 on the proposal for a directive of the European Parliament and of the Council amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations (see below).

Recital 14: “The provisions on remuneration should be without prejudice to the full exercise of fundamental rights guaranteed by the Treaties, in particular to the provisions of Article 153(5) of the Treaty on the Functioning of the European Union (TFEU), general principles of national contract and labour law, applicable legislation regarding shareholders’ rights and involvement and the general responsibilities of the administrative and supervisory bodies of the institution concerned, as well as the rights, where applicable, of social partners to conclude and enforce collective agreements, in accordance with national laws and traditions.”

As pointed out above, the European Parliament acknowledges that the provisions on remuneration are without prejudice to the social partners’ right to conclude collective agreements in accordance with national laws and traditions.

NFU urges the Commission to take this right into account when drafting criteria for recovery plans.

Question 9

9. Is a framework specifying the circumstances and conditions under which assets may be transferred between entities of the same group desirable? Please give reasons for your view.

Yes, such a framework is not only desirable, but needed. Intra-group asset transfers must be accompanied with proper safeguard mechanisms, but not only for shareholders and creditors. It is 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.

Question 13

13b. If the remuneration is determined by the agreement, how frequently should the terms for remuneration be reviewed?

As pointed out above, remuneration policies for ordinary employees should be left to the social partners to decide upon, since pay is, according to art. 153.5 in the Treaty on the Functioning of the European Union (TFEU), not for the EU to deal with.

NFU therefore urges the Commission to clearly define to what extent such an agreement could address remuneration and what levels in company structures that might be affected, i.e.

management levels. Remuneration for ordinary individual employees is a matter between the employees and trade unions on one hand and employers on the other hand, and should not be subject to review by the annual meeting of shareholders.

Question 24

24a. Is the revised trigger for supervisory intervention under Article 136(1) CRD (i.e. extended to include circumstances of likely breach) sufficiently flexible to allow supervisors to address a deteriorating situation promptly and effectively?

24b. Are the additional powers proposed for Article 136 sufficient to ensure that supervisors take appropriate action to address developing financial problems? Are there any other powers that should be added?

In the same spirit as above, NFU is pleased to see that the Commission, despite the wordings on remuneration in the Commission's communication from October 2010, does not propose any measures towards this end in the proposal for expanded powers of early intervention.

Question 41

41. Are the suggested principles sufficient to ensure that creditors receive appropriate compensation?

NFU would again like to point to the fact that the discussion is leaving the finance sector employees out of the context. The Commission points out "that affected stakeholders should suffer no greater loss than they would have suffered if the institution had been wound up under the applicable insolvency regime." It is disappointing that the Commission does not explicitly mention finance sector employees as stakeholders in this context – it should be as important to ensure the protection of the employees of the failing bank. The enforcement of the resolution 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.

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 are 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. As stated previously, this means that the question of employees' prioritized right to salaries and other means of remuneration in case of insolvency must be addressed.



About NFU

Nordic Financial 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.

Yours faithfully,

Nordic Financial Unions (NFU)

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