



EUROPEAN COMMISSION

Internal Market and Services DG

Director-General

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Markt H1 TM/ek

Ms Kerstin af Jochnik,
CEBS Chair,
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Dear Kerstin,

Subject: Request for work by CEBS on early intervention in ailing banks

The European Commission considers that although there should be considerable focus on the steps to avoid a bank reaching insolvency, it is clear that there will always remain a risk that banks will fail. Given the potential consequences to depositors, contagion to other banks or damage to confidence in the financial system, the Commission believes that it is important to ensure that appropriate legal and other arrangements are in place to deal with such circumstances.

On 14 May, in the context of discussions about ongoing work on deposit guarantee schemes and crisis prevention, the ECOFIN Council requested the European Commission to look into possible linkages to early intervention and reorganisation of a failing bank.

The Commission has presented a paper to the EBC and the EFC on early intervention to deal with an ailing bank, and has announced its intention to produce a White Paper on this issue by mid 2009 at the latest.

I would therefore like to request the assistance of CEBS in compiling information about the specific and important issue of *when, under what conditions* certain crisis intervention tools are used at national level and *which* crisis intervention tools may be used. The interaction between those tools in a cross-border case will need to be considered at a later point in time.

I acknowledge that both prudential supervision and crisis management represent a combination of rules and discretions and that the CRD leaves the issue of early intervention open¹, resulting in significantly different approaches being applied at national

¹ Article 136 of the CRD sets out minimum requirements that competent authorities need to be able to take in order to ensure that credit institutions meet the requirements of the Directive – but precisely how is left to national implementation.

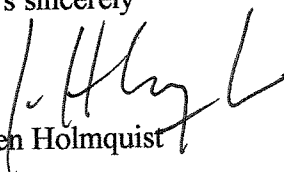
level. However, the Commission believes it is important to understand more fully how intervention works in practice in the Member States, in order to assess whether or not different processes and different trigger points have the potential to complicate smooth cross-border handling of a failing bank.

At this stage, we are confining our request for assistance to a simple stocktake, along the lines outlined in the annex to this letter. We are not issuing a formal call for advice. By "early intervention", we are interested in an overview of all pre-liquidation stabilisation measures aimed at achieving timely solutions for an ailing bank. This includes measures already covered in Article 136(1) of the CRD as well as other intervention measures e.g. suspension of payment of dividends, transferring or selling assets/liabilities to a healthy bank outside the group, taking over the management and assets of a bank and appointing a special administrator, setting up a bridge bank, creating a new bank or merging the bank with another bank, temporary public ownership, etc. The results of this evidence gathering will assist us to consider the possible policy options in the White Paper, although I should stress that at the start of this process, the Commission has no pre-conceived ideas about the possible outcomes.

Given the nature of our request, it is not necessary to revert to a formal call for advice. We would however welcome a contribution from CEBS once the stocktake has been completed – we would suggest this could be done at the same time as the Commission launches its own public consultation (February – April).

Taking into account the time constraints, we would be grateful if you would provide us with the requested information by 16 January 2009.

Yours sincerely


Jörgen Holmquist

Annex – details of the Commission's request for information on triggers for early intervention

Background

All MS operate some form of early intervention mechanism in order to handle a crisis in an ailing bank. But the nature of the measures, the criteria conditioning their application and the moment at which measures are activated are not harmonised and consequently differ across Member States. While speedy action may be critically important to the survival of the institution or to the ability for supervisors to minimise costs associated with a bank failure, such differences have the potential to complicate or impair efficient cross-border crisis handling.

The Commission intends to prepare a White Paper setting out its policy on Early Intervention Tools for dealing with Ailing Banks as a means of enhancing cross-border crisis handling. As part of this work, the Commission is requesting CEBS to compile information about the processes which lead up to decisions about whether or not to intervene in order to deal with an ailing bank (i.e. the bank is failing or is likely to fail), including the existence of any "clear cut" triggers.

There is a clear linkage between this work and the stocktake currently being undertaken on supervisory powers, due by November, and which should provide complete information about the options available to deal with various circumstances, including looming bank failures. However this new request is more focussed, and aimed at obtaining a more precise and broader picture of how decisions to apply one or other crisis resolution measure are reached in the different Member States and shedding further light on possible differences which have the potential to create problems in the case of a cross-border crisis. This stocktake should also complete information already gathered as part of the review of the Winding Up Directive

Scope of the exercise

In the White Paper on "early intervention", we intend to look at issues relating to the use of all pre-liquidation stabilisation measures aimed achieving timely solutions for an ailing bank. This includes e.g. suspension of payment of dividends, transferring or selling assets/liabilities to a healthy bank outside the group, taking over the management and assets of a bank and appointing a special administrator, setting up a bridge bank, creating a new bank or merging the bank with another bank, temporary public ownership, etc.. The main focus of the White Paper will be on assessing whether the current range of crisis management and resolution tools available to authorities can and should be complemented by additional tools and whether there is a case for further convergence of such tools at EU level.

The table in annex illustrates the intended scope of our analysis.

What do we need to know?

The purpose of this work will be to provide comprehensive information in all EU Member States about early intervention practices. By this, we mean the *key moments in time*, the *criteria which condition the decision by the competent authority to act* and the

1. The Commission wishes to obtain precise information about the **key moments**² during or preceding an unfolding banking crisis, in particular:

- Moment/event at which competent authorities trigger the requirement on a credit institution to take the necessary steps to redress the situation in order to meet minimum requirements in the Directive and to implement the measures referred to in Article 136(1) CRD.
- Moment/event at which other competent authorities need to be alerted about an emergency situation in a banking group (in accordance with Art. 130 CRD)
- Moment/event at which Member States trigger "early intervention measures" (to be understood in a broad sense which includes reorganisation measures) when the bank is still technically solvent (there is no EU legislation on this, so the rules vary across Member States).
- Moment/event at which insolvency is declared (in some cases, supervisors will participate in this decision - in others, not at all).
- Moment/event at which the DGS is triggered.

2. The Commission wishes to obtain precise information about the key *conditions* (including a detailed description of how these are determined) underpinning the key trigger moments, based e.g.:

- On the credit institution possessing adequate *resources* for it to be able to continue activities.
- On the credit institution maintaining adequate *suitability* for it to be able to continue activities
- Definition and assessment of *insolvency/illiquidity*

Input from CEBS should focus on conditions assessed by supervisors as part of their supervisory powers. Where crisis resolution is a purely judicial driven process, information should be limited to relevant law and case law underpinning this assessment by judicial authorities.

3. With reference to the results of the stocktake on supervisory powers, the Commission wishes to obtain precise information about which *actions* may result from a particular trigger being activated

4. The Commission wishes to obtain precise information about which *authorities* (e.g. finance ministries, central banks, supervisors, judicial authorities) have the power to intervene for each specific tool, including any procedures which may need to be followed (e.g. consultation with finance ministry, Parliamentary approval, etc).

² It is recognised that in reality there may be differences between perception and reality, and that in practice such moments may be very difficult to identify. However this should not exclude the possibility that legislation or internal guidelines may have attempted to describe or define such moments in precise or vague terms.

5. The Commission wishes to obtain information about whether national legislation of guidelines have already foreseen the possibility of conflicting trigger points in cross-border circumstances, and if so, what solutions have been adopted.

6. The Commission would expect, to the extent that it does not impinge on confidentiality requirements, that information on trigger events be substantiated by concrete cases of banks' resolution that competent authorities have experienced over the last decades.

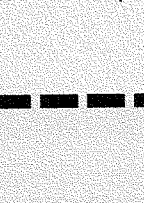
Procedure

This request is based on an informal request to CEBS chair. In view of the time constraints, the Commission is not issuing a formal call for advice. This should avoid the need for CEBS to conduct its own public consultation. The Commission intends to launch its own consultation on the White Paper before publication. CEBS will have an opportunity to provide its own assessment during the public consultation phase.

Timing

- Launch end September
- Delivery 16 January 2009

Commission's White Paper on Early Intervention: Intended scope of analysis

<p>Going concern supervision</p>	<p>Pre-intervention stage of crisis (bank is still judged solvent but in trouble)</p>	<p>Intervention stage in crisis (bank is either critically illiquid, insolvent or expected to be)</p>	<p>Insolvency proceedings/administration</p>
<p>CRD Colleges</p>	<p>CRD (Art. 130 + 136) Colleges ELA by NCB's DSG's and CSBG's</p>	<p>DSGs and CSBGs Finance ministries or NCB's (coordinating other competent authorities) Colleges</p>	<p>Reorganisation</p>
<p></p>	<p>Scope of Early Intervention measures</p> 	<p>Administrator Judicial authorities Supervisors NCB's Special Resolution Regime</p>	<p>Winding up</p>
<p></p>	<p></p>	<p>Judicial authorities Supervisors DGS</p>	<p></p>