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Ministry of Finance

RIKSGÄLDEN
SWEDISH NATIONAL DEBT OFFICE

SVERIGES RIKSBANK

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Swedish answers to the DG Internal Market and Services Working Document "Technical details of a possible EU framework for bank recovery and resolution"

1. PARTICIPATING AUTHORITIES

This memorandum includes the joint answers to questions in the DG Internal Market and Services Working Document "Technical details of a possible EU framework for bank recovery and resolution" (hereinafter "the Working Document") of the Swedish Ministry of Finance, the Riksbank, the Swedish Financial Supervisory Authority and the Swedish National Debt Office (hereinafter "the Swedish Authorities").

2. GENERAL REMARKS

The Swedish Authorities support the overall objectives of the recovery and resolution regime discussed in the Working Document. We remain convinced that the measures and tools proposed, with some necessary supplements, will provide for a credible and efficient crisis resolution regulation. Before we proceed to the specific questions raised in the Working Document, we provide some comments on broader issues that need to be resolved to ensure that the mechanisms put in place are adjusted to the problems associated with recovery and resolution.

While it is necessary to ensure stability and effective handling of crises, it is equally important that the financial system is able to fulfil its fundamental tasks also in normal times. The severity of the financial crisis justifies fundamental changes, but it does not take away the responsibility to ensure that the regulatory measures are proportionate and do not have side-effects that more than outweigh the benefits. The complexity of the rule making process now under way – where changes are made across a broad range of areas – makes it exceedingly hard to make such assessments.

The need for a principle-based approach

The Swedish Authorities support the seven principles spelled out in the introduction to the Working Document. We note that they all refer to the *resolution* part of the proposed set of rules. Focusing on resolution is appropriate, since this is the area where the current arrangements are least satisfactory and where adjustments need to be done to improve the framework.

However, this means that the guiding principles behind the proposed rules for prevention and recovery are less clearly spelled out. We believe that a more principle-based approach is necessary also when discussing prevention and recovery. These principles should clarify objectives and ambitions behind the proposed measures. For example, it is essential to take a stand on where to draw the line between responsibilities that should be given to supervisors and those that should be left with banks and their owners.

It is also not clear how all the powers proposed for prevention and early intervention are linked to the objectives of the resolution regime. The objective must be to create a resolution regime that is so effective that it can handle any bank that fails which can not be handled with ordinary corporate bankruptcy procedure, not a regime that prevents all failures. This means that the more effective the resolution regime, the less important it is to give supervisors powers to micro-manage banks, responsibilities that it will be hard for them to exercise effectively. (A similar argument can be made with regard to a more effective capital requirement regime.) A bank faced with a *credible* threat of resolution (and a lot of capital at stake) before it comes into financial difficulties will behave more prudently *ex ante*. And for banks that fail anyway, appropriate procedures to handle them should be in place. All in all, the Swedish Authorities believe that an approach based on accepting that banks sometimes fail is more credible than focusing on trying to make supervisors prevent all failures.

We would therefore prefer to see more focus on ensuring that the resolution procedures are set up appropriately. That issue is complex enough, not least considering the short implementation timeframe indicated in the Working Document. This argues for a less ambitious reform agenda in some of the other areas, such as special management, to reduce the risk that measures are introduced before they have been thoroughly assessed and evaluated.

Handling of non-systemic and/or systemic crises?

Another key issue that requires more attention is the level of ambition of the resolution regime, i.e. in which situations it is to be used. In particular, there is no discussion on how the procedures are expected to work in a genuine systemic crisis of the kind that erupted in 2008, i.e. when the survival of all banks is threatened.

Our view is that the proposed measures are insufficient in such a situation. It is, for example, inconceivable to convert all banks into bridge banks at the same time, let alone to try to sell a large number of banks in the midst of a systemic crisis. In our opinion, the proposed measures are useful when one major bank, or a few smaller banks, have to be dealt with. The fact that other measures (capital injections, guarantees etc.) were used in the recent systemic crisis is thus not only explained by the lack of resolution regimes, but by the fact that these resolution measures were not applicable because of the systemic nature of the crisis. The economies of the Member States were in a state of emergency and this called for action by Governments using their budgetary and fiscal powers. The measures were partly co-ordinated at the EU level, but responsibility for each step rested with the national Government (naturally within the framework set by the state aid rules).

The ambition behind the reforms of financial regulation is to avoid that a systemic crisis occurs again, but such an event can never be excluded. The bail-in tools presented in the Annex are important, as these tools may indeed be suitable to deal with larger and more complex banks where the traditional resolution measures may not be possible to apply. The Swedish authorities strongly support the development of bail-in tools at the international level. However, these tools are yet to be developed and are therefore untested in dealing with a systemic bank failure. More importantly, also these tools could prove insufficient to deal with a systemic crisis. Thus, the resolution framework as proposed in the Working Document will not be sufficient. A first step in the continued process for developing better resolution tools is to acknowledge this fact. It is imperative that the regime is perceived as a credible regulatory framework also for such critical crisis situations.

A second step is to consider whether to extend the powers laid down at the EU level to cover all of the measures that must be taken to handle a truly systemic crisis. In a systemic crisis it can be necessary to use measures that require the full backing by the state. These measures may have fiscal consequences of such orders of magnitude that they for both political and treaty–related reasons must be dealt

with at the national level. Moreover, emergencies may call for exceptional measures tailored to the specific situations. It is difficult to draft a directive that gives the degrees of freedom that is required. However, it is important to ensure that any legal obstacles for measures that can be imperative during emergencies, such as capital injections and partial or full nationalisation of banks, are removed. As experienced during the recent crisis, coordination between Member States is as important in this area and a lack of clear and common legal powers may lead to bail-outs of shareholders and full compensation to creditors in order to preserve financial stability, which is unfortunate.

We would point to the Swedish Bank Support Act (2008:814) as an illustration of the type of legislative set-up needed to deal with a situation where the stability of the financial system is threatened. It provides the Government with a broad range of tools and the fiscal mandate to use the tools effectively. It is also a very tough legislation in terms of the powers that can be exercised against a credit institution and its shareholders. Under the Support Act, government support can be provided to credit institutions in order to avoid a serious disturbance to the Swedish financial system. The decision is discretionary for the Government, but any support agreements can be reviewed by a special Appeals Board. If the Support Authority (the Swedish National Debt Office, SNDO) and the institution fail to reach an agreement on the terms for the support, the terms will be considered by the Appeals Board. Ultimately, the SNDO has the right to redeem all outstanding shares (i.e. immediate nationalisation) in an institution if it is of extra-ordinary importance from the public perspective that the state takes control and (i) the institution has a capital ratio below 1/4 of the legal requirement (i.e. 2 percent), or (ii) refuses to sign an agreement on support on conditions found not unreasonable by the Appeals Board, or (iii) if the institution does not follow its essential obligations following from the support agreement.

Taking control of the bank ensures that the state has all the power to reconstruct the bank, and restore confidence whilst at the same time maintain systemically important services, and safeguard financial stability. Any tools or measures that include state support must also ensure that the state is appropriately compensated for the risks assumed. At present the Swedish framework lacks the possibility of debt write down/bail-in. The Swedish Authorities therefore welcomes further work on these tools and believe that these tools may enhance the efficiency of crisis resolution and a more fair contribution of all stakeholders. It is essential that the regime is perceived as credible also in the most testing circumstances.

Finally, the Swedish Authorities would like to point to the need to set up coordination structures also for dealing with more severe crisis situations. In these situations, there may be a need for coordination between Ministries of Finance and Central Banks. These coordination structures need not be detailed in the legal framework, but could rather take the format of voluntary cooperation in Cross-Border Stability Groups. However, it is necessary to ensure that there are no obstacles to coordination, for instance as regards information exchange.

3. SUMMARY OF QUESTIONS AND ANSWERS BY THE SWEDISH AUTHORITIES

Institutional Scope

1a. What category of investment firms (if any) should be subject to the preparatory and preventative measures tools and the resolution tools and power?

1b. Do you agree that the categories of investment firm described in Question Box 1 are appropriate? If not, how should the class of investment firm covered by the proposed recovery and resolution framework be defined?

We agree with the Working Document's proposal that the investment firms carrying out investment services as defined in the consultation should be subject to the resolution regime. Whether to apply the resolution tools should be decided by the competent authorities and guided by the principle of proportionality. The resolution tools should always be applicable, but whether to use them in an individual case will depend on if there are any resolution objectives that have to be regarded. The suggestion to include a broad range of firms in the resolution framework also does not mean that all preventative measures and tools should apply. As explained further below, the Swedish Authorities for example consider that recovery and resolution plans should only be developed for institutions subject to enhanced supervision.

The Swedish Authorities are of the opinion that the framework should not apply to investment firms only because they are included in consolidated supervision of a banking group. The Swedish Authorities share the view that those investment firms that are not subject to prudential requirements and supervision under 2006/49/EC shall be excluded from the scope of the regime.

1c. Are the resolution tools and powers developed for deposit-taking credit institutions appropriate for investment firms?

Yes. Credit institutions may provide investment services. However, the fact that not all credit institutions are deposit taking has to be taken into account when developing the resolution tools and powers.

2a. Do you agree that bank holding companies (that are not themselves credit institutions or investment firms) should be within the scope of the resolution regime?

No, bank holding companies should be dealt with in the same way as other owners. Ideally the resolution regime should be designed in a manner that can resolve banks and deposit-takers or investment firms at the entity level. For this to be possible it will be necessary to ensure the scope of the resolution regime is wide enough to cover all systemically important financial institutions. In addition, resolution plans should help identify and resolve situations in which it will not be possible to resolve individual entities in a manner that meets the resolution objectives (e.g. if a bank is reliant on services from an affiliate that is outside the scope of EU regulation)

2b. Should resolution authorities be able to include bank holding companies in a resolution even if the holding company does not itself meet the conditions for resolution: i.e. is not failing or likely to fail (see conditions for resolution)?

No.

2c. Are further conditions or safeguards needed for the application of resolution tools to bank holding companies?

If included, probably. Any measures taken have to be proportionate to the situation. The holding company may be involved in both financial and non financial businesses and there might be both financially sound and unsound parts of the group.

Authorities

3a. Do you agree that the choice of the authority or authorities responsible for resolution in each Member State should be left to national discretion? Is this sufficient to ensure adequate coordination in case of cross border crisis?

Yes.

3b. Is the functional separation between supervisory and resolution functions within the same authority sufficient to address any risks of regulatory forbearance

It is important to address risks of regulatory forbearance. If a functional separation is sufficient should be left to the Member States to decide, taking into account national legislation.

3c. Is it desirable (for example, to increase the checks and balances in the system) to require that the various decisions and functions involved in resolution – the determination that the trigger conditions for resolution are met; decisions on what resolution tools should be applied; and the functional application of the resolution tools and conduct of the resolution process – are allocated to separate authorities.

This should not be dealt with in EU legislation. Accordingly, EBA should not be given the task to explain how the functions should be divided between different authorities it should be left to national competence.

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?

It is difficult to see any added value in stating the obvious that the resolution authorities should act in accordance with the principles set up in the consultation document. However, the future legislative framework should state that the resolution authorities should have proper regard to the impact of their decisions on financial stability in other Member States (compare Article 40(3) in Directive 2006/48/EC).

Supervision

General comments:
Supervisory programme (A1)

The Swedish Authorities consider an annual supervisory programme to be beneficial, provided that it is possible to apply proportionality, i.e. that the design of the programme can be based on a risk analysis. The need for specific supervisory programmes for minor credit institutions is questioned by the Swedish Authorities. We suggest that the plans instead focus on larger institutions, and other institutions subject to enhanced supervision.

Stress testing (A2)

The Swedish Authorities are in favour of the suggestion that the supervisors shall conduct annual stress tests on the credit institutions under supervision. We would also like to emphasize the importance of enabling the supervisors to use different methodologies for different types of institutions when conducting the tests, e.g. in relation to large and small institutions. The outcome of the stress test can form a basis upon which a constructive and concrete dialogue with the supervised institution can take place.

Enhanced supervision (A3)

The Swedish Authorities are in favour of the proposals regarding enhanced supervision of credit institutions, since it is the belief of the Swedish Authorities that enhanced supervision based on a risk assessment is a natural part of bank supervision.

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?

The Swedish Authorities note that stress tests conducted by supervisors have already been implemented in some Member States and on an EU-wide basis. It is the opinion of the Swedish Authorities that stress tests conducted by supervisors should be encompassed in the regular supervision of the institutions.

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?

The Swedish Authorities object to implementing new rules which would prohibit disclosure of stress tests results due to certain circumstances. Results of the stress tests should be disclosed in order to reassure markets and as a means to bring attention to potential problems. If the result of a stress test is less favourable, back-stop

measures should preferably accompany the disclosed results. The leading principle for the Swedish Authorities position regarding this issue is that transparency reduces uncertainty. Lack of transparency does the opposite, undermining the purpose of the exercise.

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

Yes, that would be beneficial. The Swedish Authorities would however like to underline that it is important that there is room for adaption to local circumstances. The common methodology should in this context serve as a minimum level of testing and should not imply a prohibition of use of other methodologies in parallel with the one agreed at EU level.

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.

The aforementioned enhanced supervision would require more time and effort. The exact need for increased resources is difficult to estimate at this stage.

Recovery Planning

General comments:
Recovery plans (B1)

The Swedish Authorities are in favour of the requirement that credit institutions should draw up and maintain recovery plans. However, a requirement stating that <u>all</u> credit institutions and some investment companies should draw up recovery plans would lead to a significantly larger workload for the supervisors and the institutions, without clear benefits for financial stability. The Swedish Authorities suggestion is to limit recovery plans to larger credit institutions, and other institutions subject to enhanced supervision.

6. Are the required contents of preparatory recovery plans suggested in section B1 sufficient to ensure that credit institution undertake adequate planning for timely recovery in stressed situations? Should we include additional elements?

The Swedish Authorities have no objections in relation to the content of the recovery plan. The Swedish Authorities are in favour of applying proportionality when requesting recovery plans from the institutions.

The Swedish Authorities are of the opinion that recovery plans should mainly provide ways to increase capital and/or liquidity, rather than focusing too much on testing different scenarios and potential obstacles. If plans become too specific, they risk being difficult to execute if the situation does not fit into a particular scenario.

7a. Is it necessary to require both entity-specific and group preparatory recovery plans in the case of a banking group? How to best ensure the consistency of recovery plans within a group?

It is the opinion of the Swedish Authorities that requiring both entity-specific and group recovery plans in the case of a banking group is unnecessary, since the group recovery plan would include recovery plans for each entity of the group. We propose that the group recovery plan should primarily be submitted to the consolidating supervisor but also to the other relevant supervisors. The Swedish Authorities would again like to stress that the focus of Recovery Planning should be on large financial groups which are relevant to the financial stability and other institutions which are under enhanced supervision.

7b. Should supervisor of each legal entity be allowed to require any changes to entity specific recovery plans, or should this be a matter for the consolidating supervisor?

Yes, the supervisor of each legal entity should be allowed to require any changes to entity specific recovery plans and thus on the group recovery plan. The matter should be dealt with within the supervisory colleges.

7c. Is a formal joint decision (in accordance with the procedure set out in Article 129 CRD) between the consolidating supervisor and the other relevant competent authorities appropriate for decisions regarding the group preparatory recovery plan?

The consolidating supervisor should bear the overall responsibility for the group's recovery plan but the views expressed by other relevant supervisors should be taken into account. A formal joint decision is

probably required to ensure that all authorities feel comfortable with, and adhere to, the plan.

7d. Should the EBA play a mediation role in the case of disagreement between competent authorities regarding the assessment of group preparatory recovery plans?

Yes, to ensure a functioning framework, some level of mediation powers is necessary. The Swedish authorities agree with giving EBA a mediation role.

8. Please estimate:
(a) the one-off initial costs (e.g., investment in IT and other systems);
(b) the additional ongoing annual costs, including the costs of Full-Time Equivalent employees (FTEs), and the number of such FTEs, that your institution would be likely to incur in carrying out the activities related to recovery planning suggested in section B.

The development of recovery plans for all institutions covered by the resolution framework would require increased resources, the exact amount of this is difficult to estimate at this stage.

Intra-group Financial Support

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

Yes, to ensure efficient crisis management on a European level, it is essential that a framework for asset transfers is considered. The most preferable solution would of course be to apply burden sharing between the countries, which would limit the incentives for ring-fencing. There are however clear difficulties in reaching such an agreement ex-ante, in particular since it may involve a contingent liability to use fiscal resources. In times of liquidity crises, asset transfers may be the optimal solution whereas ring fencing may lead to an inefficient bankruptcy of the group or part of the group. General bans ex-ante on certain types of transfer should not be allowed to be part of the legislation of Member States or members of the EEA.

The Swedish Authorities are positive to the proposed framework for intra-group financial support. However, many issues require further consideration (including how to ensure that asset transfers do not give

rise to problems in the transferor). One area which require further analysis is the tax consequence of providing financial support in a cross-border situation.

10. Section CI suggests that the support that might be provided under an agreement should be limited to loans, guarantees and the provision of collateral to a third party for then benefit of the group entity that receives the support. Do you agree that financial support should be restricted in this way, or should it allow a broader range of intra-group transactions?

The Swedish authorities agree that at least as a first step, the proposed limitations would be reasonable. The agreements on intra-group financial support should not be allowed to become overly complex. Complex agreements will be more difficult to execute in times of crisis.

11a. Should this type of financial support be provided only down-stream (parent to subsidiary) or also up-stream (subsidiary to parent) and cross-stream (subsidiary to subsidiary), or should this be left to the discretion of the parties, (subject to approval by competent authorities)? What would be the advantages and disadvantages of each option?

In the view of the Swedish authorities, support should be possible, up-stream, cross-stream and down stream. In which direction support will be necessary is difficult to determine beforehand and flexibility will allow for different group structures. The decision should be left to the discretion of the parties, but be subject to approval by supervisors. As part of the review, supervisors can consider the specific organisational structure of the group and its internal allocation of liquidity. A general ex-ante ban on certain types of transfers shall be prohibited.

11b. Should the agreement be restricted to credit institution and investment firms subsidiary, or should it be able to include financial institutions on the grounds that these are also subject to supervision on a consolidated basis?

The Swedish Authorities consider that support should be limited to subsidiaries that are credit institutions and investment firms.

12. Is a mediation procedure necessary, and if so, would the approach under consideration be effective?

Yes.

13a. Should the agreement specify the consideration for the loans, provision of guarantees or assets, or simply set general principles as to how consideration should be determined for each specific transaction under the agreement (e.g. how the rate of interest should be set)?

It should be sufficient for the agreement to set out general principles for consideration. Otherwise there will likely be a need for frequent revisions of the terms of the agreement.

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

14. Do you agree with the conditions for the provisions of intra-group financial support suggested in section C4?

Yes, the conditions for support are reasonable and if fulfilled should ensure an appropriate balance between the group interest and the interest of the transferor.

15. Do you that decisions to provide financial support should be reasoned? Are the criteria suggested in section C5 appropriate?

Yes, but the conditions for support could be further elaborated in the support agreement.

16a. Do you agree that the supervisor of the transferor should have the power to prohibit or restrict a proposed transaction under a group financial support agreement on the grounds suggested? Should any other grounds for objection be included in the framework?

Allowing the supervisor of the transferor to stop transfer under certain circumstances is likely to be required in order to reach an agreement on a framework for intra-group financial support. To ensure that such a right is not applied arbitrarily some level of mediation or scrutiny by EBA would be useful.

16b. What is the appropriate time limit for the reaction of the competent authority?

16c. Should a time limit be set also for the reply to the consultation by the supervisor of the beneficiary?

17. Do you consider that supervisors should have the power to require an institution to request financial support?

Yes, such a request is an appropriate tool to include in a common toolbox for early intervention.

18a. Is either or both of the suggested mechanisms for protecting the claim of a transferor in relation to intra-group financial support appropriate?

The Swedish Authorities are sympathetic to the reasons outlined for applying safeguards. However, it is important to consider the impact of such safeguards on the perceived value of support. Support that is combined with a right to claw-back may not provide the market or supervisors with clear comfort.

18b. If adopted, should either be subject to a time limit (for example, the priority claim or claw back right would apply only if the relevant insolvency is commenced within a specified period – such as 12 months – after the transfer)?

Any safeguards that are introduced should be limited in time.

19. Do you agree with the exclusion of liability for management proposed in section C9?

According to the Swedish Authorities, the outlined approach may be too far-reaching and require further consideration.

20. Do you agree that agreements for intra-group financial support should be disclosed?

Yes, disclosure of intra-group financial support agreements is vital as they include important information for market participants.

Resolution Plans

General comments:
The Authorities are positive to implementing resolution plans but support limiting the scope of resolution plans to larger credit institutions and other institutions subject to enhanced supervision.

The decision on how to divide the responsibilities between national authorities should be left to national discretion. A functional separation between the supervisory authority and the resolution

authority is important however, the resolution authorities should cooperate with the supervisory authorities when developing the resolution plans. The triggers for early intervention and resolution are very similar and the preparatory and preventive power and the early intervention are partly overlapping. The national framework for recovery and resolution needs to clarify which authority – the supervisory or the resolution authority – that is responsible for which part of the preventive or the resolution phase and how any difference of opinion should be dealt with. Also, the framework does not specify to what extent Ministries of Finance or Central Banks shall be involved in the drawing up of resolution plans or if and how they shall contribute in the early intervention or resolution phase. Since those authorities are closely involved financial stability work on both national level and on cross border level (through their participation in the cross border stability groups) the future framework should explicitly recognise their roles in the financial stability work.

21a. Should resolution plans be required for all credit institutions or only those that are systemically relevant?

Similar to recovery plans, resolution plans should only be required for larger credit institutions and other institutions subject to enhanced supervision.

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?

The Swedish Authorities consider the requirements for resolution plans to be adequate for preparing authorities to handle a crisis situation in a single institution effectively. However, they will not be adequate to handle a wider systemic failure. Please refer to the general remarks under the heading *Handling of non-systemic and/or systemic crises?* in the introduction to this document for further reasoning.

21c. Please estimate:
- the one-off costs in EUR (e.g., investments in IT or other systems);
- the additional ongoing annual cost (e.g. human, subcontracts etc.), including the cost and number of Full-time Equivalent employees, that your institution would be likely to incur in

complying with requirements related to recovery and resolution plans.

A requirement for recovery and resolution plans to be developed for all institutions covered by the resolution framework would mean significant additional costs. The total cost is difficult to estimate at this stage.

Preparatory and Preventative powers

General comments:
Preparatory and preventative powers (D3)

The Swedish Authorities consider that the proposed preventative powers listed in the working document should be initiated by the supervisory authority rather than the resolution authority in order to avoid any potential institutional conflicts. The proposed procedure, according to which the resolution authority should impose a list of measures on the credit institution so as to overcome impediments, could lead to a duplication of responsibilities and conflicting requirements, as well as increased costs.

The Swedish authorities are in favour of more proactive supervision, but as described in Section 2 General comment, it is important that preventative powers are designed in such a way as to contribute to the overarching principles of the framework. It is our opinion that some of the measures described under preparatory and preventative powers (D3) are highly intervening in the management of the institutions, given the early point in time when the measures should be activated. We object to measures which result in the supervisor taking over the responsibility for the credit intuition's management decisions at this early point in time.

22a. Are the preparatory and preventative powers proposed in section D3 sufficient to ensure that all credit institutions can be resolved under the framework proposed? Are any further specific powers necessary?

The lack of appropriate legislation and sufficient supervision in a time of financial crisis is not contested and the proposed preparatory and preventative powers may indeed be an efficient mean to make the management of a crisis and resolution easier. However, as explained in Part 4 Resolution, faced with the threat of a systemic crisis other means will typically be needed.

22b. Specifically, should there be an express power to require limitations to intra-group guarantees, in order to address the obstacles that such guarantees may pose to effective resolution? (The FSB has identified such an obstacle: the guaranteed activities may be more difficult to separate from the rest of the organisation in times of stress, and may limit the ability to sell the guaranteed business.)

No, although it is true that intra-group guarantees could be a potential obstacle to effective resolution. Such difficulties should be handled primarily through increased requirements on capital and liquidity planning for the guarantor.

22c. In what cases, if any, might the exercise of such powers have an impact on affiliated entities located in other Member States? In such cases, should the EBA play a mediation role, or should the group level resolution authority make the final decision about the application of measures under section D4 to single group entities (irrespective of where they are incorporated)?

It should not be a sole decision by the group level resolution authority. EBA should play a mediation role.

23a. Do the provisions suggested in sections D4 to D6 achieve an appropriate balance between ensuring the effective resolvability of credit institutions and groups and preserving the correct functioning of the single market?

An appropriate balance should be reached in order to avoid undermining the benefits of integrated groups, i.e. the power to require changes to the legal or operational structure of a group may result in undesired effects on the single market. One measure that, arguably, does not fall under usual preventative measures would be the power to require changes to the legal or operational structure of a banking group. The existence of such a power raises concerns given its potential effects on the Single Market. In the working document, it remains unclear how the Commission intends to ensure that the Single Market will not be harmed by the exercise of such power. However, it is important to make sure that legal and operational structure is aligned, many problematic issues arise when the legal structure is ignored.

23b. Do you consider that only the group level resolution authority (rather than the resolution authorities responsible for the

affected entities) should have the power to require group entities to make changes to legal or operational structures (see point (e) in the list of possible preparatory and preventative powers in (E4))?

None of the authorities should have such direct legal powers.

23c. Are there sufficient safeguards for credit institutions in the process for the application of preparatory and preventative measure that is proposed in sections D4 to D6?

The proposal discusses the presence of measures available for the authorities in order to require entities to make changes in legal or operational structures. The Swedish Authorities are concerned that there are not enough safeguards to preserve the internal market in the proposed process.

Early Intervention

General comments:
Early intervention powers (E1)

The Swedish Authorities welcome the increased possibility for the supervisor to intervene at an early stage and even before a possible crisis has occurred. It is an essential part of crisis management to ensure that supervisory authorities have a common tool box also at an early stage.

The Swedish Authorities are however of the opinion that some of the measures described under part 3-Early Intervention will have the effect that the supervisor takes the responsibility for managing the company. As such they are less adapted to combat moral hazard. Our view is that if the management is not capable of running the company, it should be replaced. The Swedish Authorities agree that all supervisors must have the power to require the replacement of members of the Board of directors and the Managing director. If the owners prove unable or unwilling to do this, the institution's license should be revoked. The intermediate solution, where the supervisor (or a special managers appointed by the supervisor) takes charge for an extended period of time, is not desirable. The system should not be designed to avoid resolution at all costs. Institutions must be allowed to fail to restrict moral hazard.

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?

Yes, the Swedish Authorities are positive towards "likely to fail/breach" as trigger. The financial crisis clearly shows the importance of pro-active supervision and intervention before serious problems occur. When a trigger relies on determining an actual breach of requirements appropriate actions may come too late.

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

We believe that they are sufficient, and are generally very positive towards them.

Regarding the plan for renegotiation of debt, it seems to be a resolution measure to be part of the resolution plan, rather than an early intervention tool. On the other hand, conversion or write-down of instruments, such as contingent capital and other hybrid instruments, may be an early intervention measure in a future framework depending on whether conversion is to be triggered by supervisory intervention of more mechanical criteria.

25a. Should supervisors be given the power to appoint a special manager as an early intervention measure?

No, the Swedish Authorities do not support the Special Manager proposal as an early intervention measure. It could raise moral hazard, competition and Single Market concerns. It is likely that the Special Manager would be associated with an implicit government guarantee. The Swedish Authorities are of the strong opinion that the supervisor should not interfere with the management of the institution to such an extent and at the same time leave the ownership of the company with the shareholders. If the failures in the management of the institution are of such magnitude, the institution's license should be revoked and it should be transferred to the resolution regime. There are also other tools that could be used, such as replacement of board members or the managing director, if the failures do not motivate withdrawal of the institution's license.

25b. Should the conditions for the appointment of a special manager be linked to the specific recovery plan (Option 1 in section E2), or should supervisors have the power to appoint a special

manager justifying grounds to or unable section E2)? *when there is a breach of the requirements of the CRD intervention under Article 136, but the supervisors have believe that the current management would be unwilling to take measures to redress the situation (Option 2 in*

If implemented, Option 2 is preferred, since it relates to a situation where the management is already failing.

25c. If the conditions for appointment of a special manager are based on Article 136, is an express proportionality restriction required to ensure that an appointment is only made in appropriate cases where justified by the nature of the breach?

The Swedish Authorities do not support the proposal of a Special Manager with actual decision rights in the management of the institution, see q. 25a. In any event a general proportionality principle, meaning the size of the company and the success of other measures needs to be considered.

Recovery plans

26a. Do you agree that the decision as to whether a specific group recovery plan, or the coordination at group level of measures under Article 136(1) CRD or the appointment of special managers, are necessary should be taken by the consolidating supervisor?

Yes, but in the assessment of the plan all of the supervisory authorities should participate.

26b. Should the supervisors of subsidiaries included in the scope of any such decision by the consolidating supervisor be bound by that decision (subject to any right to refer the matter to a European Authority that could be the EBA)?

Yes, but they should have the right to refer the matter to EBA.

26c. Is a mechanism for mediation by a European Authority appropriate in this context and should the decision of that Authority be binding on all the supervisors involved?

Yes, the mediation mechanism is appropriate. But it is important that supervisors are allowed to question the plan on the basis of the

solvency, liquidity of the individual institutions and the group as a whole and financial stability, similar to what is required for implementation of intra-group financial support.

26d. Is the suggested timeframe (24hours) for decisions by the consolidating supervisor and the EBA appropriate in the circumstances?

27. Do you agree that the consolidating supervisor should be responsible for the assessment of group level recovery plans?

The Swedish Authorities find it reasonable that the consolidating supervisor should be responsible for the assessment of group level recovery plans in coordination with the other authorities.

Part 4 – RESOLUTION TOOLS AND POWERS

General comments:
Resolution: conditions, objectives and general principles (F)

The Swedish authorities welcome the Working Document proposal for a minimum harmonisation of the measures to resolve financial crises. However, there are some caveats to be aware of. As experienced during the recent financial crisis, traditional resolution tools are not sufficient to handle a systemic crisis. The bail-in tool described in the framework is untested and even if it will function to a reasonable extent, it still may not be sufficient. A functioning framework for crisis management is crucial to better cope with the next financial crisis. Hence, we can hope for the best, but should prepare for the worst, and this calls for additional tools – e.g. capital injections and guarantees. Capitalization combined with a correct valuation of the assets will reduce moral hazard, and is a swift way to handle failing banks.

To prepare for the worst, a back-stop in the form of temporary public ownership (nationalization) is required. Unfortunately this tool does not make other stakeholders (such as creditors) share the burden even if shareholders are wiped out, an issue the new framework is designed to avoid. Hence, the use of temporary public ownership is a last resort and should, if possible, be combined with a bail-in element if it is ever used.

Financial crises are not as uncommon as previously believed and systemic crises are extremely costly for society as a whole.[1] In order to be credible, the resolution framework must provide authorities with instruments and powers which make it possible to handle a systemic crisis as well as single entities. The view of the Swedish Authorities is that the framework presented in the working document needs to be supplemented with additional resolution tools, such as capital injections and guarantees in order to be a credible framework for the handling of a systemic crisis like the one we have recently experienced. The main reason for this is that the Swedish Authorities consider it as inconceivable to convert a large number of banks into bridge banks at the same time, nor is it possible to sell a large number of banks in the midst of a systemic crisis.

The framework does not mention any use of state guarantees, a tool that indeed prevented the banking systems from a collapse when the inter-bank market failed to serve the market. The Swedish Authorities are convinced that this tool must remain in the toolbox in order to prevent future crises from escalating.

The Swedish Authorities support the development of bail-in tools, but these proposed measures are still untested and many questions remain. In the future bail-ins might work as a substitute to recapitalisation and it will probably work well in non-systemic situations. In the short term however it is unlikely to be an efficient stand alone alternative in a systemic crisis. Even in the long run it can not be ruled out that capitalization might be needed to complement bail-ins.

The conclusion of the Swedish Authorities is that the framework needs to be complemented by a state guarantee tool as well as a capitalization[2] tool in order to be credible. Whatever the tool used to wind down banks or keep them as a going concern it is important to stay with the basic principle that owners and creditors should not be worse or better off than they had in a bankruptcy. As we interpret the document there is a great risk that owners and creditors will gain from

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[1] Reinhart and Rogoff (2008) *This Time is Different: A Panoramic View of Eight Centuries of Financial Crises* NBER Working Paper 13882. In addition Rogoff and Reinhard (2009) show that national debt levels increases by 86 percent on average, after a post WWII crisis, *The Aftermath of Financial Crises,* NBER Working Paper 14656.

[2] Norway, Finland and Sweden all used some form of public capital injection during the severe financial crises in the early 1990's. Allen and Gale (1999) argue that the public capital injection made it possible for the banks to realise losses and quickly return to normal credit services to households and industry which limited the effect of the financial crisis on the overall economies. During the 1990's Japan used the opposite strategy of letting the banks slowely finance losses with retained earnings which resulted in a slow and stagnant economic recovery. Hoshi and Kashyap (2004).

a state intervention. This is not acceptable. We must simply do what we can to curb moral hazard, any net gain due to state intervention should not be passed on to creditors or shareholders responsible for the bank at the time for intervention.

Bridge bank tool (G3)

The Swedish authorities broadly support the bridge bank tool. The bridge bank tool proposed by the Working Document can be evaluated by its ability to maintain financial stability during the crisis while keeping the moral hazard concerns at minimum during normal times. That said, the bridge bank tool seems to be more suited for a resolution of a single, large financial institution or a number of small, 'systemic-as-a-herd' financial institutions. Two important questions concerning this tool can therefore be raised:

- Can the bridge bank tool cope with system-wide shocks with multiple simultaneous medium/large bank failures?
- How to avoid the general loss of confidence e.g. runs of uninsured creditors even for banks that are financially sound?

The bridge bank tool is suited to financial institutions that can be split upon failure into parts that the resolution authority wants to preserve and the parts that it allows to fail. The effectiveness of the bridge bank tool relies heavily on the institutions' resolution plans ('living wills'). If a bank cannot be split, the bridge bank tool is in effect like nationalisation. In such a situation, it may be more straightforward to use a temporary public ownership tool directly. (This tool is however not an explicit part of the Working Document framework). However, relying on only a public ownership tool risks increasing moral hazard concerns, as creditors are 'needlessly' bailed out. A legal framework supporting bail-ins is therefore vital. Facilitating the sale of the bridge bank on commercial terms should be the goal.

How to re-organize the asset and liability side of a failing institution?
To restore market confidence and facilitate the future sale, the bridge bank must be viable and subject to the same CRD requirements as any other credit institution. Allowing a bridge bank to operate without complying with the CRD requirements will create significant competitive distortions in the banking sector. Hence capitalisation and/or bail-in is likely to be needed.

Assets and liabilities that are left over from the bridge bank should ideally be left in insolvency. The important issue, however, is that the

credit institutions residual owners take losses to the fullest possible extent and that creditors also bear losses.

Principles for valuation

A central issue with bridge banks and moral hazard is related to the practical computation of the compensation for various creditors including shareholders. The guiding principle is that creditors should receive a treatment similar to that which they would have received if the bank had been wound up (which is in line with the statement in footnote 1 of the EC paper, that "creditors are neither better nor worse off than they would have been if the bank would have been wound up").

While this guiding principle is fair, it is the practical implementation details that will determine how well this principle is achieved. In case of the bridge bank, there are two alternative points of departure to determine the value of different creditors: (1) liquidation value of assets and (2) resale value of the bridge bank.

1) Liquidation value of assets: The Swedish Authorities believe this is the right approach to estimating the compensation due to the estate of the failed bank when the bridge bank tool is used. The principle is that the compensation should reflect the net value of the assets and liabilities transferred to the bridge bank if they had been placed into the insolvency procedure at the time of the transfer, i.e. liquidation value. Therefore, any recoveries from the sale of the bridge bank above the compensation value provided to the estate of the failed bank should go to the resolution fund. In short, the resolution fund takes on the financial risk of running the bridge bank and therefore should receive any upside from the sale of the bridge bank.

   If the liquidation value of a failing institution is taken as a basis, then the appropriate care should be exercised to calculate the (unobservable) liquidation value. Any valuation method should take into account the distressed market conditions in determining the value of various assets. It is important to make a clear distinction between the expected, fundamental and liquidation value of an asset. Especially during a crisis period, the expected value of any claim is significantly higher than its true fundamental value due to high market price of risk. The liquidation value in turn is significantly lower than the fundamental value since a

financial crisis typically means the absence of natural buyers and lack of overall funding liquidity.

2) Resale value of the Bridge Bank: This is the approach proposed in the EC paper (and adopted in the UK resolution regime). The guiding principle is that the compensation due to the estate of the failed bank should be calculated based on the sale value of the bridge bank minus any administration costs or charges for providing financial assistance incurred by the resolution authority / resolution fund. In effect, under this approach the state is seen as taking an administrative role, in that the economic rights to the bridge bank remain with the failed bank. The resolution authority / resolution fund simply charge for the actions and support it provides to the bridge bank.

   As we see it, this approach is not in line with the principle of ensuring creditor's receive neither more nor less than they would have in insolvency - since creditors (and shareholders) left in the failed bank may recover more than they would have in insolvency if the bridge bank is sold for a profit (i.e. the sale value of the bridge bank is greater than the insolvency value of the bridge bank plus the operating and support costs of the resolution authority).

Both valuation tools are imperfect as they are difficult to calculate. However, for the reasons described above, the liquidation value approach is preferable.

A bridge bank is intended to be a temporary structure. A time limit on the operation of the bridge bank of 2+3 years will in most cases be appropriate. However, in particular circumstances and depending on the nature and origin of the financial crisis some assets may need to be held for an even longer time period in order not to disrupt a sensitive and recovering market (e.g. real estate assets).

Summary of key points

- The proposed resolution objectives appear sensible but need to be balanced properly when being used to design the resolution regime.
- The scope of institutions that the bridge bank tool can be used on will be dependent on the effectiveness of resolution plans and the scale of a systemic crisis (i.e. it would not be possible or desirable to bridge bank the majority of the banking sector).

- The compensation due to the condition of the failed bank for the transfer of assets and liabilities to a bridge bank should be based upon an independent valuer's estimate of the net value of the assets and liabilities if allowed to go into the insolvency process (i.e. absent of any state support). The current Working Document proposal creates a moral hazard concern as the compensation might be above what it would have received in the case of insolvency at the expense of the resolution fund.
- If it is not possible to split a failed bank into parts to be saved and parts to go into insolvency, it may be more straightforward to use a temporary public ownership tool directly. In principle, as has been said above, this equals a broad bridge bank. Instead of transferring assets and liabilities to a new entity, the old shares are redeemed, and a bail in procedure is used to ensure that also creditors bear losses.

Conditions for resolution

28. Which of the options proposed, either alone or in combination, is an appropriate trigger to allow authorities to apply resolution tools or exercise resolution powers? In particular, are they sufficiently transparent, and practicable for the authorities to apply? Would they allow intervention at the appropriate stage?

The Swedish authorities support option 2 as proposed by the Working Document (p.47) as appropriate trigger for resolution. Option 2, includes the circumstances mentioned in option 1 as well as provides transparency whilst leaving enough flexibility for authorities to make a more composite assessment of the credit institutions situation.

As regards the supplementary triggers, it is important that the burden to take measures to avert failure is put on the bank. Therefore, we suggest amending the sentence as follows: "No measures taken by the credit institution are likely to avert failure and restore the condition of the institution in a reasonable timeframe".

Resolution objectives and principles

29. Do the resolution objectives suggested in section F3 comprehensively encapsulate the public interest considerations that justify resolution? Should any have precedence? Are there any other objectives that we should consider?

The objectives generally encapsulate the public interest considerations that justify resolution (p.49). No resolution objective should have precedence.

An additional objective that should be envisaged is the need to limit moral hazard and ensure that bank shareholders and unsecured creditors will not get the upside from public interventions.

30a. Are the guiding principles for resolution suggested in section F4 appropriate?

We agree with the general principles. The resolution framework must also promote an efficient outcome, which raises issues concerning piece-meal liquidations vs. going concern of a failed bank, as well as ensuring that the failed banks' creditors share the losses. This has some implications for the proposed principles guiding resolution. Although the principles are appropriate they could include the additional principle of authorities to minimize overall costs of the resolution.

30b. In particular, is it necessary to include a general principle that creditors of the same class should be treated equally or should resolution authorities be able to derogate from this principle in specific circumstances?

Yes, as a principle an authority should not have a discretionary power to treat creditors with the same ranking differently. However, in order to rule out the need for resolution authorities to be able to derogate from this principle under specific circumstances further analysis is needed.

30c. Is it necessary to require independent valuation, and are the objectives of that valuation appropriate?

Yes, it is important that ;

- resolution authorities ensure a fair and realistic valuation of the credit institution,
- the valuation is carried out by an independent valuer/ the valuation is subsequently verified by an independent valuer,
- the objective should be to assess the market/liquidation value, at the time of the resolution, without factoring in the state intervention or support,
- there is full transparency.

Resolution tools, powers and mechanisms

31a. Are the tools suggested in section 2 and elaborated in the following sections sufficiently comprehensive to allow resolution authorities to deal effectively with failing banks in the range of foreseeable circumstances? Are there any others that we should consider?

The Swedish authorities are of the opinion that the resolution tools mentioned in the Working Document proposal are, as mentioned above, insufficient for the framework to be credible when faced with the threat of a systemic crisis situation. Relying too much on untested resolution tools rather than previously proven solutions risks leaving authorities with insufficient instruments in a potential systemic crisis. A comprehensive list of resolution tools available for the authorities has been stressed by several examiners.[3] Three additional tools should at least be mentioned, conditional on appropriate safeguards:

- Temporary public ownership following capital injection (existing shareholders wiped-out, moral hazard taken care of; independent valuation at time of intervention; potential to make a bail-in)
- Capital injection (in threat of systemic crisis when it is not feasible for the state to sell, bridge bank or nationalize a large part of the banking sector)
- Guarantee tool (possibility for the state to issue guarantees of bank debt, subject to risk based fee's; a pivotal factor in current crisis resolution programs;)

Temporary public ownership of a troubled bank is not a goal in itself, but injecting new capital will restore confidence whilst at the same time maintain systemically important services, safeguard financial stability and give the authorities control of the distressed bank. Any value increase following the state support must also be returned to the state and the taxpayers as a compensation for the risks and costs taken by the government. Further, capitalisation and temporary public ownership is a necessary tool for national governments in markets characterized by an oligopoly-like competition. The direct and indirect links between financial institutions must not be underestimated. Even isolated problems in one credit institution can, through fire sales of assets, lead to rapidly decreasing asset prices. This might lead to

[3] Basel report: "Report and recommendations of the cross-border bankresolution group", Sept 2009, and IMF WP/09/200 "The need for Special Resolution Regimes for Financial institutions – The case of the European Union".

contagion to previously solvent banks.[4] Fire sales of assets can thus lead to additional assets sales and provoke a vicious circle.

The Swedish authorities also find it unacceptable that the original shareholders should receive the residual value from the sale of the bridge bank.[5] We are of the opinion that they should receive the value at the time of intervention, neither more nor less. The valuation should be done without taking into account any enhanced value as a result of the resolution measures.

Putting the bank into temporary public ownership may also be preferable from a corporate governance perspective. It will be clear that the state/resolution authority is the sole owner of the bank from the point of takeover. Also, the publicly owned firm can be managed as any other profit maximizing institution (according to sound market principles but without specific limitations on the business). Legislation enabling the state to take over ownership under certain strict conditions is therefore an important part of a crisis management framework.[6]

The Swedish authorities concern regarding the proposed resolution framework is also related to the structure of the banking sector (which has similarities in a number of other Member States). The banking sector is often dominated by a limited number of very large banks, and supplemented by a large number of small banks. A close-down or sale of one of the dominating banks is from a competition perspective problematic even during normal market conditions. In a crisis situation a wind up or close down of one of the major banks will lead to significant competition distortions. A resolution regime must recognize this in order to gain confidence.[7] In a crisis situation it might therefore be more economic and optimal from the point of overall costs to society to maintain a credit institution as a going concern.[8]

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[4] Diamond and Rajan (2009) *Fear of Fire Asset Sales and Credit Freeze* show that the risk of fire sale or anticipated stress can be sufficient to provoke a credit crunch.

[5] Goodhart (2008) writes: "*This means that a key feature of any bank insolvency regime must involve some expropriation of shareholder rights, and, whatever the compensation arrangement for shareholders, it is bound to generate either a claim that they were robbed of their property, or that the taxpayers were billed, or, quite often, both at the same time. So the key for closure, and the treatment of shareholders, is a central issue*".

[6] All Nordic countries have made provisions in national law which make it possible to take control of a troubled bank by means of temporary public ownership if it is motivated from the public perspective. In Denmark, Finland and Sweden special resolution regimes have been included in national law. The UK special resolution regime (SRR) also include the resolution tools "temporary public ownership", as a last resort.

[7] Cihak and Nier (2009) *The Need for Special Resolution Regimes for Financial Institutions – The case of the European Union*, IMF Working Paper, WP/09/200.

[8] Cihak and Nier (2009) argue that public ownership is an appropriate measure in smaller markets characterised by oligopoly-like competition in the banking sector.

31b. Should resolution authorities be restricted to using these tools, or should Member States be able to supplement the proposed EU resolution framework with national tools and powers?

A harmonised list of resolution tools available for authorities will enable better cooperation and cross-boarder resolution, which is one prime objective of the framework. But, at the same time, there are no good reasons for restricting the list. The Member States must be allowed to use additional tools, as long as every additional national tool is applied in conformity with the general principles governing resolution.

32. Do you agree with the conditions for the sale of business tool suggested in section G2, and in particular the requirement for marketing?

Yes.

33a. Should the EU framework include an express requirement that the residual bank (i.e. the entity that remains after the transfer of some, but not all, assets and liabilities to a purchaser) must be wound up? Are there likely to be circumstances where the residual bank is required to provide support to the purchaser or other remaining group entities?

No.

33b. Should a bridge bank be permitted to operate without complying with the CRD requirements, in particular without minimum capital? If that is the case, should its activities be subject to restrictions?

No, this would create severe competition distortions.

33c. A bridge bank is intended to be a temporary structure. Is it appropriate to limit the operation of the bridge bank to 2+3 years? Would it be preferable to impose a shorter or a longer limit?

A longer time period will be necessary under certain conditions and due to the nature of the assets, a definite time limit might therefore be counterproductive.

34. Should the use of the asset management tool as a stand-alone tool for resolution be prohibited in order to avoid the 'rescue' of a failing bank?

We are doubtful that this tool would be efficient in a more severe crisis situation. We agree that the tool should not be allowed as a stand-alone tool, as it will conflict with overall objectives of resolution.

35. The powers set out in this section G5 are intended to ensure that resolution authorities have all the necessary powers to apply the resolution tools. Are the suggested powers comprehensive? Are any additional powers necessary?

The resolution tools mentioned in the Working Document proposal are, as mentioned above, insufficient for the framework to be credible in a systemic crisis situation. Relying too much on untested resolution tools rather than tested solutions risks leaving authorities with insufficient instruments in case of a potential systemic crisis. A comprehensive list of resolution tools available for the authorities has been stressed by several examiners. Three additional tools should at least be mentioned, conditional on appropriate safeguards:

- Temporary public ownership following capital injection (existing shareholders wiped-out, moral hazard taken care of; independent valuation at time of intervention; potential to make a bail-in)
- Capital injection (for systemic crises when it is not feasible for the state to sell, bridge bank or nationalize a large part of the banking sector)
- Guarantee tool (possibility to issue guaranteed debt (subject to risk based fee's; a pivotal factor in current crisis resolution program;)

The Swedish Authorities note that the text does not mention which power the Resolution Authorities have in connection with off balance sheet items.

36. The ancillary provisions set out in section G6 are intended to ensure that where business has been transferred to another entity through the use of a resolution tool, the transfer is effective and the business can be carried on by the recipient. Are the suggested provisions sufficient? Are any additional provisions necessary?

The provisions are important, but the Swedish authorities doubt that they will be practicable if there are no guarantees that the opposite

party will be paid. The framework should therefore specify from what source the compensation should be paid. Our proposal is that compensation shall be paid from the resolution fund (if the institution cannot pay).

The Swedish authorities are also uncertain if provisions regarding this should apply to contracts of employment in cases when the employees choose to do a notice to quit or there has been a breach of the contract. And the opposite party must have the right to cancel the contract if the "new entity" breaches the agreement

37. Should the power suggested in section G7 be extended to allow authorities to impose equivalent requirements on other entities of the same group as the residual credit institution?

Yes.

38. The objective of the provisions suggested in section G8 is to ensure that where a transfer includes assets located in another EUMember State (e.g. in a branch) or rights and liabilities that are governed by the law of another Member State, the transfer cannot be challenged or prevented by virtue of provisions of the law of that other Member State. Are the suggested provisions sufficient to achieve this objective? Is any additional provision necessary?

39a. Should all member States be required to make provision in national law for all three mechanisms by which resolution can be carried out that that are suggested above? If the same mechanisms are not available in all Member States, could this pose an obstacle to coordinated cross-border resolution?

39b. Should receivership – which allows resolution authorities to take full control of the failing institution - be the primary framework for resolution?

39c. Is any provision considered in this section necessary, or is it sufficient simply to provide for the resolution tools and powers?

No, see general comments. It is sufficient to provide for the resolution tools and powers. National laws and regulations along with the heterogeneity of the proposed resolution authorities call for flexibility in terms of the legal means by which resolution powers are exercised.

40. Are the notification and publication requirements suggested in section G10 appropriate and sufficient to ensure that all affected persons are adequately informed about a resolution action?

It is important to consider proportionality and practicality with regards to this issue.

According the proposal notification shall take place "as soon as reasonable practicable after applying the sale of business tool….or exercising a resolution power". This is not in conformity with the text in G12 and G13 on Temporary Suspension which seems to assume that the notifications shall take place when the Resolution Authority has made the decision to put the institution under resolution. Since the objective of the temporary suspension is to give the resolution authorities time to decide which assets or liabilities that should be transferred and to effect the transfer, the notification should ideally take place as soon as the decision is taken.

41. Are the principles suggested in section G11 sufficient to ensure that creditors receive appropriate compensation?

The compensation due to the estate of the failed bank for the transfer of assets and liabilities to a bridge bank should be based upon an independent valuer's estimate of the net value of the assets and liabilities if allowed to go into the insolvency process (thus absent of any state support). The valuation must be clear and predictable. Therefore, the principles for the valuation should be stated in law.

42. Please give your views on the suggested temporary suspension of payment or delivery obligations? Is it appropriate to exclude eligible deposits? Should any other obligations be excluded?

A possibility to use a temporary suspension of rights will be necessary. It should however not be allowed in cases where a temporary suspension risks causing serious disturbance in the financial system.

The Swedish Authorities assume that the provision on limited stay of certain obligations will prevent a collateral taker to realize a collateral. To remove any legal uncertainty of how this right relates to the Financial Collateral Directive (2002/47/EC), the Swedish authorities would welcome amendments to that Directive; in particular Articles 4 and 7.

If a resolution is considered to be insolvency proceedings according to the Settlement Finality Directive (98/26/EC), the use of a temporary suspension of right may come in conflict with Article 3 in the Settlement Finality Directive (98/26/EC). According to that provision transfer orders and netting shall under certain circumstances be legally enforceable and binding on third parties even in connection with the event of insolvency proceedings against a participant. Furthermore, according to Article 4 of the same Directive, Member States may provide that the opening of insolvency proceedings against a participant or a system operator of an interoperable system shall not prevent funds or securities available on the settlement account of that participant from being used to fulfil that participants obligations in the system or in an interoperable system on the business day of the opening of the insolvency proceedings.

The Swedish Authorities notice that the provisions on temporary stay will exclude the possibilities to apply principles provided for in the Settlement Finality Directive. We advocate that temporary suspension of rights shall not be applicable to designated payment systems and central banks. If such an exemption is not introduced, an explanation on the relation between the suspension rights and the Settlement Finality Directive would be appreciated.

It is appropriate to exclude eligible deposits, but only up to the deposit insurance limit (otherwise depositors will be able to circumvent the deposit insurance limit. Every exception in addition to the covered deposits must be considered very carefully, otherwise there will be a risk for unfair treatment between the remaining creditors.

43. Please give your views on the temporary suspension of close out netting rights suggested in section G13, including the appropriate length of the suspension. Should any classes of counterparty be excluded from the scope of such a suspension: for example, Central Banks, CCPs, payment and securities settlement systems that fall within the scope of the Settlement Finality Directive?

A temporary suspension of close out netting would most likely facilitate a transfer of rights and liabilities etc. from a failing bank to another entity such as a bridge bank. Since close out netting primarily mitigates risks in an ongoing process by reducing credit exposures, the length of the suspension is essential for those counterparties that will be affected by the suspension. Preferable a stay should be as short as possible in order to limit any unpredicted and unacceptable consequence.

However, in order to protect financial stability, it is of great importance that this framework does not stand in opposition to the risk management mechanisms that already exist in systemically important financial infrastructures. The function and safety of clearing and settlement systems are based on the requirement that the participants in the systems must meet their commitments. If these commitments are not met on time, risks, which the clearing and settlement systems are built to cope with, could be reintroduced into the financial system.

The Swedish Authorities advocate that the clearing and settlement systems that fall within the scope of the Settlement Finality Directive should be excluded from the scope of such a suspension. If this would not be the case we would prefer to see a thorough impact analysis in this area, especially for the CCPs.

Provisions on suspensions and stays should furthermore be harmonised with third countries, e.g. the US, in order to secure a world-wide perspective.

44. Do you agree that judicial review of resolution action should be limited to a review of the legality of the action, and that remedies should be limited to financial compensation, with no power for the court to reverse any action taken by resolution authorities? Alternatively, should the court have the power to reverse a transfer of assets and liabilities in limited circumstances where unwinding of the transfer is practically feasible and would not cause systemic risk or undermine legitimate expectations?

It is essential that the judicial review of the actions by the resolution authority must be in line with the European Convention of Human Rights (article 6.1); cf. article 6.3 TEU. The matter needs further careful examination.

The Swedish Authorities agree that the framework should include provision to ensure that no insolvency or winding up proceedings under national law can be commenced with respect to a credit institution to which resolution tools are applied.

The Swedish Authorities have concerns regarding the proposal that the resolution authority should have the right to apply to the court to request a stay of up to 90 days in *any* judicial action or proceeding in which the affected credit institution is or becomes a party. That

proposal is very far-reaching and we have doubts whether this can be justified.

45. Would the provisions suggested in section G15 provide adequate protection for confidential information?

It is our opinion that secrecy should not be maintained unless it is motivated in a certain case. Thus, the principal rule should be transparency.

Safeguards for counterparties

General comments:
Safeguards for counterparties (H1)

The Swedish Authorities welcome the provisions on safeguards, which identify the classes of arrangements that should be protected. It is important to safeguard arrangements that are crucial for the functioning of the financial market and for which legal uncertainty can disturb the functionality of the market. The scope of the safeguards must therefore be absolutely clear. Clarification on which structured finance arrangements that are safeguarded should therefore be considered. The protection of trading, clearing and settlements systems should be introduced.

Safeguards for central banks may also be introduced since they according Article 9 of the Settlement Finality Directive are not affected by insolvency proceedings.

46a. Do you agree that the classes of arrangement suggested in this section should be subject to the suggested safeguards in the case of partial property transfers? Should any other market arrangements be included?

46b. As a general approach, this Section H suggests a set of outcomes that Member States need to achieve (i.e. transfer of all or none of the property, rights and liabilities that covered by the various kinds of market arrangements that are specified here). It does not prescribe how that should be done or, in particular, the consequences if a transfer contravenes these provisions. Is such further provision necessary?

46c. Is further harmonisation of the definitions of the financial markets arrangements covered under this section necessary for the safeguards to be effective?

46d. The objective is to ensure appropriate protection ('no cherry picking') for legitimate financial market arrangements. Is there a risk that the necessary flexibility for resolution authorities could be undermined or frustrated, for example if non-related derivatives are included in a protected netting arrangement?

47a. Please give your views on the safeguards for title transfer financial collateral arrangements and set-off and netting arrangements suggested in section H2.

47b. Do you agree that certain retail rights and liabilities and rights and liabilities relating to subordinated debt should be excluded from the suggested safeguard?

48. Please give your views on the safeguards for security arrangements suggested in section H3.

49a. Please give your views on the safeguards for structured finance arrangements suggested in section H4.

49b. Do you consider that property, rights and liabilities relating to deposits should be excluded from the suggested safeguards?

50. Is express provision in relation to the protection of trading, clearing and settlement systems necessary, or are the provisions of the Settlement Finality Directive sufficient? If express provision is needed in this context, should the protections be drafted more broadly than those in the Settlement Finality Directive?

51. Is the provision suggested in section H6 sufficient to ensure that creditors would receive appropriate compensation? Is it necessary to specify the details of such compensation arrangements in an EU framework?

It is important that ;

- resolution authorities ensure a fair and realistic valuation of the credit institution,
- the valuation is carried out by an independent valuer/ the valuation is subsequently verified by an independent valuer,

- the objective should be to assess the liquidation value, at the time of the resolution, without taking notice of the state intervention or support,
- there is full transparency and disclosure of impairments.

The compensation due to the estate of the failed bank for the transfer of assets and liabilities to a bridge bank should be based upon an independent valuer's estimate of the net value of the assets and liabilities if allowed to go into the insolvency process (thus absent of any state support). The valuation must be clear and predictable. Therefore, the principles for the valuation should be stated in law.

The framework should specify from what source the compensation should be paid. Our proposal is that compensation shall be paid from the resolution fund (if the institution cannot pay).

Group Resolution

52. *Do you agree that the group level resolution authority should decide on the composition of the resolution colleges?*

Yes. But there should be guidelines that give resolution authorities from countries where the credit institution has a substantial activity the right and obligation to participate in the college.

53a. *Does the framework suggested in Part 5 strike an appropriate balance between the coordination of national measures that is necessary to deal effectively with a failing group, and the proven need for authorities to act quickly and decisively where the situation requires it?*

The Swedish Authorities are positive to increased cross-border coordination during financial crises. Uncoordinated national responses are likely to result in sub-optimal solutions. The resolution college shall here serve as a coordination body and a forum for information exchange. However, coordination should be voluntary and decisions need be taken on national level. A resolution college cannot have the power to block decisions on a national level that may have vital importance for the economy.

53b. *Should the framework set out explicit detail about how each resolution tool might be applied at group level?*

No, each financial crisis is different. A too detailed regulation risks ruling out efficient means that would be essential in situations which are not foreseen today.

54. *Should it be a priority for the EU to strive for an internationally coordinated approach?*

Coordination in first instance should be carried out by the group resolution authority, in contact with the counterparties in the third country. Firm specific arrangements would be preferred to more general solutions.

55. *Should firm specific arrangements with third country authorities be required, as suggested in section P. 54?*

See question 54. National resolution authorities shall be responsible for their national branches located in third countries. This shall not automatically be delegated to EBA, even if there may be branches of the same institution in several EU-countries, since the activity of the branch may be of vital national interest.

Financing Arrangements

56. *Do you agree that if the resolution authority is not satisfied about the resolution framework of a third country it should be able to require changes to the organisation or operating structure of the credit institution?*

57. *Is it sufficient to make a general reference to the financing of resolution tools or is it necessary to be more explicit about what a fund can or cannot finance (e.g. recapitalisation, loss sharing, etc.)?*

The Swedish authorities believe that it is essential to define the use of the fund in broad terms. Should it only handle resolution of individual banks or should it also handle situations of potential systemic crises? We are of the opinion that the resolution fund should be possible to use for recapitalisation and that the fund should ultimately bear costs due to state interventions that are not covered by special charges.

We believe that it is necessary that the system can handle the threat of a systemic crisis. In order to make a resolution regime credible also during a systemic crisis, the financing arrangement needs to be credible. Faced with the threat of a severe crisis it might become

evident that industry is not able to bear the losses. In that case it is imperative that the financing regime is backed by the state as the last resort. This might be arranged with an explicit financing guarantee by the government. However, it is important that the shareholders are not bailed out.

Alternative 1:

A two tier system:

1. DGS-fund: Define that the fund could be used to reconstruct an institution if and only if it would be cheaper to use a DGS-system (and/or the tax payers) than to liquidate.

2. Stability fund: The fund should be used to counter systemic instability in a broader sense. The use shall be lightly regulated and its use should be controlled. It might be used to reconstruct institutions of systemic importance.

It should also be possible to use the fund for other purposes. It might for example be useful to use funds in order to counteract a domestic credit crunch due to a withdrawal of credits from foreign institutions during a financial crises. This may be done by offering temporary capital support on market terms to the solvent domestic banks to increase their lending capacity (in case of dysfunctional capital markets).

Alternative 2:

A single fund system:
Since it is unlikely that the DGS will be used for systemically important institutions, it might be logical to have a single fund for all purposes (pay out of deposit guarantee, resolution of single institutions and handling of a potential systemic crises).

If third country institutions have branches within the community, they should contribute to the fund if not a similar system has been established in that country (it is not reasonable to pay to two different systems for the same risk).

58. *Should there be more explicit provision about the alternative funding arrangements, for example reference to specific types of arrangements such as debt issuance or guarantees?*

Yes, see q.57. However, we would not consider issuance of debt by the resolution fund to be a sensible alternative. Such funding will not be feasible without state guarantees and in that case it is more efficient for the state to borrow in its own name.

59a. Should the basis for the calculation of contributions be fully harmonised or left to the discretion of Member States?

In order to promote a cross border level playing field certain harmonisation is needed. It should be stated that fees shall be ex ante and risk based. The base should be harmonised so as to avoid "double taxation". Also the approximate level needs to be harmonized.

59b. Are eligible liabilities an appropriate basis for calculating contributions from individual institutions, or a more risk adjusted basis be preferable? The latter might take account of elements such as: a) the probability that the institution would enter into resolution, b) its eligible liabilities, c) its systemic importance for the markets in question, etc. However, would that add too much complexity?

The Swedish authorities agree that eligible liabilities may be an appropriate basis for calculating the contribution, but we think that risk differentiation would be necessary. The fee could relate to each of the elements outlined although further work is required on the appropriate approach to doing this. In addition, the calculation should be consistent with other reforms currently underway (for example, the capital surcharge for systemically important institutions). However, the calculation should not be overly complex.

60. Do you agree that when the DGS of a Member State is also able to finance resolution, this should be taken into account when calculating the contributions to the Fund? Are additional safeguards necessary to protect the interests of insured depositors?

It is not sufficient with the present deposit insurance fee and funding if the fund in the future shall cover a larger set of obligations, that is both resolution and deposit insurance. Ex ante funding should be done for both the DGS and for resolution. However, Member States should have the freedom to collect funds using one or two separate fees since the risk differs between the systems.

61. Do you agree that a resolution fund should have a priority ranking over the claims of all other unsecured creditors? Do you consider that this privileged position should be extended to other creditors in order to ensure temporary funding in the context of resolution?

As pointed out in Part 4, the Swedish authorities have difficulties with the proposal for compensation proposed in the Working Document. If the Working Document approach is followed, the proposal on priority ranking for the resolution fund may however also be necessary.

Annex I: Debt write-down

General comments:
The role and design of bail in instruments

Although further work is needed, the tentative position of the Swedish Authorities is that the proposed framework is too dependent on untested bail-in tools to be able to fulfil its objectives.

Bail-in *may* be an instrument that can handle financial institutions that are too big to fail. Such institutions exacerbate systemic risk by removing incentives to prudently manage risks and by creating a massive contingent liability for governments that, in extreme cases, can threaten their own financial sustainability. Bail-in is one instrument that can help to reinstate the incentive to prudently manage risks, working through the channel of correctly priced risk, and thereby decrease the implicit state guarantee. Bail-in as a mechanism ensures that also creditors are bearing losses, which is an important part of the end to the privatisation of gains and socialisation of losses.

If the bail in tool can be shown to work, it should be treated the same as the orderly wind down tools (i.e. sale of business and bridge bank tools). Bail in should be one complementary method of achieving the resolution objectives, it need not be a 'third option' if ordinary liquidation and orderly wind down tools cannot achieve the objectives.

On occasion there will be a need to maintain a bank as a going concern, even when the point of non-viability is passed. Determining ex ante the extent of write downs needed for all potential situations is not meaningful. For banks that can be liquidated easily (without systemic consequences), bail in instruments would under normal circumstances serve no purpose and creditors would suffer losses through regular liquidation procedures. For banks that require some or all of their functions/activities to be maintained (for systemic or

other reasons), write downs are needed to avoid risk taking and potential suffering of losses by tax payers.

The latter category of banks could be required to issue bail-inable instruments. The required amount should be linked to its resolvability. A bank would be required to issue a sufficient amount of contractual bail-inable instruments that would create enough equity through conversion, haircuts or write offs to restore the (parts of) the bank to viability.

However, since one cannot be certain that contractual instruments would suffice to recover (parts of) a bank, a backstop that prevents tax payers from suffering losses is necessary. Therefore, contractual instruments would need to be complemented by a statutory approach where the competent authority can impose write downs on (selected forms of) existing unsecured debt. A statutory approach is also required to be able to deal with circumstances of systemic stress, where the consequences of liquidating even minor banks may be too dire for the financial system as a whole.

The orderly wind down tools, which we argue should include the statutory bail in tool, will impose market discipline on unsecured debt holders as they can impose losses on those creditors (eg through transferring only part of a bank to a bridge bank or private sector purchaser or buy imposing debt write downs). Therefore, there will be an incentive for those creditors to ensure the bank avoids entering the resolution regime, eg through issuing contractual bail-inable instruments.

The concept of a fall back on statutory bail in cases where contractual bail in does not suffice in enacting a successful resolution or recovery requires further elaboration on triggers, subordination and relations to other capital instruments. While this needs further investigation, a few tentative conclusions can be drawn. Contractual bail in instruments must trigger before a statutory bail in is applied. Regulatory capital instruments must bear losses before any higher ranking debt.

The point of non-viability is likely to coincide with the point in time at which the resolution plan is enacted. Contractual bail in instruments must also trigger at this point to fulfill their purpose. At point of trigger, all shares and bail-inable debt is written off. This should leave the troubled bank well capitalized. If not, additional statutory bail ins through hair cuts on unsecured creditors should be enacted by the resolution authority. The total amounts written off should seek to ensure that the bank becomes well capitalized. However, it is still unclear who is the owner of the recapitalized bank and this has to be further analysed. What must be stated is that the original owners can

not be the owners of the new bank, they should be wiped out in the bail-in process.

Bail-in as a concept to handle several of the problems that came to awareness during the financial crisis appear very appealing. However, it remains to be seen if and how bail-in will work in the next banking crisis. One issue that needs further investigation is if bail-in actually will be used in a severe crisis, or if policymakers may avoid imposing haircuts to senior bondholders out of concern that they may precipitate runs on similar instruments in other firms.

62a. What classes of debt (if any) would need to be excluded from a statutory power to write down senior debt?

A number of instruments may need to be excluded in different circumstances, depending on the implications of their potential bail in on financial stability, whether they expose the bank to runs on funding, legal impediments etc. This would in many cases probably include insured deposits, secured liabilities (covered bonds and repos), derivative exposures etc. It could be considered to try to establish ex ante the classes of debt that could never be excluded in a write down. This could for instance refer to subordinated debt and certain long-term debt. The Dodd-Frank legislation could be a useful reference in this regard.

62b. Is it desirable to undermine the principle that creditors of the same ranking should be treated similarly? Should a discretionary power allow authorities to discriminate within classes of debt?

It is not desirable, however, in order to limit contagion and safeguard financial stability, discretionary power to treat creditors with the same ranking differently may be needed. This need cannot be rule out without further analysis. Obviously, this power should be used restrictively and only when necessary, and be subject to a clear and transparent claims process.

62c. What are the consequences of the fact that this approach may result in the ranking of creditors in the context of resolution being different to that in normal insolvency? Is further provision needed to address this?

Further analysis is needed. However, a creditor should not be worse off in a resolution than in normal insolvency.

62d. What measures would be appropriate to reduce debt restructuring and regulatory arbitrage? For example, would it be necessary to require a minimum amount of debt remains in scope at all times?

The effect of a bail-in mechanism would be some change in the capital structure of financial institutions, e.g. increase the share of covered bonds. A minimum level of bail-inable debt is needed in order to make the bail-in instrument credible. If the capital structure changes enough to risk the functioning of the bail-in instrument, it would require a minimum of bail-inable debt at all times. The amount of bail-inable instruments that a bank should be required to issue must be linked to their resolvability.

63a. What factors should authorities take into account when determining the correct amount of 'bail-in debt' that should be issued acknowledging the need to ensure that institutions are 'resolvable' while avoiding single market distortions?

The amount of contingent capital and bail-in debt issued is an important factor in their effectiveness as possible resolution tools. Banks should have sufficient bail-in debt to be able to be recapitalized according to prudential requirements. This would imply a minimum for the bank's funding in the form of bail-inable debt. The regulator could set the capital requirement for a bank based on the prudential risks posed by its business activities, as in the current Basel capital framework. The level of bail-in senior debt could then be set to protect against insolvency (if the prudential capital requirement is inadequate).

63b. Would a market for large amounts of such debt exist at a cost which is lower than equity?

63c. As an alternative to a statutory requirement to issue certain instruments with specified terms, might institutions be permitted to insert a write down term in any debt instrument they deem appropriate to meet the fixed requirement for 'bail in' debt? Would there be any drawbacks to such an approach?

Instruments that meet any fixed requirement (set in regulation or as part of the pillar 2 process) need to meet certain criteria. This is necessary to ensure their policy purposes. For instance, sufficient maturity is needed to ensure that instruments are available in situations of stress. Further investigation is needed on the appropriate criteria for contractual bail inable debt. Looking at which of the eligibility criteria for Tier 2 instruments is necessary may be a promising starting point for that work.

64a. Would the trigger be sufficiently clear and predictable (i.e. will instruments be rateable and will markets be able to price them) if linked to the failure of an institution?

The recent standards from the Basel Committee on Banking Supervision on the function of regulatory capital instruments in

situations of non-viability provides some elaboration on when a bail in regime would be triggered. In the preparatory work of that proposal, industry dialogue did indicate that pricing and rating of such an event would be possible.

The trigger for statutory bail in should be the same as the other resolution tools. Otherwise it could cause confusion in the use and ranking of the resolution tools. The issues around clarity and predictability of the trigger for statutory bail in are the same as for other resolution tools, as the bail in and other tools are different approaches to achieve the same/a similar economic outcome for creditors.

64b. Are market participants likely to have an appetite for such instruments? Why or why not? If you consider that the pool of likely investors would be small, are there any adjustments which could be made to make such instruments more attractive without undermining the objectives of the tool?

We believe that as long as the instruments are properly priced and understood there will be investors.

64c. What are the most likely classes of investor: e.g. other banks or investment firms, insurers, pension funds, hedge fund and other high yield investors, retail? Should certain types of investor be restricted from holding such instruments?

Once the current preconception of too-big-to-fail is eliminated or at least significantly reduced, we envisage a broad range of investors to show appetite for such instruments, including asset and fund managers, hedge funds, pension funds and insurance etc.

There may be an increased risk of contagion for institutions that hold bail-inable debt of other financial institutions. This is something that should be analysed further.

65. Under what circumstances would additional compensation mechanisms be needed and what form might they take?

The guiding principle is that creditors should receive a treatment similar to that which they would have received if the bank had been wound up. The framework should specify from what source the compensation should be paid. Our proposal is that compensation shall be paid from the resolution fund (if the institution cannot pay).

66. Should a regime of the kind discussed in this Annex allow flexibility in where within the group 'bail in debt' issue or held? What are the relative pros and cons of such an approach and what

mechanisms would there be for ensuring all resolution authorities have viable resolution tools?

67. Is there a case for giving some creditors of a newly bailed in institution 'super senior' status? Should such a status be discretionary or a rule? What sorts of claim should be included and what mechanisms for transition back to a normal state should be considered?

This calls for further analysis.

68. Is it necessary to design a 'bail-in' mechanism for non-joint stock companies? How might this be achieved without unduly benefitting the members at the expense of creditors?

No, we doubt that it will be possible to design a bail-in tool for non-joint stock companies. The Swedish experience is that non-joint stock companies may need to be transformed into joint stock companies for resolution to be possible.

Annex II: Derogations to Company Law Directives

69. Are these provisions sufficient for the effective application of the resolution powers? Please specify the missing provisions, if any.

The Swedish Authorities welcome the amendments proposed of Company Law Directives, which should facilitate the application of the resolution powers.

70. Do you agree on the need to create a mechanism for a rapid increase of capital? What would be your preferred option for the mechanism? Is there a need to specify that this mechanism can only be used close to the resolution triggers, i.e. not throughout the entire early intervention

The Swedish Authorities agree to create a mechanism for a rapid increase of capital, but do not at this stage have any preferred option.

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