



**To the members of the
European Federation of Building Societies**

Brussels, 28 June 2012

Proposal for a Directive establishing a framework for the recovery and resolution of credit institutions and investment firms

Dear members,

Enclosed you will find, for your information, the European Commission's proposal for a Directive establishing a framework for the recovery and resolution of credit institutions and investment firms. With this proposal for a Directive, the EU Commission intends to introduce common rules for the recovery and resolution of credit institutions which are in financial distress. The Commission believes that national insolvency proceedings are not sufficient.

The proposal for a Directive will apply to all credit institutions, investment firms and financial holding companies. After the Directive's adoption and transposition into national law, Bausparkassen and their deposit guarantee schemes would also be directly affected. In particular, we would like to draw attention to Article 97(2) (see II 2. on page 3), which provides for an obligation among national resolution funds to lend money to each other. This proposal has already prompted some protests in the banking sector. Below we would like to draw your attention to detailed provisions contained in the proposal for a Directive.

I. Measures

The measures stipulated in the proposal for a Directive can be subdivided into three phases: prevention, early intervention and the resolution phase of a credit institution.

1. Preparation and prevention

a. Drawing up a recovery plan

Under Article 5 ff. of the Commission's proposal, Member States shall ensure that each credit institution draws up a recovery plan which will enable them to independently restore their financial situation following significant deterioration. The institutions shall update their recovery plans annually based on regulatory technical standards of the European Banking Authority (EBA) and the requirements contained in Annex A of the proposed Directive and submit them to their national supervisory authorities. More detailed plans will have to be drawn up for institutions with systemic importance. Groups of companies will have to draw up a group recovery plan which will contain recovery plans for the group as a whole and for each institution of the group.

b. Drawing up a resolution plan

For the resolution of credit institutions, the competent authorities shall draw up plans, for each institution and for groups as a whole, which can be used for the resolution of an institution (Article 9 ff.). The precondition for the implementation of a resolution plan is that the institution concerned must be in such financial distress that recovery is no longer possible. The resolution authority shall assess the resolvability in line with the requirements laid down in Annex C of the proposal for a Directive. The resolution authorities shall obtain the information required for this purpose from the institutions themselves. The authorities shall draw up resolution plans both for each institution and

for groups of institutions as a whole. More stringent requirement shall apply to institutions with systemic importance.

c. Impediments to resolvability

When the competent authority draws up a resolution plan and determines that the resolution of an institution might be hampered by impediments, the authority may, under Article 14, request the credit institution concerned to remove the impediments. The resolution authority may, for instance, separate critical functions from other functions by requiring changes to the structure or organisation of an institution.

d. Intra-group support

Financial groups may internally conclude agreements to provide financial support to any group member that experiences financial difficulties through loans granted by other group members. The agreement may only be concluded with the approval of the supervisory authorities and the shareholders of all Group members. The decision taken by the management body of a group with regard to the provision of financial support must be submitted to the competent authority and EBA. The competent authority may prohibit the provision of financial support. Where the competent authority responsible for the institution that is to receive financial support decides to prohibit the financial support, EBA shall take a final decision. The names of the institutions that have entered into a group financial support agreement shall be published and updated annually in accordance with EBA's regulatory technical standards.

2. Early intervention

Where an institution is likely to breach the regulatory capital requirements, the competent authority must be able to intervene at an early point in time (Article 23). In this context, the competent authority may require the management of the institution to implement measures set out in the recovery plan, to draw up an action programme and a timetable for its implementation, to convene an Annual General Meeting so that the shareholders can take urgent decisions, and to draw up a debt restructuring plan with its creditors. Should the early intervention measures remain unsuccessful, the competent authority may appoint a special manager for a maximum period of one year (Article 24).

3. Resolution tools and powers

Where prevention and early intervention have failed and where failure of the credit institution is inevitable and the institution's resolution is in the public interest, the authority shall be entitled to take resolution actions. Under Article 27 of the proposal for a Directive, an institution is deemed to be failing or likely to fail if it is in breach of capital requirements for continuing authorisation, or if the institution's liabilities will be greater than its assets, or if the institution will be unable to pay its obligations as they fall due, or if the institution requires extraordinary public financial support. The most important resolution tools include the sale of a business, the transfer of assets to a bridge institution, the separation of assets and their transfer to an asset management vehicle, and the "bail-in" tool.

The purpose of the bail-in tool (Article 37 ff.) is to recapitalise the institution or to provide capital for the bridge institution. The bail-in tool will give resolution authorities the power to write down the claims of unsecured creditors and to convert debt claims to equity.

Under Article 38, the bail-in tool shall not be applied to the following liabilities:

- deposits that are guaranteed in accordance with the 1994 Directive on Deposit Guarantee Schemes (Directive 94/19/EC),
- secured liabilities and liabilities with an original maturity of less than one month, liabilities that arise from holding client assets or a fiduciary relationship between the institution as fiduciary and another person, liabilities arising from accrued salary or pension benefits.

The hierarchy of claims in terms of write-down and conversion powers shall be in keeping with the provisions laid down in Article 43.

The resolution tools may be applied to a subsidiary or to the holding company as a whole if only one subsidiary meets the requirements for the application of a resolution tool.

The resolution authority will be given a wide range of resolution powers, including the power to amend the amount of interest payable under debt instruments issued by the institution. To this end, they will also be able to suspend payment for a temporary period (Article 56(1)(m)). Furthermore, resolution authorities shall have the power to suspend, for a period of one day, any payment or delivery obligations pursuant to any contract to which an institution is a party (Article 61). However, this shall not apply to deposits. Resolution authorities will also have the power to restrict secured creditors of an institution under resolution from enforcing security interests for a limited period (Article 62). The time period for which a restriction on the enforcement of specified classes of security interest applies shall be determined by means of delegated acts adopted by the European Commission.

The resolution actions taken by the competent authority shall also apply to assets that are located in a Member State other than the one in which the resolution authority is based. The resolution decision and its implementation shall be published by the resolution authority in accordance with regulatory technical standards.

II. Resolution financing:

1. The financing of resolution tools

Pursuant to Article 91, Member States shall establish a resolution fund that can be used to finance resolution. The fund will be financed from contributions made by the banks, adjusted in accordance with a credit institution's liabilities and risk profile. Within a period of 10 years, the financial means available in a fund should reach 1 percent of the amount of guaranteed deposits. Member States may also provide that the available financial means of deposit guarantee schemes established in their territory may be used for this purpose (Article 99(5)). The European Commission shall be empowered to adopt delegated acts in order to adjust the amount to an institution's risk profile and financial position. Furthermore, where the available financial means are not sufficient, resolution authorities may raise ex post contributions.

2. Obligation to grant loans between national financing arrangements

In the event that the amounts raised for the national resolution fund are not sufficient and that national third parties such as financial institutions or the central bank are unable to provide the funds necessary to cover the losses, the national resolution funds of the EU shall be obliged under Article 97 to grant loans to each other. This would lead to the heretofore not wanted European guarantee network of the deposit guarantee schemes and the institution guarantee schemes. However, this obligation to lend to other financing arrangements shall be limited to no more than half of the funds that the national financing arrangement has available at the moment when the

borrowing request reaches it. The Commission shall be empowered to adopt delegated acts in order to specify the conditions that have to be met by a financing arrangement to borrow from another financing arrangement.

III. Sanctions

Member States shall be able to introduce administrative measures in the form of pecuniary sanctions to ensure that credit institutions, their senior managers and the members of their management body comply with the provisions contained in the proposal for a Directive (Article 101(2)). In case of legal entities, administrative pecuniary sanctions can amount to up to 10 percent of the total annual turnover; in the case of natural persons, they can amount to up to € 5,000,000. However, pecuniary sanctions shall not exceed twice the amount of the profits gained because of the breach of the Directive. When determining the level of the sanctions to be imposed, the competent authorities shall take into account the gravity of the breach, the degree of responsibility, the financial strength of the responsible person or entity, etc.

IV. Transposition period

Member States shall transpose the Directive into national law by 1 January 2015. The "bail-in" tool (Article 37 ff.) shall be applied as of 1 January 2018.

To position the building societies in the future parliamentary debate, we would be grateful if you could send your statements on this proposal for a Directive by **Friday, 17 August 2012** to the European Office.

Should you have any further questions, do not hesitate to contact us.

Kind regards,



Andreas J. Zehnder
Managing Director

European Federation of Building Societies

Enclosure

Proposal for a Directive of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directives 77/91/EEC and 82/891/EC, Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC and 2011/35/EC and Regulation (EU) No 1093/2010