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UNI Europa Finance Reply to the EBA Discussion Paper on a template for recovery plans (EBA/DP/2012/2)

UNI Europa Finance is the European-level trade union body for the finance sector. It represents 100 unions with 1.5 million workers in the banking and insurance industries. It is part of UNI Global Union and recognised by the European Union as a social partner. UNI Europa Finance is also part of UNI Europa, representing 7 million workers in the services and communication sectors. UNI Europa is member of the ETUC.

UNI Europa Finance welcomes the approach taken by the EBA to propose a detailed template for recovery plans. Such an initiative enhances comparability amongst institutions and their respective plans. The initiative is complementary to the Commission's framework for the recovery and resolution of credit institutions but deals only with recovery plans and not with resolution of an institution, the latter being in the realm of the new Directive. The key assumption is that in a crisis, a financial institution should not rely on the state or central bank's money to manage its survival. The EBA template puts prevention first with a three step framework: firstly, a general overview of the institution including information on employees (breakdown of employees per business unit); secondly, the core recovery plan which includes early warning systems; and thirdly a follow-up plan for the recovery.

UNI Europa Finance will only reply to the questions which we seem relevant to comment.

Q. 5: Do you believe the draft recovery template to be sufficiently comprehensive and cover all the aspects relevant to the purpose of the recovery plan? If not, please specify what is missing.

UNI Europa Finance generally supports a template for recovery plans. However, consequences on employees and employment have not been sufficiently taken into

account and the key role employees can play in recovery measures and warning systems is not sufficiently explicit. In addition to the important role a financial institution has in the economy at large, these institutions are also large purveyors of employment and have a social responsibility in this respect.

1. Under B. a and/or b) “General overview of recovery options/measures” and “Recovery and early warnings and triggers” the preventive role employees can play in the first stages of crisis management is not explicitly taken into account. This section should include a description of whistle-blowing procedures. Whistle-blowing can be used for prevention, such as to detect inappropriate or risk sensitive practices and to discover infringement of rules and regulations.
2. Under B. d) “Recovery measures” the impact assessment should also include the expected impact on employment in the institution and on external firms (i.e. on sub-contractors, externalized IT, suppliers, etc.). If the impact on employment is known, preventive measures may be taken in order to preserve employment, such as training or skills development. These measures should be further specified as well. Preventive measures on employment and skills development are already part of employment legislation in some Member States. In practice, it appears however that preventive measures are not sufficiently used: in restructuring processes, firms often rely on dismissals and recruit different staff later on. Such kind of measures may also include contact with government agencies in order to enable external reclassification measures and training for skills outside the finance industry if a permanent reduction in staff level in the sector is to be expected. Banks should take their responsibility for training of employees seriously and thus contribute to preserving employment and to reinforce the employability in case of permanent staff reduction in the firm or/and sector.
3. Under B. f) “Communication plan”, the plan should address in detail national and European and/ or international information and consultation procedures for employee representatives. In practice, European consultation procedures are often neglected and not sufficiently taken into account by global firms. In general terms, information and consultation procedures with employee representatives should, if used correctly, be mutually beneficial: employee representatives will discover the ongoing restructuring and the recovery plan, but they can also reveal specific situations management might otherwise not be aware of. This can also help to prevent crisis situations (see also Q. 14).

Q. 8 What kind of corporate governance arrangements have you adopted or would you adopt for recovery planning? Please comment on the differences to the template.

Corporate governance should not only include short term profitability indicators and maximization of value for the shareholders. There should also be indicators of long term strategic goals, based on economic and social performance, such as the long term impact of strategic decisions on employment and working conditions.

The board should be collectively responsible and accountable for risk management programs. In this respect, the civil and criminal liability of directors should be reinforced. We also advocate the importance of having employee representatives on the board level: this can ensure that the board has access to information it would not get otherwise.

Q. 11: Have you got any remarks or concerns about the confidential nature of the information provided in the recovery plan? If so, please elaborate.

When it comes to information concerning the employment situation of the firm or group of firms, employees' representatives and trade union representatives must be able to share information between them in order to anticipate important changes in working and employment conditions as well as possible redundancies. While there is no doubt that any misuse of confidential information must not be accepted, it must be ensured that trade union members and trade union officials are allowed use relevant information in order to fulfil their mandate and defend workers' rights.

The European trade union federations and the ETUC have been very concerned about companies' managements not obliging to European legislation on information and consultation of employees (most importantly EWC Directive 2009/38/EC). Often, even information directly relating to the employment conditions or the financial situation of a company is not given to European Works Councils or SE works councils, with management referring to confidentiality and potential harm for business. In other cases, information is given under the condition that e.g. EWC members must not even pass it on to their trade unions. Under these conditions, information and consultation of employees, guaranteed by European legislation, can not be effectively implemented in practice. EWC members and trade unionists are bound to confidentiality rules as well (see for example EWC Directive 2009/38/EC), so they should be trusted to know their responsibilities of how to handle confidential information.

Q. 14: What kind of information arrangements have you put in place to ensure that the right information is available within a short time frame for decision making in a stress situation?

Information should be a constant flow, not only between managers, but also bottom-up, from employees to management. This can be done either in the usual information and consultation process through works council sessions, or through whistle-blowing. Very often, difficult or potentially dangerous situations are identified by staff well before management discovers them. The question of professional alert systems points to the question of professional responsibility. Employees must have the right to raise an alert, and also enjoy anonymity and adequate protection when they exercise this right. Better protection for whistleblowers should be insured and structures provided to enable the information flow.

Q. 15: How frequent should interactions/iterations between supervisors and the financial institution be? What role should the supervisor play?

Supervisors should be able to be contacted even by lower level employees if they feel that risk sensitive practices can be discovered. This could be in the form of “open guichets” already existing in some Member States for consumers, where employees may turn directly to supervisory authorities. Employees have detailed knowledge about concrete implementation of risk policies and about how daily practices can have an impact on risk. Therefore, they should be able, if necessary, to contact the supervisor directly if they realize that risky practices are being implemented by the financial institution they work in. In such cases it should also be ensured that those employees have a right to remain anonymous and enjoy adequate protection.