

15 June 2010

CEBS's Advice on the EU Framework for Cross-Border Crisis Management in the Banking Sector

Introduction

1. On 20 October 2009, the European Commission launched a public consultation on its Communication entitled "An EU Framework for Cross-Border Crisis Management in the Banking Sector". CEBS responded to this consultation on 19 January 2010 ("the consultation response"¹).
2. Considering the results of the public consultation provided by the European Commission, CEBS has taken the initiative to provide the European Commission with further advice on specific issues relating to cross-border crisis management.
3. In this present advice, CEBS concentrates on the following issues:
 - in Section 1, CEBS lays down some general principles that would apply to the minimum common toolbox;
 - Section 2 provides more detailed comments on the proposed tools that should be part of the minimum common toolbox, including the conditions for the use of these tools;
 - Section 3 elaborates on the issue of financing the implementation of the tools; and
 - Section 4 deals with Recovery and Resolution Plans.
4. CEBS intends to carry out further work in a number of areas, some of which are highlighted in this report. In particular, CEBS will look further at the issues surrounding the imposition of losses on creditors.

Section 1 - General principles for the minimum common toolbox

5. Further to the consultation response, and in particular in paragraphs 19 to 32 thereof, CEBS would like to set out some general principles that should apply to the authorities' minimum common toolbox².
6. First, a key issue is the tools available to the authorities. As CEBS has already stated, once an actual or potential issue is identified, authorities will take the appropriate measure(s) on the basis of their supervisory

¹ CEBS's response to the European Commission's Communication on an EU Framework for Cross-Border Crisis Management in the Banking Sector (CEBS 2009 309 rev2-FINAL), January 2010.

² As stated in paragraphs 20-23 of the consultation response, the toolbox should be established as a common minimum range of options/tools available to the competent authorities, independently of the different national institutional architecture.

judgment: *"Supervisory judgment leading to the adoption of supervisory measures is exercised in accordance with the principle of proportionality. According to this principle, corrective measures must be proportionate to the risks/problems/breaches that have been detected. In other words, the severity of the measures taken will depend on the seriousness of the identified risks/problems/breaches. This principle also entails a gradual escalation of the measures in line with the seriousness and persistence of the situation."*³

7. Authorities may thus use one specific tool from those in the common toolbox or a combination of these tools. The decision as of which tool or combination of tools to use will depend on the seriousness of the actual or potential issue. The principle of proportionality will guide the authorities' decision in order to determine which tool or combination of tools they deem necessary and appropriate to deal with the situation. This entails tools of differing intensity and escalation being available in the common toolbox. Some tools can be defined as less stringent and intrusive, whereas other tools will have a deeper impact on the credit institution concerned, its management, or its shareholders and creditors. It does not follow from the principle of proportionality that less stringent tools must be used first, before more intrusive tools may be used. The authorities must be free to choose the appropriate tool, or tools, to deal with the situation, subject to the conditions for their use being met.
8. Secondly, the tools may have some common features. The imposition of a time limit is such a feature. When requiring a credit institution to take a certain course of action or, more generally, to take appropriate measures to restore the situation, competent authorities may set a time period within which the credit institution concerned will have to present the actions it plans to undertake or report on the measures it has actually taken.
9. Another feature which is common to many of the tools in the minimum common toolbox is their temporary nature. For such tools it is assumed that, once the appropriate measures have been taken to restore the situation, and have produced their intended effects, the requirement(s) imposed by the authorities will be lifted.
10. A third principle is the principle of legality, which should apply to all measures taken by the authorities. When using a tool from the common toolbox, authorities must state their reasons and the legal basis for their decision. This is a prerequisite in order for stakeholders to exercise their right to judicial review and to challenge the authorities' decisions before a Court. However, the role of the Court should only be to review ex post the legality of the authorities' decisions, and, in circumstances where this is appropriate, to set compensation.
11. Fourth, the future EU framework for cross-border crisis management should provide all stakeholders with the necessary predictability. In this respect, it should be noted that the tools currently used by authorities are described in

³ Mapping of supervisory objectives and powers, including early intervention measures and sanctioning powers (CEBS 2009 47), March 2009, paragraph 163, p. 44 ("the Mapping report").

the relevant EU legislation and in the respective national law; this principle should also apply to the common minimum toolbox. As noted above, this principle must be without prejudice to the power of the competent authorities to decide which tool or combination of tools is best suited to deal with each specific situation.

12. As an additional general issue, financial contracts may contain provisions that could hinder effective early intervention, crisis management and resolution of a distressed credit institution by the authorities. For example, material adverse change, event of default and/or termination clauses entailing termination events if a credit institution becomes subject to more intensive supervision. Such clauses, allowing creditors to modify or terminate funding agreements to the detriment of the borrowing credit institution, specifically by reference to measures taken by the authorities to restore the health of a distressed credit institution or to reduce the impact of its failure on financial stability, may be counterproductive for two reasons. First, the threat of a simultaneous termination of a large volume of financial contracts may deter necessary action by the authorities. Second, would competent authorities nevertheless decide to intervene, the outflow of liquidity that could result from this intervention may even trigger the failure of the distressed credit institution. As a rule, authorities do not have the power to ensure that contractual provisions do not hinder the effectiveness of early intervention and crisis resolution tools. The absence of such powers is not compatible with the general interest of – and public confidence in – financial stability; yet, it is exactly this interest for which the use of early intervention and crisis resolution tools is meant.
13. One solution could be to introduce a statutory override of contractual termination clauses linked to more intrusive measures taken by competent authorities for the purposes of financial stability. For the other, less intrusive, tools, CEBS would suggest considering the introduction of an alternative solution aimed at preventing, or at least minimising, the use of contractual provisions that could hinder effective early intervention or resolution. A possibility could be to adapt the framework for liquidity supervision by introducing prudential requirements according to which credit institutions should measure and assess the liquidity risks related to contractual termination provisions and should develop and implement a policy to mitigate such risks.
14. Any solution to address this issue should be harmonised to at least a common minimum level, given its cross-border dimension (including problems associated with the mutual recognition of national measures) and the related spill-over effects, and the need to ensure a level playing field. It seems desirable that such a solution would be applied at both the EU and the global level.
15. Finally, as already pointed out in the consultation response, the tools described in the present advice should be applicable to all credit institutions, whatever their corporate form, including mutual organisations⁴.

⁴ The consultation response, paragraph 54.

Furthermore, CEBS is aware that some of the tools might have an impact on company law or insolvency law and that some changes to these legal provisions might be necessary in order for these tools to be fully effective.

Section 2 - The minimum common toolbox and conditions for use

Power to require the submission of a restoration plan

16. As shown in the Mapping report, most authorities have the power to require the submission of a restoration plan. This will often be used together with the power to ensure compliance with relevant laws and regulations⁵. From CEBS' point of view, it would be sensible to supplement the general power to ensure compliance with laws and regulations with an explicit power to request the submission of a restoration plan. The restoration plan should contain all the measures the institution will implement in order to restore compliance with its legal obligations. Therefore, authorities should be able to require the submission of a restoration plan when a credit institution is in potential or actual breach of a licence requirement, or other relevant regulatory requirement, or when the credit institution is in serious distress.

Power to require an institution to cease practices

17. All authorities currently have the general power to ensure compliance with the laws and regulations governing a credit institution's activities. The power to require a credit institution to cease practices which are harming the institution constitutes a core competence of all authorities⁶.

18. This power is similar to that set out in Article 136(1)(d) of Directive 2006/48/EC ("restricting or limiting the business, operations or network of credit institutions"), but CEBS believes this power should be included explicitly in the common minimum toolbox. Furthermore, it should be clarified that this power can be used not only where the requirements of the CRD are not met, but also when the credit institution concerned operates in breach of a licence requirement, or of any other relevant regulatory requirement, or when it is in serious distress.

Power to require an institution to restructure activities

19. The Mapping report has shown that, even where the national legal framework does not explicitly provide the power to require an institution to reduce or restructure activities, all authorities currently have a general power that they can use to require an institution to restrict or limit the exercise of its unprofitable activities⁷.

20. This power is similar to Article 136(1)(d), but CEBS believes this power should be included explicitly in the common minimum toolbox to make it clear that the restructuring of activities can be required by all authorities. Furthermore, it should be clarified that this power can also be used not only

⁵ The Mapping report, paragraph 66, p. 24.

⁶ The Mapping report, paragraph 65, p. 23.

⁷ The Mapping report, paragraph 77, p. 25.

in case where the requirements of the CRD are not met but also when the credit institution concerned operates in breach of a license requirement, or of any other relevant regulatory requirement, or when it is in serious distress.

Power to limit intra-group asset transfers and transactions and Power to limit asset transfers and transactions outside the group

21. In the consultation response, CEBS suggested that these tools may be added to the minimum common toolbox⁸, in order to be used when a credit institution is in potential or actual breach of a license requirement, or other relevant regulatory requirement, or when the credit institution is in serious distress. However, this power is similar to Article 136(1)(d).

Power to oppose the nomination of a Board member or a managing director²

22. As stated in the consultation response, CEBS considers that the power to oppose the nomination of a board member or managing director and the power to replace or require a bank to replace a board member or a managing director should be included in the minimum common toolbox.

23. In the Mapping report, it was shown that almost all authorities have the power to oppose the nomination of the persons who effectively direct the business, based on the fit and proper requirements set in Directive 2006/48/EC¹⁰. However, because there is no specific definition of the fit and proper criteria in Directive 2006/48/EC, competent authorities are applying these criteria in different ways. CEBS believes that it could be beneficial to apply this power in a more homogeneous way, both in normal times and in times of crisis. It could be considered whether CEBS would need to undertake further work in this respect in the future.

Power to require the dismissal of a Board member or a managing director

24. As a further step, authorities may consider it necessary to require the dismissal of a Board member or a managing director. The conditions for applying this tool should relate to the existence of a serious breach or repeated breach of a licence requirement, or other relevant regulatory requirement, or to the fact that the credit institution is in serious distress. The conditions need not relate directly to the fit and proper criteria but could relate to the situation of the credit institution concerned.

Power to replace a Board member or a managing Director

25. In addition, CEBS considers of the utmost importance that competent authorities are empowered with the ability to replace one or more members of the board or managing directors. In a crisis situation, the conditions for applying this tool should relate to the existence of a serious breach or repeated breach of a license requirement or other relevant regulatory

⁸ The consultation response, paragraphs 55 and 84.

⁹ Reference is made here to respectively non-executive and executive senior management.

¹⁰ The Mapping report, paragraph 86, p. 28.

requirement or to the fact that the credit institution is in serious distress. Hence, the conditions need not to be related directly to the fit and proper criteria but to the situation of the credit institution concerned.

The appointment of a special administrator

26. CEBS discusses here, in more detail than in previous advice, the tool of appointing a special administrator. Many authorities already have this tool, and CEBS believes this should be included in the common minimum toolbox in a way that allows for the full range of uses that currently exist.
27. Special administration is a measure aimed at restoring the conditions for sound and prudent management. It is a discretionary and preventive measure that may be adopted at different points, from relatively early stages of the credit institution's problems. It should be available when there are potential or actual breaches of a license requirement, or other relevant regulatory requirement, or when the credit institution is in serious distress. Additionally, the special administration can be ordered upon a reasoned request of the credit institution's directors or shareholders. The final decision about appointing a special administration rests with the authorities.
28. Authorities should appoint one or more special administrators, depending on the nature of the credit institution and of the issues that need to be addressed. The special administrator acts autonomously in carrying out its day-to-day activities, but acts under the control of the authorities, who define *ex ante* the mandate of the special administrator and can revoke that mandate at any time. Depending on the situation, the powers of the special administrator could range from being an observer, sometimes with a right to veto all or part of the decisions of the governing bodies of the credit institution, to taking over and exercising all the powers and responsibilities, as provided for by the relevant banking and corporate law. In this latter example they would replace the credit institution's governing bodies. CEBS believes that the future framework must allow for such a strong mandate of the special administrator.
29. As the credit institution is still a going concern, special administration does not wipe out the shareholders and third parties' rights; it should only suspend the application of general corporate rules to the extent necessary. So when the mandate of the special administrator allow them to take extraordinary measures (e.g. capital injections; change of legal form; business combinations; voluntary liquidation) these should be approved by the shareholders' meeting, convened by the special administrator with permission of the authorities. The appointment of a special administrator does not preclude authorities using other tools which entail the suspension of shareholders' rights, when the necessary conditions are met.
30. When the special administrators are entrusted with the powers pertaining to the managing body, in exceptional circumstances they may also adopt a suspension of payments, with the permission of the authorities. Authorities should also explicitly authorise the most important acts, such as the calling of a shareholders' meetings and the initiation of a company action against the former members of the institution's governing bodies.

31. To be effective, special administration should last enough to let the special administrator restore the sound and prudent management of the credit institution by rectifying the particular difficulties. Experience with special administration regimes has shown that one year is the adequate time to find appropriate and lasting solutions. If necessary, additional time can be given to a special administrator but, in principle, it should not be for more than six additional months. Both authorities and special administrators must remain aware of the need to put an end, in one way or another, to the situation that justified the special administration.
32. CEBS believes that authorities should have the power to choose if it is appropriate to communicate to the public the decision taken to appoint a special administrator. What is important is that the decision not to disclose this information to the public is based on a proper public interest test, where the potential damage from disclosure would be greater than the damages incurred by the public directly related to the non disclosure of the measure applied. Authorities have successful examples either in keeping the appointment confidential or in disclosing it to the public because of a legal obligation to do so. However, when a publicly listed credit institution is involved, there may be no other choice than to disclose the appointment of a special administrator.
33. Special administration can be an appropriate framework within which to apply other tools. For instance, special administrators may initiate and carry out the institution's restructuring. The authorities may exercise their direction and supervision powers, provide their support for the arrangement and the structuring of any plans, and grant the necessary authorisations for the measures involved, while the details of the relevant plans are defined and negotiated by the special administrator.
34. Special administration can allow the authorities to conduct thorough due diligence and find suitable market solutions for the credit institution's difficulties. If this proved to be impossible, special administration should be ended and liquidation or other winding up measures would be initiated.

Suspension of shareholders' voting rights

35. The following paragraphs do not discuss the power to suspend individual shareholder's rights on the basis of the "fit and proper" test, but rather the circumstances in which authorities should be able to suspend the rights of all shareholders.
36. When a credit institution is in severe distress and there is a need to restore confidence and increase capital rapidly, existing shareholders cannot always take the necessary decisions in the timeframe available. Alternative tools are particularly important in order to avoid any assumption that taxpayers must foot the bill. The power to suspend the rights of all shareholders stems from the fact that the cost to the society of closing a credit institution may justify government interference into shareholders' rights. Not only the cost to society, but also the rights of other creditors of the credit institution, depositors' interest and the stability of the national financial markets are factors that can justify bypassing shareholders' rights. However, as CEBS

has already argued in its consultation response, the overall framework should respect property rights and shareholders should be able to seek compensation *ex post*¹¹.

Power to transfer assets and liabilities and power to transfer shares

37. The rights of shareholders would need to be suspended, even prior to insolvency procedures, in order for several tools to be effective. These tools include the sale or transfer of assets and liabilities to an existing credit institution or to a “bridge bank”; the issuance of new capital, with or without prior write-down of existing capital; the transfer of shares to private sector participants or into a temporary public ownership structure; all these may need to be imposed without the consent of existing shareholders.

38. As already mentioned, in the case of issuance of new capital existing shareholders may either be unable to provide the necessary funds, or may play a game in which they expect public money to be injected. Writing down, fully or in part, existing capital against actual losses may be a precondition for attracting new owners to subscribe in new capital. Such a write-down of capital should be limited to what follows from accepted accounting principles and should be made on a proper assessment of the situation. In those cases where existing shareholders fail to take the necessary decisions to raise new capital, the authorities must be in a position to take the necessary steps. Existing (previous) shareholders might be granted a preferential right to participate, or an option to buy back their stake in the bank, should the authorities take a holding in the bank.

39. Also in the case of transfer of shares, be it to a bridge bank or to a private sector participant, shareholders would be left with a claim against the authorities or the acquirer for any residual value that might have existed at the time of transfer. As with issuances of capital initiated by the authorities, shareholders could be granted an option to a preferential participation in the event an IPO follows the restructuring process.

40. With regard to the conditions for using such tools, as underlined above timing is of the utmost importance in a crisis situation; restoring confidence is often an issue of days and hours, not weeks or months. So the conditions for using these tools must reflect this.

Conditions for the use of more intrusive tools

41. Qualitative conditions for the use of intrusive measures should be shaped by four key general considerations.

42. First, they need to be structured so that the authorities can intervene at an appropriate time. For these tools to be effective this point needs to be pre-insolvency and at a point that protects financial stability.

43. Second, they should not be quantitative conditions that trigger automatic actions; individual authorities will need to continue to be able to exercise

¹¹ The consultation response, paragraph 49.

discretion in judging the full facts of a particular case. There will be a risk of unintended consequences if a tool is applied too early or too late that could jeopardise – rather than mitigate – financial stability, and of disproportionate responses.

44. Third, competent authorities should not be restricted to using intrusive measures only after they have attempted to use other less intrusive powers. In practice, authorities would expect to have used their powers on an escalating basis as the risk posed by a credit institution increases. However, if this became a hard requirement there would be a risk that the authorities find themselves unable to deal with a scenario in which the credit institution's condition deteriorates very rapidly.
45. Fourthly, the conditions should provide reassurance to market participants that their property rights are not being interfered with unduly. It does not follow from this feature that the conditions must be unarguable or perfectly predictable for stakeholders. Indeed, a set of conditions that allows the market to predict and anticipate action by the authorities could have the perverse effect of encouraging the authorities to take even earlier pre-emptive action in order to minimise the risk of a 'run on a bank'.
46. Against this background, the following criteria would form the basis of a set of qualitative conditions for the use of intrusive tools.
47. First, a qualitative condition should be expressed at a high-level, reflecting an overall judgement by the supervisory authority about the credit institution, as follows:
- whether or not the credit institution meets the license requirement or other relevant regulatory requirement; and/or
 - whether or not the credit institution is viable, or is unsafe or unsound; and/or
 - whether or not the credit institution poses a risk to its customers or financial stability.
48. Second, there should be a second qualitative condition that requires the supervisory authority to be satisfied that there are no suitable alternatives other than the use of the intrusive power. The advantage of this condition is that it would send a strong signal that an intrusive power could not be used if the credit institution's problems were temporary, insignificant or the credit institution had a credible plan to rectify the problems.
49. Finally, whatever qualitative conditions are adopted, they should allow for the supervisory authority to take a forward-looking judgement about the likelihood of the credit institution meeting the condition in the future. The authorities should not have to wait until a problem crystallises for the tools to become available.

Prohibit the distribution of profits

50. This tool would normally be used from an early stage, when it is evident that the credit institution concerned is facing difficulties and that it needs to restore confidence and strengthen its capital.

51. As to the circumstances for applying such tool, the authorities should use it not only when the requirements of the CRD are not met, but also when the credit institution concerned operates in breach of a licence requirement, or other relevant regulatory requirement, or when it is in serious distress.

52. The current Article 136(1)(c) of Directive 2006/48/EC has some similarities with this tool. However, without prejudice to ongoing developments in global fora regarding capital-related requirement, CEBS is of the view that this tool should be included in the common minimum toolbox.

Limit or prohibit major capital expenditure

53. A credit institution may not incur a risk that fundamentally endangers its solvency or its liquidity. For that reason, the credit institution shall always have enough capital and arrangements, processes and mechanisms ensuring efficient risk-management as well as internal control.

54. When a proposed capital expenditure would endanger the capital position of a credit institution, the authorities should be able to limit or prohibit this, unless additional capital can be raised or risks are mitigated adequately.

55. As to the circumstances for applying such tool, the authorities should use it not only when capital is insufficient, but also when the requirements of the CRD are not met, when the credit institution concerned operates in breach of a licence requirement, or other relevant regulatory requirement, or when it is in serious distress.

56. The current Article 136(d) has some similarities with this tool. However, CEBS considers that this tool should nevertheless be included in the minimum common toolbox, in order to increase predictability and to strengthen the authorities' ability to take action at an early stage.

Pre-insolvency and insolvency related tools

57. CEBS believes it is necessary to include the following tools in the common minimum toolbox: the suspension of all or part of the credit institution's activities; the initiation of a reorganisation or winding-up procedure; the withdrawal of all or part of the licence; and the imposition of a moratorium¹². These tools are considered as useful complements to more 'operational' tools such as, for instance, the power to transfer shares or assets or any tool that aims at restructuring the credit institution. In such a phase, they would apply for a short period, i.e. the time which is necessary to organise the transfer or implement the restructuring measures¹³. In addition to this complementary nature, these tools may also apply in the context of reorganisation and winding-up proceedings.

58. With regard to the specific conditions applying to each particular tool, CEBS would like to refer to its Mapping report, and in particular to paragraphs

¹² The consultation response, paragraph 79.

¹³ The consultation response, paragraph 80.

125 to 146 thereof¹⁴. Given the existing discrepancies, CEBS identified a need for some further harmonisation of the role that authorities play in pre-insolvency and insolvency phases. CEBS is aware that the inclusion of the proposed tools would imply changes in the respective Member States' national insolvency law. However, in an EU crisis management framework, it would seem essential that authorities may use the same tools to allow for a consistent approach and for the necessary coordination of their actions in a cross-border context.

Section 3 - Financing the implementation of the tools

59. Some of the measures proposed in the new framework would require the use of financial resources. For instance, the transfer of insured deposits (or other liabilities) from a distressed credit institution to another, sound, firm would need to be matched by transferring some combination of assets of the distressed firm and additional funds. The amount and type of financing required will depend on the measures adopted, but - in CEBS' opinion - should come from clear and identifiable sources in each Member State, so that intervention can be financed from the moment the authorities consider it to be needed. CEBS also considers that in order to avoid moral hazard, preventative action (i.e. with a view to avoiding a failure and pay-out by the DGS) should exist, based upon private sector financing.

60. Note that this advice does not discuss sources of financing for financial support provided without an accompanying use of intervention measures.

61. When financing tools take place (whether by DGS or others), the different stakeholders (e.g. shareholders and creditors) should be the first source of finance.

62. It is CEBS' opinion that intervention financing by DGS (or by others) is an important tool as:

- it allows cases to be dealt with where it is more rational and less expensive to avoid the closure of a credit institution and payout to depositors;
- this can contain an individual crisis and avoid that, through contagion, it becomes a systemic one.

Institutional structure and governance

63. As it has argued in its consultation response, CEBS considers that Member States should ensure that there is a mechanism in place for national banking sectors to contribute to the cost of intervention measures. This should be seen in the context of CEBS' strong preference that such costs should, in the first instance, be borne by the shareholders and creditors of the individual firm resolved. Different models for organising such contributions have been adopted in different Member States¹⁵; CEBS sees merits in each financing model, and does not think it necessary to

¹⁴ The Mapping report, p.37-41.

¹⁵ The consultation response, paragraph 36.

recommend one particular institutional structure. Nevertheless, a number of issues are important.

64. Given the substantial differences in industry structure, the organisation and financing of industry funds, and existing powers across Member States, it should be left to the authorities in each Member State to determine which measures could require financing on a case-by-case basis.
65. On governance, the authorities should retain the final responsibility to decide the best way forward in a crisis resolution (e.g. liquidation and pay-out, good/bad bank, partial sale of assets). Action must not be prevented by a lack of financing.
66. As far as triggers and timing for the usage of tools is concerned, CEBS has already mentioned that financing should be related to the need to use early intervention and resolution tools. There should not be additional conditions for financing to those that may be specifically considered for the use of tools.
67. On the question of the relationship between existing DGS funds and potential funds for resolution, CEBS has noted that the establishment of separate funds for resolution would lead to the unnecessary duplication of resources and possibly reduce the size of funds available for intervention¹⁶. On the other hand, the use of DGS funds to finance intervention measures (i.e. preventative action) would require a balance to be struck between the cost of the action at an early intervention stage and the cost of a potential pay-box action (i.e. applying a 'least-cost' principle).
68. CEBS has already mentioned that the European Commission should examine the case for national DGS to be able to contribute to the costs of non-payout measures. Any proposal for greater harmonisation should at least ensure that the ability of national DGS to contribute to intervention measures is not reduced, but may strengthen the case for harmonisation of related industry funds¹⁷.

Calibration issues

69. Calibration of the necessary size of *ex ante* funds for resolution is an important and difficult problem, which depends on the purposes for which they are to be used. Some minimum harmonisation would help to achieve a level playing field and, possibly, increase confidence in the effectiveness of the new EU framework. CEBS is aware that these issues have been thoroughly considered by the European Commission in the framework of the review of the DGS Directive.
70. Although some time should be necessary to complete the recapitalisation of each fund (both initially and after having been used), the time frame should be as short as possible, and consistent with countercyclical objectives.

¹⁶ The consultation response, paragraph 37.

¹⁷ The consultation response, paragraph 39.

Operational issues

71. For operational purposes, CEBS suggests that intervention action may benefit from an exchange of information between the supervisory authority and the DGS (or other), before the DGS intervenes in connection with a credit institution whose situation gives grounds for fearing that the deposits or other repayable funds may be unavailable when due.
72. Furthermore, CEBS encourages the European Commission to provide that interventions must not benefit existing management and shareholders, and so may be conditional upon the dismissal of the management, a restructuring, a total or partial sale, conversion of contingent capital, haircuts on creditors, or the cessation of its business and the sale of its assets.

Section 4 - Recovery and Resolution Plans

73. In its consultation response, CEBS set out an analysis of the potential advantages and disadvantages of the introduction of Recovery and Resolution Plans (hereafter 'RRPs'), and concluded that there would be merit in introducing such a requirement in the future framework for cross-border crisis management, while acknowledging the need to assess their potential impact on the Single Market.
74. If RRP's were to be introduced, in accordance with the Council conclusions of 18 May 2010, CEBS is of the opinion that the future framework should set out the principles on the basis of which RRP's should be devised. These principles should be the following:
- all EU credit institutions should have the obligation to devise RRP's. However, the principle of proportionality should apply to RRP's;
 - RRP's should be formally approved by the top management of the credit institution;
 - RRP's should be confidential, given the market sensitive information they would contain;
 - RRP's should be regularly reviewed and updated by each credit institution; and
 - RRP's should be discussed with the relevant competent authorities.
75. As for the structure and content of RRP's, CEBS considers that the any future EU legislative framework should refrain from setting out a detailed list of content-related requirements and that the final content of the RRP's should be the result of the dialogue between the credit institutions and the relevant supervisory authorities. Once there is clarity on the issue of RRP's, CEBS will consider the need to undertake further work in this respect in order to ensure the necessary convergence and level playing field.

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